

**OECA's DRAFT FY 2014 National Program Manager (NPM) Guidance
FY 2014 EXTERNAL COMMENTS AND RESPONSE TO COMMENTS SUMMARY TEMPLATE**

Comments Received Specific to OECA's FY 14 DRAFT NPM Guidance:

Comment from State, Tribe, or Other Stakeholder	Commenter(s)	Location in Draft Guidance	NPM Response	Action Taken in Final Guidance
<i>Issue Area: RCRA Subtitle C Hazardous Waste Program</i>				
<p>The third bullet under Activities discusses use of the CMS flexibility to deviate from LQG inspection requirements. The 2010 RCRA CMS authorizes two additional flexibilities for TSDF inspections (substituting GME/OAM inspections for CEIs or substituting FCIs for CEIs). On 10/17/2012, EPA issued a new Appendix J to the CMS that includes implementation guidance for these flexibilities. The NPM should be revised to reflect the existence of the two additional flexibilities already approved in the CMS, as well as the LQG flexibility mentioned.</p>	<p>Oklahoma Department of Environmental Quality, Land Protection Division and The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Hazardous Waste Subcommittee</p>	<p>Section IV.8, page 26, the third bullet under Activities</p>	<p>EPA agrees with and addressed your comment in the final NPM Guidance.</p>	<p>EPA revised the 3rd bullet under activities (on page 26) to read as follows:</p> <ul style="list-style-type: none"> Follow the RCRA Compliance Monitoring Strategy (CMS). Note: States may use the flexibilities described in the RCRA CMS for Large Quantity Generators (LQGs) and TSDFs.
<p>Page 26, recommend that the times EPA will take enforcement action also include “or when required to</p>	<p>Division of Solid Waste Management (DSWM)</p>	<p><i>Page 26</i></p>		<p>EPA revised the subject bullet to read as follows:</p>

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assist the state program or when federal enforcement is more appropriate than an individual state response (for example on issues that involve multiple states)".	Tennessee Department of Environment & Conservation Contact: Robert S. Nakamoto, P.E., CHMM Environmental Protection Specialist (615) 532-0868		EPA addressed your comment in the final NPM guidance.	<ul style="list-style-type: none"> Take enforcement action, consistent with national policy, where states are not addressing serious noncompliance or when federal enforcement may provide a more comprehensive response than an individual state response (for example on issues that involve multiple states).
Issue Area: RCRA ACS Measure RCRA 01s				
ACS Measure RCRA01.s includes the note, "The RCRA CMS establishes minimum annual inspection [emphasis added] expectations for TSDFs." This is incorrect. The RCRA CMS for this element states that 50% of non-government TSDFs should be inspected annually. States and EPA have always interpreted this to mean non-government TSDFs should be inspected a minimum of every two years. This note should be revised to ensure it is consistent with the CMS.	Oklahoma Department of Environmental Quality, Land Protection Division	Appendix I, Page 7	The commenter seems to have misinterpreted the language of the RCRA Compliance Monitoring Strategy (CMS) to require annual inspections of all TSDFs. The commenter is correct that RCRA CMS establishes minimum annual inspection expectations for TSDFs of at least 50 percent of the operating non-governmental TSDFs. The cited language was clarified in the final NPM Guidance.	EPA changed the language in the final NPM Guidance to read, "Only one inspection per facility counts towards this coverage measure. The RCRA CMS establishes minimum annual inspection expectations for TSDFs. At least 50 percent of the operating non-governmental TSDFs in the state must be inspected annually."

