

EXTERNAL COMMENTS ON OECA’s DRAFT FY 2016-2017 NPM GUIDANCE AND OECA’S RESPONSES

This chart includes responses from the Office of Enforcement and Compliance Assurance (OECA) to the seven sets of comments submitted by states, tribes and associations during the external comment period on OECA’s draft FY 2016-2017 National Program Manager (NPM) Guidance.

Comment from State, Tribe, or Other Stakeholder	Commenter	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
Environmental Justice				
<p>The “activities” section begins with “Regions, together with states, tribes and other partners as appropriate, will...” and goes on to call for potential environmental justice (EJ) concerns to be reviewed using the agency’s EJSCREEN tool. NACAA has expressed concerns to EPA about EJSCREEN, particularly with respect to the age of the data that is the underpinning of the tool. NACAA has recommended that EPA delay the launch of EJSCREEN until these data concerns can be addressed. Therefore, NACAA believes it is premature to include the use of EJSCREEN in the NPM. Additionally, even after the tool is launched, NACAA does not believe the use of EJSCREEN should be required and recommend that the word “will” be</p>	<p>Bruce Andersen, Kansas, and William Allison, Colorado, Co-Chairs, NACAA Program Funding Committee</p>	<p>Pages 17 – 18</p>	<p>EPA is moving forward with the interim public release of EJSCREEN in order to engage a broad range of stakeholders on the datasets in the tool, how it could be improved, and all other aspects of EJSCREEN. In an effort to make the tool as up-to-date as possible, the 2005 National-scale Air Toxics Assessment (NATA) data have been temporarily removed from the interim public version of EJSCREEN. The updated 2011 NATA dataset will be put back in the tool around Spring 2016, when the next update to EJSCREEN is expected. EPA released EJSCREEN in October 2012 for internal Agency use. OECA’s internal policy requires headquarters and regional enforcement programs to screen civil enforcement cases for potential EJ concerns using EJSCREEN and to record the results of those reviews in the Integrated Compliance Information System (ICIS). Although EPA plans to release EJSCREEN to the public in an effort to be more transparent about how EPA considers</p>	<p>OECA revised the introductory phrase in the activities section on page 18 and the last bullet on page 19 in the environmental justice section. OECA deleted a phrase in the CAA section on page 27.</p>

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replaced with “may.”			EJ in its work, there is no mandate or guidance expressed or implied that state governments or other entities should use EJSCREEN or its underlying data.	
A number of instances are identified for the use of EJSCREEN including for review of civil enforcement cases to be initiated and identification of the most important air pollution problems and most serious violations. ECOS and EPA have discussed a number of needed communications efforts regarding EPA’s EJSCREEN tool including use cases and other important information. EJSCREEN was released internally for EPA staff use in 2012. State environmental agency staff have not yet had the opportunity to use and understand how to apply this tool and recognize this will take time. Continued close communication between states and EPA is needed related to EPA’s plans for EJSCREEN as well as data set updating. These concerns have been conveyed several times to the Agency.	ECOS	Pages 17-18	OECA will continue to work with ECOS and state partners regarding the use of EJSCREEN, related communications, and plans moving forward. This includes the continued engagement of an ECOS/EPA EJSCREEN Communications Team specifically established to ensure that the Agency receives feedback on EJSCREEN communication needs from states. EPA also plans to release an ‘interim’ public version of EJSCREEN in the summer of 2015 to better engage stakeholders, including states, around the tool. In an effort to make the tool as up-to-date as possible, the 2005 National-scale Air Toxics Assessment (NATA) data have been temporarily removed from the interim public version of EJSCREEN. The updated 2011 NATA dataset will be put back in the tool around Spring 2016, when the next update to EJSCREEN is expected. Prior to that release, state partners will have an opportunity to gain early access to the tool for a limited period.	This comment does not necessitate a change to the NPM Guidance.
In addition to the Environmental Justice activities listed in the draft guidance, ECOS would encourage	ECOS	Pages 17-18	OECA will take ECOS’s suggestion into consideration, as a way to enable broader integration of EJ within state, tribal and local	This comment does not necessitate a