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<p>Commenter: ASTSWMO Hazardous Waste Subcommittee Tammie Hynum (501) 682-0831 or hynum@adeq.state.ar.us</p> <p>Location in Draft Guidance: Appendix I, Page 7, ACS Measure RCRA01.s</p> <p>The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Hazardous Waste Subcommittee appreciates the opportunity to provide comments on the FY 2014 Draft Office of Enforcement and Compliance Assurance (OECA) National Program Manager (NPM) Guidance. Please note that these comments only pertain to activities under RCRA as performed by State and Territorial (State) RCRA programs. The following comments are provided by the ASTSWMO Hazardous Waste Subcommittee and do not reflect a position or endorsement by the ASTSWMO Board of Directors.</p> <p>Comments: In Appendix I, Page 7, ACS Measure RCRA01.s includes the note, “The RCRA CMS establishes minimum annual inspection [emphasis added] expectations for TSDFs.” This is incorrect. The RCRA CMS for this element states that 50% of non-government TSDFs should be inspected annually. States and EPA have always interpreted this to mean non-government TSDFs should be inspected a minimum of every two years. This note should be revised to ensure it is consistent with the Compliance Monitoring Strategy (CMS).</p> <p>The definition of a Compliance Evaluation Inspection (CEI) under ACS Code RCRA01.s on page 7 of Appendix I of the Draft FY 2014 OECA NPM states that a CEI should include evaluating compliance with the financial assurance requirements, 40 CFR Parts 264/265 Subpart H. Financial responsibility is an important component of the RCRA core program and should be included as part of the inspection of each TSDF</p>		<p>Same as previous response to comment.</p> <p>For RCRAInfo purposes, a Compliance Evaluation Inspection (CEI) is separate from a Financial Record Review (FRR) inspection. However, RCRA Section 3007(e) requires the authorized</p>	<p>EPA revised the language in the final NPM Guidance to read, “Only one inspection per facility counts towards this coverage measure. The RCRA CMS establishes minimum annual inspection expectations for TSDFs. At least 50 percent of the operating non-governmental TSDFs in the state must be inspected annually.”</p> <p>EPA revised the language in the final NPM Guidance to</p>	

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<p>(although the financial responsibility reviews do not have to occur at the same time nor be conducted by the same people who conduct the field inspections). This definition is not consistent with the Compliance Monitoring Strategy and the definition of a CEI in RCRAInfo.</p> <p>The Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program, dated January 2010, states:</p> <p>“RCRA mandates “thorough” inspections for TSDFs. Therefore, for purposes of this CMS, Compliance Evaluation Inspections (CEIs) generally are expected for operating TSDFs. A CEI encompasses pre-inspection preparation; field inspection; possible follow-up activities, such as re-visits to sample; and information requests. See Appendix D for more information on the elements of a CEI.</p> <p>Ensuring that facilities maintain adequate financial responsibility is an important aspect of the RCRA compliance monitoring program. Typically financial assurance reviews are not a field inspection activity nor conducted by field inspectors, or may follow a different regulatory schedule than field inspections. At a minimum, however, determining whether a facility is in compliance with requirements to keep financial assurance records on-site is an appropriate part of any CEI. Some states address compliance monitoring for financial responsibility by conducting Financial Record Reviews at least annually for each facility. Where this is not the case, it is beneficial for field inspectors to have financial records information prior to visiting the facility (or at least before the CEI is concluded) to have a complete picture of the facility’s compliance status.”</p>			<p>hazardous waste program to “thoroughly inspect” every facility as to compliance with the subchapter and the regulations promulgated under the subchapter. Compliance with financial requirements falls under this subchapter and therefore is part of the requirement. For purposes of completing the ACS commitment, this means conducting an FRR as part of the CEI. The cited language was clarified in the final NPM Guidance.</p>	<p>read:</p> <p>“The onsite inspections for RCRA01 and RCRA01.s should be CEIs. Completing the commitment includes evaluating compliance with the financial assurance requirements, 40 CFR Parts 264/265 Subpart H. Financial responsibility is an important component of the RCRA core program and should be included as part of the inspection of each TSDF (although the financial responsibility reviews do not have to occur at the same time nor be conducted by the same people who conduct the field inspections).”</p>

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<p>In addition, Appendix D of the Compliance Monitoring Strategy defines a CEI as the following:</p> <p>A CEI evaluation is primarily an on-site evaluation of the compliance status of the site with regard to all applicable RCRA Regulations and Permits (with the exception of groundwater monitoring and financial assurance requirements). Although portions of a CEI evaluation may routinely be conducted in an agency office setting, such "office" evaluations are considered an integral part of a CEI in terms of completing an evaluation. The overall evaluation of a site's compliance status may take place over multiple days necessitating multiple site visits and activities. The entire set of activities and associated effort is considered a single CEI.</p> <p>The major function of a CEI is an overall review of the site's performance. The inspection includes an on-site examination of records and other documents maintained by the site and an evaluation of the site's compliance with all applicable requirements and adequate sampling, when necessary. Where appropriate, it includes groundwater monitoring assessment outlines or plans, closure/post-closure plans, contingency plan reviews, waste analysis plan reviews, and preparedness and prevention plan reviews. Specifically excluded from the CEI type of evaluation are financial assurance requirements and inspections of groundwater monitoring systems. A review of financial assurance requirements is most often conducted by "agency experts", and appropriately coded as a Financial Record Review (FRR) evaluation. Inspections of groundwater monitoring systems are coded as either a GME or OAM.</p> <p>Therefore the wording in the note for ACS Code RCRA01.s should</p>				

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<p>be revised to state that a CEI should include a review to determine that the required financial assurance documents are onsite. OECA should also add that the review to determine if the financial documents are in compliance with 40 CFR Parts 264/265 can be completed at another time and entered into RCRAInfo as Financial Record Reviews (FRR).</p>				
<p><i>Issue Area: Recognize Resource Limitations and Need for Flexibility</i></p>				
<p>Commenter: ECOS President Location in Draft Guidance: Page 14, Opening paragraph for “Program Specific Guidance”</p> <p>In the draft FY14 OECA guidance document, in the opening paragraph for “Program-Specific Guidance” on page 14, the document states “We recognize the tight budget situation faced throughout EPA at present. If resources do not allow for activities in the guidance to be implemented, then regional management should raise specific activities for discussion with the appropriate OECA office director(s).” Although states are co-regulators with EPA and have been delegated authority to implement much of the inspection and enforcement activity, there is no mention of state resource limitations or flexibility for states. States have been facing similar, if not worse, resource challenges for several years and should have similar ability to explore flexibility.... <i>(Next, in ECOS’ comments, there was a bullet about the OSWER guidance.)</i></p> <p>ECOS recommends all NPM guidance documents include a statement regarding both potential state and federal resource limitations and that explicitly allows for exploration of flexibility in state-region negotiations to fit local priorities in recognition of these limited</p>		<p>OECA discussed this topic with ECOS during the conference call on the draft FY 14 NPM Guidance. In response to the comment, OECA added a statement to the final NPM Guidance which reads:</p> <p>“Similarly, delegated or authorized state, tribal or local agencies that are facing resource challenges can raise specific activities for discussion with the appropriate senior regional manager(s) when developing their annual work plans with the EPA regions.”</p>	<p>EPA updated the introductory language for the “Program Specific Guidance” section of the final FY 14 NPM Guidance in response to the comment.</p>	

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resources.				
<i>Issue Area: Streamline State Application and EPA Approval of Alternative Compliance Monitoring Strategies</i>				
<p>Commenter: ECOS President</p> <p>In OCFO's "Draft Overview to EPA's Draft FY 2014 NPM Guidances," OCFO notes the FY 2014 guidance documents reflect four over-arching themes for program implementation including "[i]ncrease coordination and collaboration across the Agency and federal government and with states, tribes, and other implementation partners" and "[w]here appropriate, provide flexibility for states and tribes to achieve national program goals within existing laws, requirements, strategies, and guidance."</p> <p>On all of the state-EPA calls, the topic of EPA's approval in February 2013 of the Massachusetts Department of Environmental Protection (MassDEP) alternative compliance monitoring strategy (ACMS) for its FFY13 federally funded inspections for the air, RCRA, and underground storage tank programs was included. The process FFY13 took seven months and has been described as "onerous" and attempts by the state in prior years have taken even longer and have often completely failed.</p> <p>State grant funding for air, water, and waste core programs comes from EPA's media offices. OECA is the lead agency for approval of any ACMS which impacts state workload and environmental outcomes. States would benefit from greater coordination between OAR, OW, OSWER, and OECA on how to streamline a state's application and EPA's approval of an ACMS. For instance, pulling together information on why there may be less need to inspect major sources that</p>		<p>OECA is the EPA lead for development and implementation of national policies for compliance monitoring and enforcement. This includes the program specific Compliance Monitoring Strategies (CMS) that establish compliance monitoring goals for statutory programs, and CMS implementation and oversight. Development of each national CMS policy has involved extensive consultation and input from the relevant media program offices in EPA, EPA regions and states. State consultation and input on the national CMS policies has been obtained through the media-specific state associations (e.g., NACAA, ACWA, and ASTSWMO) and ECOS. OECA remains committed to extensive consultation and cooperation with our state and EPA program office colleagues regarding development and implementation of CMSs. This includes consultation and cooperation where individual states seek approval for an alternative CMS by availing themselves</p>	<p>The comment did not impact the language in the NPM Guidance but instead addressed an associated process.</p>	