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<p>EPA to gather, compile, and share with states best examples through case studies and recommendations for implementing environmental justice through compliance and enforcement programs. These examples should not only be federal, but also be from states who have had successes in this arena.</p>			<p>governments.</p>	<p>change to the NPM Guidance.</p>
Compliance Assistance				
<p>OECA's Guidance recognizes on page 11 that, "robust compliance monitoring and enforcement are critically important for identifying and addressing violations and promoting deterrence. While individual facility inspections and enforcement actions remain a critically important part of addressing noncompliance, this alone is not sufficient to achieve the improvements in compliance we need." States agree that many strategies are needed to ensure compliance. As one example, based on 2002 state legislation, New Hampshire DES offers training to hazardous waste generators. The program requires each hazardous waste generator that generates more than 220 pounds of hazardous</p>	<p>ECOS</p>	<p>Page 11</p>	<p>While EPA's primary focus for utilizing our limited resources will be on traditional core types of enforcement and compliance activities, such as inspections and enforcement, we do acknowledge that compliance assistance can be a valuable tool as part of an overall integrated approach to help encourage and maintain compliance among the regulated community. EPA is interested in partnering with states to develop and implement next generation approaches to improve compliance, as stated in the National Program Manager (NPM) Guidance. In addition, EPA will continue to support over 17 compliance assistance centers that are available to increase compliance at regulated facilities. A listing of these can be found at http://www2.epa.gov/compliance/compliance-assistance-centers.</p>	<p>No revision to the NPM Guidance is necessary given that the topic addresses state-specific decisions to incorporate compliance assistance into integrated state enforcement and compliance assurance approaches.</p>

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<p>waste in one month to have on staff at the facility where the hazardous waste is generated, a Hazardous Waste Coordinator (HWC) certified by DES. The goal of the certification program is to empower each HWC to be responsible for ensuring that the generator is aware of, and in compliance with, limited to storage, transportation, and disposal. This first-in-the-nation certification program for HWCs is being implemented to provide a forum for educating generators in the complex regulatory area of hazardous waste management. Future certification courses will be designed to encourage generators to move "beyond compliance", by developing resource conservation, waste minimization, and recycling programs at their facilities. The state has seen positive results in improved compliance by hazardous waste generators and is seeking to further measure results. There are other examples of state initiatives to effectively incorporate compliance assistance as part of an overall integrated compliance assurance program.</p>				

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<p>ECOS recommends the OECA Guidance include specific language related to compliance assistance as one possible element of an overall integrated compliance assurance program.</p>				
CAA Section				
Compliment on Flexibility Language				
<p>NACAA commends OECA for its recognition of the need for federal, state, local and tribal governments to work together toward environmental goals. The association also applauds EPA for recognizing that resource constraints are a real challenge and that it is important for EPA to exercise flexibility in implementing the measures in the NPM to accommodate resource issues.</p>	<p>Bruce Andersen, Kansas, and William Allison, Colorado, Co-Chairs, NACAA Program Funding Committee</p>	<p>Overview Pages 1 -3</p>	<p>Thank you for your comment.</p>	<p>No revision is necessary in response to this comment.</p>
NSPS and NESHAPs Rule Language				
<p><u>NAAQS: Air Toxics Implementation; and CAA Compliance Assurance and Enforcement</u> A critical need for state and local agencies is for assistance from EPA when working with sources on interpreting NSPS and NESHAP rule</p>	<p>Wyoming Air Quality Division</p>	<p>Pages 25-26</p>	<p>Thank you for your comment. OECA takes seriously its role in providing assistance on regulatory interpretations and applicability issues upon request from regions, states, and local agencies.</p>	<p>OECA updated page 1 of the introduction to the NPM Guidance to include the language underlined below:</p>

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<p>language. This can be for determining applicability in situations not considered when the rule was developed or how to apply requirements that do not “fit” a specific circumstance, again typically in situations not considered in rule development. This need lives on for years after a rule is promulgated, and sometimes dredges up regulatory background documents that are decades old. While this does not happen frequently, we have seen it come up a few times a year and have had a great deal of difficulty getting assistance from EPA – especially when OAR points us to OECA who points us back to OAR. The source is just trying work with us to figure out, in good faith, what they are supposed to do – and not only do they not get clear answers but they risk enforcement on something that was never clear and that they were unaware was a problem. Every day that is delayed in getting them answers worsens their compliance situation. Nowhere in the NPM is this kind of support mentioned, which indicates that it is not a priority and likely will not get</p>				<p>“OECA coordinates with the EPA program offices, regions, states and local agencies and engages in consultation and coordination with tribal governments as it designs, develops, implements and oversees national compliance and enforcement programs. Regional offices also work with states and local agencies and consult with tribes to implement and review these programs. <u>Headquarters and regional program coordination includes providing assistance on regulatory interpretations</u></p>