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<p>are largely in compliance and instead focus on smaller sources that may need greater assistance can be burdensome. An alternative approach may be to provide compliance rate data on major sources. If this data shows compliance is at a certain level along with data from an EPA oversight audit that a state is meeting EPA's requirements, a state may be allowed to pursue an ACMS. EPA might also consider working jointly with states to develop a "pick list" for compliance oversight strategies states can use.</p> <p>ECOS recommends that OAR, OW, OSWER, and OECA, working jointly with states, initiate discussions on how to streamline a state's application and EPA's approval of an ACMS and include in appropriate NPM guidance documents, a commitment to work with states to do so. As a specific short-term action for FFY14, ECOS suggests that a high-level group with representatives from OECA, OW, OAR, OSWER, and ECOS be tasked to create some simple guidance for states on approvable ACMS containing elements like those outlined above, that if followed by states will be quickly approved by EPA.</p>		<p>of the substantial flexibilities that currently exist in each of the media program-specific CMS policies.</p> <p>When EPA receives a proposal for an alternative CMS plan, the review of the plan is considered a high priority activity. As EPA reviews proposed alternative plans, we look to ensure that the alternatives being proposed are consistent with ensuring overall long-term program integrity. Our experience has been that the duration of the alternative CMS approval process for a particular state or program is affected by how well the alternative CMS proposal is presented and supported by data that show the problems that will be addressed by the alternative plan, the potential impacts on other program areas due to trade-offs, and the overall long term plan for ensuring overall statutory program integrity.</p> <p>EPA will treat the review of future proposals for an alternative CMS plan as a high priority activity.</p>		
<p>Issue Area: Introduction Page 1- OECA's overall national goals</p>				

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<p>Page 1, Recommend substituting the words “Fair & Appropriate” for “Tough”. If the enforcement is appropriate, then when “tough” enforcement is required, it will be there. There are times when “tough” enforcement is not appropriate. Using more neutral terms like “fair and appropriate” sends a better message to the public.</p>	<p>Division of Solid Waste Management (DSWM) Tennessee Department of Environment & Conservation (TDEC) Contact: Robert S. Nakamoto, P.E., CHMM Environmental Protection Specialist (615) 532-0868</p>	<p>Page 1</p>	<p>Thank you for your comment. EPA indicates in the introduction to the NPM Guidance that “tough” enforcement will be used to address “<i>violations that threaten communities and the environment.</i>” As discussed in other sections of the NPM guidance, such enforcement is conducted in conformance with federal enforcement response policies to ensure fair and appropriate treatment.</p>	<p>There was no change to the NPM Guidance given that different media specific sections of the Guidance already note that enforcement is conducted consistent with national policy to ensure fair and appropriate treatment.</p>
<p>Issue Area: Introduction Section – Next Generation Compliance</p>				
<p>Commenter: ECOS President Location in Draft Guidance: Page 2, Introduction section i. Next Generation Compliance. On page 2 of OECA’s draft FY14 NPM Guidance, in the Introduction section, the document states, “The EPA, states, and other partner agencies propose to design and implement this transformation (Next Generation Compliance) together.” For over a year now, EPA has regularly discussed Next Generation Compliance with the states but usually only in broad terms. The states are interested in partnering with EPA on this initiative and would like to be provided with more detail and on how the states can engage with</p>			<p>EPA agrees with and will follow-up on this comment. In FY 2014, EPA intends to increase its outreach to, and collaboration with, states and tribes on Next Generation Compliance.</p>	<p>EPA edited page 2 of the introduction in the final NPM Guidance to read: “To further these efforts, in FY 2014, EPA will be increasing its outreach to, and collaboration with, states and tribes on Next Generation Compliance strategies.”</p>