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resources from EPA. It is also critical that OAR and OECA cooperate effectively in dealing with these kinds of questions, because the answers require the input of both entities. We feel strongly that this support needs to be specifically mentioned in the NPM for both OAR and OECA.				<p><u>and applicability issues upon request from regions, states, and local agencies.”</u></p> <p>OAR also updated their NPM Guidance in response to this comment.</p>
Compliance Monitoring Strategies				
ACWA supports the updates to the Compliance Monitoring Strategies to include a larger set of compliance activities.	ACWA	Page 22	Thank you for your comment.	No revision is necessary in response to this comment.
ECOS commends EPA regions for negotiating flexible approaches under the new guidance for states to request alternative CMS plans and for regions to review and approve state alternative plans. While states note that in certain instances the process is still challenging, time consuming, and complex, significant progress has been made and agreements reached. ECOS encourages EPA to continue working to support and refine this process.	ECOS	Page 22	OECA looks forward to continued coordination with the EPA regions and authorized states on developing, approving and implementing alternative plans under Compliance Monitoring Strategies to ensure the intended flexibilities are realized while maintaining a strong national program.	No revision is necessary in response to this comment.

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CWA New Enforcement Framework				
<p>EPA should consider whether a sector specific approach is the best use of resources in the coming three years. The draft New Enforcement Framework considers different groups of criteria that would be used to prioritize violations. Perhaps there is opportunity to leverage this tool to identify facilities with the greatest potential for environmentally significant impacts. EPA should consider piloting a prioritization inspection effort once the Draft New Enforcement Framework is finalized.</p>	ACWA	Page 12 and Pages 5-6	<p>EPA appreciates ACWA's active participation in OECA's ongoing effort to develop a draft NPDES New Enforcement Framework and will consider the suggestion to use this tool to identify facilities with the greatest potential for environmentally significant impacts by piloting a prioritization inspection effort, once the Draft New Enforcement Framework is finalized.</p>	<p>No revision to the NPM Guidance is necessary in response to this comment.</p>
NPDES E-Reporting Rule				
<p>With respect to the NPDES e-Reporting Rule, states and EPA should only collect information that is needed to manage their programs. ACWA encourages EPA to continue to work with states to develop an implementable rule. In particular, EPA must streamline Appendix A.</p>	ACWA	Page 11	<p>Starting in January 2014, EPA began approximately weekly discussions with a technical workgroup organized by ECOS and ACWA to help design the final rule's implementation process. Many of these discussions have focused on improving and streamlining the list of data elements covered by the forthcoming rulemaking (Appendix A to the proposed rule).</p>	<p>No revision to the NPM Guidance is necessary in response to this comment, which focuses on working with states on implementing the NPDES electronic reporting rule.</p>

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<p>Under “Implementing the Clean Water Act (CWA) Action Plan,” OECA includes the switch from paper to electronic reporting for the NPDES program. Forty-six states have NPDES delegation. The E-Enterprise Leadership Council (EELC) has endorsed support for a NPDES e-reporting pilot that would include development of e-reporting tools for various NPDES data flows that the rule addresses. EPA has identified some potential states as partners for particular work under this pilot. Given the potential for state shared services and the need to align with state reporting systems as appropriate, ECOS recommends a joint governance team be established to oversee this work and to provide timely and meaningful state engagement. This work would be distinct from EPA’s efforts to finalize the rulemaking.</p>	ECOS	Pages 10-12	OECA would welcome a discussion with ECOS on what they have in mind for a joint governance of the pilot effort.	No revision to the NPM Guidance is necessary in response to this comment.
Next Generation Compliance				
<p>ACWA supports Next Generation Compliance initiatives where flexibility is provided, efficiencies are highlighted and improved water quality is a direct result.</p>	ACWA	Pages 12-14	Thank you for your comment.	No revision is necessary in response to this comment.