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EPA on the strategic planning and implementation.				
Page 2, recommend looking at how improved technologies can be used to reduce the regulatory burden while improving environmental protection.	Division of Solid Waste Management (DSWM) Tennessee Department of Environment & Conservation (TDEC) Contact: Robert S. Nakamoto, P.E., CHMM Environmental Protection Specialist (615) 532-0868	<i>Page 2</i> <i>Next Gen paragraph</i>	EPA agrees with this comment.	EPA edited page 2 of the final introduction to state: “In many instances, Next Gen solutions can reduce regulatory burdens while improving compliance with environmental standards.”
Issue Area: Advancing Next Generation Compliance				
Advancing Next Generation Compliance- If “States and tribes should: “Expand their understanding and use of Next Generation Compliance.” Then “EPA regions should:” Provide adequate training to states and tribes in the area of NGC.	Eight Northern Indian Pueblos Council, Inc.	III, 7 , pages 11 and 12	EPA agrees with this comment that states and tribes should receive Next Generation Compliance training. OECA would likely develop and provide the initial training. EPA will explore options on how and when to conduct this training.	EPA edited page 10 of the final NPM Guidance to state, “OECA plans to pilot Next Generation Compliance training with the states and tribes in FY 2014 and beyond.”

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Issue Area: Safe Drinking Water Act				
<p>“Inaccurate and incomplete data result in incorrect and inconsistent Enforcement Targeting Tool (ETT) scores within and across states.””</p> <p>The Government Accountability Office (GAO) in FY 2011 highlighted the seriousness of underreporting SDWA data and recommended action by the EPA to improve the quality of data reported by states.” Tribal PWS need to be included in correct and consistent ETT scores and reporting considering their unique O&M situations and relationship with IHS.</p>	<p>Eight Northern Indian Pueblos Council, Inc.</p>	<p>Section III, 3, pgs. 5 and 6</p>	<p>The SDWA requires that EPA establish and enforce standards applicable to all public water systems (PWS) to protect the public from unsafe levels of contaminants. If states and tribes meet certain requirements, EPA may give them primary enforcement responsibility (e.g., primacy) for public water systems. Currently, primacy is exercised by each state (except Wyoming), each territory, the Navajo Nation (for most PWSs on the Navajo Reservation), and by EPA (for Wyoming, the District of Columbia and Indian country except PWSs under Navajo Nation primacy). The GAO Report led EPA to emphasize the underreporting problems in the National Program Management (NPM) guidance. The NPM guidance, therefore, directs primacy agencies to accurately and completely record information into the federal Safe Drinking Water Information System (SDWIS). EPA uses SDWIS data to generate the Enforcement Targeting Tool (ETT) scores for each PWS and an Enforcement Response Policy to focus on return to compliance and increase our effectiveness in the protection of public health. Among</p>	<p>EPA updated the language in the final NPM Guidance to read:</p> <p>“<u>EPA regions</u> will:</p> <p>Promote accurate, timely and complete reporting by each primacy agency, including the EPA.”</p>