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<p>ECOS commends EPA for its outreach and engagement with states on Next Generation Compliance (NGC), and encourages EPA to: analyze, document and report on pilot projects in ways that expedite adoption by others; pursue avenues to more quickly share NGC information with states not yet able to participate in EPA visits on NGC; compile and share with states successful state examples of NGC activities across all media programs; consider longstanding collaborative programs supporting compliance and protection, such as the National Vehicle Mercury Switch Recovery Program supporting the Electric Arc Furnace Steelmaking Area Source NESHAPs, for focused NGC activities; coordinate with states when releasing to the public new data generated by NGC actions; and ensure that NGC approaches result not only in improved compliance but also significant streamlining regarding electronic data exchange and reporting.</p>	<p>ECOS</p>	<p>Pages 12-14</p>	<p>As EPA continues to engage with states on Next Generation Compliance, we will compile state Next Generation Compliance examples and share them with other states periodically. We have already assembled a <i>NPDES Compendium of Next Generation Compliance Examples</i>, which showcases examples of <i>Next Gen</i> activities undertaken by states and regions. This document is scheduled to be finalized by the end of April. We intend to prepare similar documents for CAA and RCRA, and would welcome examples or contacts from states that are interested in sharing information or partnering with EPA to develop these documents.</p>	<p>No revision is necessary in response to this comment.</p>
<p>E-Enterprise</p>				
<p>ECOS urges EPA to include in all final NPM Guidance documents clear</p>	<p>ECOS</p>		<p>Thank you for your comment. OCFO included E-Enterprise language in the EPA Overview to all</p>	<p>OECA revised the introduction to the</p>

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<p>reference to the E-Enterprise for the Environment joint governance initiative between states and EPA. Specifically, ECOS requests each NPM include language generally defining E-Enterprise; language regarding how E-Enterprise concepts are being incorporated into each NPM's work; language explicitly recognizing that states need flexibility to adjust their work commitments and required outputs to be able to devote time to continuous process improvement efforts, including joint efforts with other states, tribes and EPA in support of E-Enterprise aligned activities; and language discussing that states may use categorical grant dollars to advance E-Enterprise aligned projects. ECOS also asks each NPM to provide examples in its final Guidance of specific E-Enterprise aligned work it is undertaking and examples of projects that states may similarly be undertaking. This may include efforts such as shared services development or implementation, LEAN and streamlining initiatives, e-permitting, EEnterprise scoping team participation, development of</p>			<p>of the Agency's NPM Guidances and each NPM Guidance includes a link to this Overview. OECA and each NPM included standard language in the introduction to their final NPM Guidance addressing E-Enterprise. OECA also added examples of specific E-enterprise aligned work that we are undertaking in the Next Generation Compliance section of the final NPM Guidance and in Appendix 1.</p>	<p>final NPM Guidance and the Next Generation Compliance section, and included a new Appendix 1, to address ECOS' comment.</p>

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E-Enterprise architecture and identity management, portal development, and other activities.				
States and EPA are working collaboratively on E-Enterprise for the Environment. One of the goals of this initiative is to improve environmental protection through better program performance. One of the ways this could be achieved is through promotion, adoption, and integration of advanced information and monitoring technologies. OECA's Guidance includes a section on, "Advancing Next Generation Compliance." ECOS recommends language be added noting state-EPA collaboration through E-Enterprise for the Environment and recognizing states and EPA will be jointly developing plans related to advanced monitoring.	ECOS	Pages 2, 12-14	OECA added examples of specific E-enterprise aligned work that we are undertaking in the Next Generation Compliance section of the final NPM Guidance, including plans for EPA and states to jointly develop an Advanced Monitoring Integration Strategy.	OECA revised the Next Generation Compliance section to address ECOS' comment.
ACWA urges EPA to include in the final Office of Enforcement & Compliance (OECA) NPM Guidance a clear reference to the EEnterprise for the Environment initiative between states and the Agency. We ask OECA to include language regarding how EEnterprise concepts are being incorporated into the Office's work, to explicitly recognize	ACWA		Thank you for your comment. OCFO added E-Enterprise language to the EPA Overview for all the NPM Guidances and each Guidance includes a link to the Overview. OECA and each NPM included standard language in the introduction to their final NPM Guidance addressing E-Enterprise. OECA also added examples of specific E-enterprise aligned work that we are undertaking in the Next Generation Compliance section and in Appendix 1.	OECA revised the introduction to the final NPM Guidance and the Next Generation Compliance section, and included a new Appendix 1, to address ACWA's

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<p>that states need flexibility to adjust their work commitments to incorporate E-Enterprise aligned activities, and to discuss that states may use categorical grant dollars to advance E-Enterprise projects. We also ask OECA to provide examples in the final NPM Guidance of E-Enterprise aligned work it is undertaking.</p>				comment.
Drinking Water Section				
<p>Compliance/Enforcement Principles:</p> <ul style="list-style-type: none"> We agree with the overarching goal of the Agency’s Enforcement Response Policy (ERP), which has the ultimate goal of returning non-compliant public water systems (PWSs) to compliance in order to protect public health. We also agree with the holistic approach of prioritizing those systems that need to be addressed through enforcement actions (i.e., PWSs with an Enforcement Targeting Tool score of 11 or higher, based on consideration of the number, 	ASDWA	Pages 8-9	Thank you for your comments in support of the drinking water section of the FY 2016-2017 NPM Guidance.	No revisions are necessary in response to these comments.

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<p>severity, and length of violations).</p> <ul style="list-style-type: none"> • We appreciate the Guidance’s acknowledgement that primacy agencies need to have the flexibility to use a variety of tools such as technical assistance and informal enforcement actions to bring PWSs back into compliance. Informal actions are often the most expeditious ways to help a facility return to compliance. • We also appreciate the Guidance’s acknowledgement that some small systems may remain in persistent noncompliance, despite a primacy agency’s best efforts and actions. In such instances, EPA and states will need to work together to explore root causes of noncompliance and options for resolution – and, hopefully, long term sustainability. Those efforts should take advantage of a variety of available tools, resources and partners. • States support the Agency’s efforts to stand up and continue to refine the Enforcement and Compliance History Online 				

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<p>(ECHO), which makes public access to PWSs' compliance status readily available and highlights the importance of accurate and complete data. States agree with the need to continually strive to improve the completeness, accuracy, and timeliness of data reported.</p>				
<p>FY 2016-2017 Activities We believe the suite of activities enumerated in the Guidance for both Regions and states appropriately reflects these foundational principles and supporting tools. We believe that ongoing consultations and collaboration between states and EPA Regions (described in the 4th and 5th bullets under the activities the EPA Regions will conduct) are especially important. States and Regions, as co-regulators, need to be on the "same page" relative to mutual expectations and planned activities – in light of priorities and resource constraints.</p>	ASDWA	Pages 8-9	<p>EPA recognizes the critical role played by state co-regulators to implement the drinking water program ensuring safe water for the public. We recognize that being on the "same page" is necessary when identifying priorities and efficiently applying limited resources.</p>	<p>No revisions are necessary in response to these comments.</p>
<p>Finally, we would suggest that the last bullet under expected <i>state activities</i> (i.e., "coordinate internally among enforcement programs in all media to protect drinking water sources") should also appear in the</p>	ASDWA	Pages 8-9	<p>Thank you for highlighting this. As discussed in the current FY 2015 Addendum to the NPM Guidance, EPA expects regional and headquarters offices to coordinate internally among enforcement programs in all media to protect drinking water sources.</p>	<p>EPA added the same internal coordination language on page 9 under EPA regional activities</p>