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			<p>other things, the ETT increases the effectiveness of enforcement targeting efforts by providing a “tool” that calculates comprehensive noncompliance status for all PWS and identifies those PWS not meeting national expectations as set by EPA. It also provides an additional resource for identifying PWS possibly in need of other assistance in the areas of capacity development and sustainability.</p>	
<p>“Apply the ERP in Indian country, Wyoming, and the District of Columbia.”” Application of the the guidance, which contains procedures for consultation with tribes, should not result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the United States and must address and resolve drinking water violations on a schedule consistent with the ERP.” Please address how OECA will consult with Tribes as the ERP is applied and how ERP was developed with tribal input.</p>	<p>Eight Northern Indian Pueblos Council, Inc.</p>	<p>Section III, 3, Activities, Page 6</p>	<p>The SDWA requires that EPA establish and enforce standards applicable to all public water systems (PWS) to protect the public from unsafe levels of contaminants. If states and tribes meet certain requirements, EPA may give them primary enforcement responsibility (<i>e.g.</i>, primacy) for public water systems. Currently, primacy is exercised by each state (except Wyoming), each territory, the Navajo Nation (for most PWSs on the Navajo Reservation), and by EPA (for Wyoming, the District of Columbia and Indian country except PWSs under Navajo Nation primacy). The December 8, 2009 Enforcement Response Policy (ERP) is a policy that applies to EPA and each state, territory, and tribe with primacy. Among other things, the ERP creates a timeframe for addressing</p>	<p>No change is recommended. The NPM Guidance language already refers to consultation and OECA’s Indian country specific guidance.</p>

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			<p>serious violations. The timeframe and all other aspects of the ERP apply equally to all primacy agencies and PWSs in the United States. As the primacy agency for PWSs in Indian country except those under Navajo Nation primacy, EPA both follows the ERP's timeframe and engages in appropriate consultation and coordination with tribes on a government-to-government basis consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy and Questions and Answers on the Tribal Enforcement Process. EPA consulted with tribal governments on the Enforcement Principles Guidance. The Navajo Nation – the only tribe with primacy – was engaged in the ERP's development along with the states with primacy. In the near future, EPA plans to conduct a national consultation with tribes to improve tribal government understanding of drinking water compliance issues and the roles and responsibilities of EPA and tribal governments to ensure compliance with the SDWA. The consultation will help to inform Indian-country specific guidance under consideration on how to</p>	

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			ensure compliance at PWS in Indian country. EPA will conduct the consultation consistent with the EPA Policy on Consultation and Coordination .	
<p>General Comment on “Activities” – It is recommended (as a continuous comment)“EPA regions will:” assist tribal PWS in the areas of compliance assistance to insure safe drinking water for tribal populations.</p>	Eight Northern Indian Pueblos Council, Inc.	III, 3, page 6	<p>EPA has a longstanding commitment to work collectively with tribes to ensure access to safe drinking water. This work includes providing funding to support the construction of drinking water infrastructure and providing a wide array of compliance and technical assistance and training to PWSs. Compliance and technical assistance occurs when PWSs are both in and out of compliance with the SDWA in an effort to address violations in a timely manner. The Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy and Questions and Answers on the Tribal Enforcement Process convey the Agency’s approach to achieving compliance and protect human health and the environment in Indian country while ensuring appropriately consultation and cooperation with Tribal governments.</p>	<p>EPA updated the applicable language in the final NPM Guidance to read as follows:</p> <p>“Apply the ERP in Indian country, Wyoming, and the District of Columbia. When serving as the primacy agency for Indian country, ensure that the ERP timeline for RTC is accomplished while simultaneously implementing <i>OECA’s Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)</i>, which can be found at: http://www.epa.gov/compliance/resources/policies/state/84inindianpolicy.pdf. Application of the guidance, which contains procedures for consultation with tribes, threshold criteria for EPA’s consideration of formal civil enforcement actions, including appropriate</p>

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				<p><u>consultation and compliance assistance</u>, should not result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the United States and must address and resolve drinking water violations on a schedule consistent with the ERP.”</p>
<p>Issue Area: Clean Water Action Plan</p>				
<p>“State and EPA representatives on the CWA Action Plan Steering Committee and the various associated workgroups should:” It is important Tribes participate in the CWA Action Steering Plan Steering Committee as states and tribes share waterways, lakes, aquifers, etc. Are tribes able to sit at the table with this sub-committee?</p>	<p>Eight Northern Indian Pueblos Council, Inc.</p>	<p>Section III, 6, page 9</p>	<p>EPA did not include tribes on the Clean Water Action Plan Steering Committee as they are currently not authorized to implement the Clean Water Act’s National Pollutant Discharge Elimination System programs. EPA will, however, engage in appropriate consultation and coordination with tribes on actions or decisions that may affect them under the Action Plan consistent with the EPA Policy on Consultation and Coordination with Indian Tribes.</p>	<p>EPA included the following bullet on page 9 of the final NPM Guidance:</p> <p>“EPA will engage in appropriate consultation and coordination with tribes on the Clean Water Action Plan consistent with the EPA Policy on Consultation and Coordination with Indian Tribes.”</p>
<p>Issue Area: CWA NPDES</p>				
<p>“EPA regions with direct implementation responsibilities (e.g., non-authorized states, federal</p>	<p>Eight Northern Indian Pueblos Council, Inc.</p>	<p>IV, 3, page 18</p>	<p>EPA targets serious sources of pollution and serious violations of the CWA when directly implementing the water program</p>	<p>The updated language in the final NPM Guidance reads as follows:</p>