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<p>list of activities the <i>EPA Regions</i> will undertake. For instance, the draft FY 16-17 NPM Guidance for the Office of Water includes various cross references to use of other statutes (especially, the Clean Water Act) to protect sources of drinking water. This ethic needs to be built into our <i>collective</i> compliance/enforcement priorities as well – in both states and Regions.</p>				<p>in the drinking water section.</p>
Measures for States Reflecting a 2 Year Cycle				
<p>ECOS appreciates the inclusion of language regarding alternative compliance monitoring strategies and the option to discuss flexibilities with state workplans. The OECA Guidance Appendix on draft Annual Commitment System (ACS) measures includes several measures that discuss annual inspection activities. For instance, RCRA 01.s describes the number of inspections of operating TSDFs by states during the year. RCRA 02.s describes the number of inspections of LQGs to be inspected by the state during the year. CWA 07 describes annual CMS plans and numerical end of year report both due by December 31. With a shift to two-year NPM</p>	<p>ECOS</p>	<p>Appendix 1, pages 4-6</p>	<p>Thank you for your comment. The EPA-state-tribal NPM Guidance/NEPPS workgroup, whose purpose was to develop the new two-year FY 2016-2017 NPM Guidance process, discussed the ACS commitment process, and decided to maintain the annual commitment process in FY 2016-2017 NPM Guidance. EPA will re-evaluate the possibility of setting two-year commitments for the FY 2018-2019 NPM Guidance process, based on experience from the first two-year cycle. EPA appreciates ECOS' participation in the workgroup.</p>	<p>No revision is necessary in response to this comment.</p>

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<p>Guidances and corresponding shift to multi-year state grant workplans, states and EPA should consider how measures should be modified to reflect a multi-year cycle and to minimize annual measures relating to state activities to gain the maximum advantage of administrative reporting burden reduction and flexibilities to negotiate state workload over a two-year period.</p>				
FIFRA Section				
<p>Please insert language in red:</p> <p>“Convene routine and regular meetings between the region and state or tribe to discuss how the state or tribe has been performing overall in its implementation of the program, and in respect to its negotiated cooperative agreement.</p> <p>When appropriate and consistent with the Interpretive Rule and other national policy, take enforcement to address serious violations in the absence of appropriate state or tribal response or when significant state or tribal cases are referred to</p>	<p>Gila River Indian Community in Arizona</p>	<p>Page 40</p>	<p>OECA incorporated the suggested language into the final NPM Guidance.</p>	<p>OECA revised page 41 of the NPM Guidance to incorporate the suggested language.</p>

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EPA for enforcement.”				
State Review Framework Section				
States continue to point out that EPA incorporates in state program reviews (SRFs) requirements that are not found within 40 CFR. EPA identifying “failure to implement policy or guidance” as a program deficiency seems inappropriate. The Administrative Procedure Act (APA) provides EPA with a tool to elevate policy to regulations and EPA should avail itself of this tool.	ACWA	Page 15	EPA establishes by regulation the requirements for enforcement authority, and outlines by policy and guidance, the more detailed expectations for an acceptable state enforcement program. National policies and guidance, many of which set goals for performance, are important to achieve consistency across state programs and establish a level playing field for businesses, states and the public. EPA is responsible for ensuring that states consistently apply the law and pursue vigorous enforcement as appropriate.	No revision is necessary in response to this comment.
States remain concerned that the Agency is pushing for more prescriptive NPDES MOAs than are necessary. EPA Headquarters should closely monitor individual state feedback on this issue.	ACWA	Page 16	The Inspector General (IG) identified that NPDES Memoranda of Agreement (MOAs) are out of date, inconsistent with statutory requirements and current regulations, and hinder effective oversight over a national program administered by states. The IG recommended that EPA ensure all NPDES MOAs contain essential elements for a nationally consistent enforcement program. EPA reviewed all MOAs and identified a limited number of MOAs that were missing key, statutorily required elements where updates were needed. EPA headquarters and regional offices are working with those identified states to update the MOAs. EPA is interested in state feedback on this issue.	No revision is necessary in response to this comment.

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<p>Oklahoma DEQ is very supportive of the State Review Framework process and we believe it is a valuable tool for ensuring state compliance and enforcement programs are functioning fairly consistently across the nation. We are also very committed to compliance and work hard to ensure Oklahoma facilities maintain a high level of compliance at all times, as evidenced by our Round 3 SRF review. We are also putting into place additional processes to further improve compliance. Unfortunately, the metrics used and the review process employed for the SRF is heavily skewed so that states with high violation and enforcement rates may tend to be more favorably reviewed than states with lower rates when there may be good reason for the lower rates. For example, one metric in the Round 3 review evaluated states on the percent of inspections at which violations were found and compared the state's percentage against the national average for the review year. We are concerned when national averages are used as a measure of program health when only the raw</p>	<p>Oklahoma DEQ</p>	<p>Pages 15-16</p>	<p>Thank you for taking the time to comment. An SRF review develops findings from a number of sources which build upon each other. First, EPA develops initial findings and observations from national data, many of which serve as indicators where further review and discussion may be warranted. The specific metric you reference in your comment is a "review indicator" and is not used as the basis for a finding level. As stated in EPA's guidance, review indicator metrics use national goals and/or averages to indicate when agencies diverge from national norms. When deviation from a national goal or average is significant, this only means that the issue should be explored further. EPA should ensure that it pulls a sufficient sample of files to evaluate the issue during the file review (see the <i>File Selection Protocol</i> for additional guidance). EPA and the state or local agency should discuss the issue to determine if a problem exists.</p> <p>EPA then reviews facility files to provide more detailed findings. EPA discusses its observations and findings with the state to understand the potential issues and develop appropriate corrective actions. These discussions are intended to be in-depth and allow EPA and the state to understand the state program well beyond what is revealed by the data metrics.</p> <p>EPA did research the NRC program and there are similarities between the SRF and NRC</p>	<p>No revision is necessary in response to this comment.</p>

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<p>performance against the national average is evaluated without delving deeper into the numbers to see exactly what they mean. This is problematic because a national average is unknown and unknowable at the beginning of the review year. Furthermore, neither the National Program Manager's Guidance nor any other EPA guidance for authorized states establishes a definitive goal for this metric. While it is very important to correctly identify violations when they exist, it is equally important to document no violations when they do not exist. Any other outcome is detrimental to the integrity of a state's RCRA program and may place unnecessary compliance costs on industry. Thus, states with violation hit rates above the national average do not necessarily have better programs. Since the SRF reports are public records, it is important for EPA to accurately report its findings to ensure the public receives a fair and balanced summary of a state's RCRA program.</p> <p>To present a more holistic view of a state's compliance and enforcement</p>			<p>program, in addition to their differences. In decisions around the Round 2 SRF process and guidance, EPA and states together determined that the governance and implementation structures of the NRC reviews were not feasible for the SRF.</p>	

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<p>program, we believe EPA should consider modeling the SRF review after the Nuclear Regulatory Commission's (NRC) quadrennial Integrated Materials Performance Evaluation Program (IMPEP). Because Oklahoma's NRC Agreement State Program is under DEQ's jurisdiction, we have the opportunity to participate in both SRF reviews and IMPEP reviews, and we believe there are some aspects of the IMPEP review that would make the SRF review process even more valuable to the states and the public.</p> <p>The IMPEP team consists of NRC regional staff, NRC HQ staff, and an individual from another Agreement State (not the state being reviewed). The review looks at several areas of the Agreement State program. Those that could be most applicable for an SRF review are whether or not there is enough staff with proper training to adequately operate the RCRA program, whether or not the inspection program is meeting all of the requirements of the authorized program, and the technical quality of inspections. The review</p>				

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<p>includes both extensive file reviews and inspection accompaniments. Similar to the SRF review, files to be reviewed are determined ahead of time and form a significant basis for the evaluation. Unlike the SRF review, the IMPEP team also accompanies staff on one or more inspections prior to the on-site review. The data from these inspections may guide the review team during the on-site file review. At the conclusion of the IMPEP review, there is an extensive out-briefing with staff, management, and agency leadership.</p> <p>Once the IMPEP team has written their draft report and determined its rating, the state may provide comments. Both the draft report and state comments are then provided to a Management Review Board where the state has another opportunity to discuss the findings and provide clarification before the report is finalized and released. One outcome is that states with good radiation protection programs are not evaluated more often than every four years, while those with deficiencies may be evaluated on a</p>				

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<p>less-than-four-year basis. We believe this is fair.</p> <p>A process similar to the IMPEP would provide a much better evaluation of a state’s RCRA inspection/enforcement program, rather than relying exclusively on file reviews and comparing a state’s inspection/enforcement numbers against a national average, NPM Guidance expectations, or other measures. While we realize such an effort will require a significant change to the SRF process, we believe the thoroughness of the process would result in a far better assessment of a state’s EPA-authorized RCRA inspection/enforcement program. We would certainly be happy to work with EPA to develop such a review process.</p>				