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<p>facilities and Indian country) and authorized states and tribes, should:</p> <ul style="list-style-type: none"> • Target serious sources of pollution and serious violations.” Tribes in states without primacy require additional assistance from Regions. 			<p>in non-authorized states and in Indian country. In both areas, EPA applies the appropriate tools, the NPDES Compliance Monitoring Strategy, and applicable enforcement response policies to ensure compliance and address violations in a timely manner. With regard to direct implementation in Indian country, EPA also applies the Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy and Questions and Answers on the Tribal Enforcement Process which convey the Agency’s approach to achieving compliance and protecting human health and the environment in Indian country while ensuring appropriately consultation and cooperation with Tribal governments.</p>	<p>“With regard to regional direct implementation in Indian country, apply the NPDES CMS, applicable enforcement policies, and <i>OECA’s Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)</i> (http://www.epa.gov/compliance/resources/policies/state/84indianpolicy.pdf). The latter policy contains procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA’s consideration of formal civil enforcement actions. The threshold criteria, including appropriate consultation and compliance assistance, should not result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the United States.”</p>
<p><i>Issue Area: Access to NEI Strategies</i></p>				

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<p>Commenter: ECOS President Location in Draft Guidance: Pages 3-4 NEI section</p> <p>ii. Access to national strategies. Pages 3-4 indicate that EPA regions will implement the strategies for the Air Toxics National Enforcement Initiative and the National Enforcement Initiative on New Source Review – Coal Fired Electric Utilities, Cement, Glass, Sulfuric and Nitric Acid. While the guidance identifies these as regional activities, because the measures for these activities ties to Annual Commitment System measures, there is likely state agency involvement in this work. States would like access to these strategies to better understand the efforts. Currently the only information available to states on EPA’s website provides goals, enforcement cases, and progress but no information on the strategies themselves.</p>				<p>The section on <i>National Areas of Focus</i> in the final NPM Guidance states that after strategies are developed for the FY 2014 – 2016 cycle, summaries will posted on EPA’s NEI website.</p>
<p>Issue Area: Suggested New Priority</p>				
<p>Page 2 for “National Areas of Focus Guidance” recommend adding in “Maintaining National Competitiveness”. Every environmental program should be aware of not only protecting the environment and the public, but on how to use environmental laws and policies to make our economic system and technology stronger. Linking enforcement and compliance back to encouraging and promoting sustainability and product life cycle approaches should be considered. That is,</p>	<p>Division of Solid Waste Management (DSWM)</p> <p>Tennessee Department of Environment & Conservation (TDEC)</p> <p>Contact: Robert S. Nakamoto, P.E., CHMM Environmental Protection Specialist</p>	<p>Page 2</p>	<p>Thank you for your comment. Our National Enforcement Initiatives (NEIs) are selected to focus enforcement resources and expertise on serious pollution problems affecting communities. As part of the preparation process for implementing the next cycle of NEIs, EPA develops a national strategy for each NEI which takes into account, where appropriate, promoting sustainability. For example, EPA has an NEI focused on Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation’s Waters. This NEI focuses on reducing discharges from</p>	<p>EPA took into account the comment received but it did not result in changes to the National Enforcement Initiatives (NEIs). However, as EPA develops its strategies for the selected FY 2014-2016 NEIs, it will continue to promote sustainability where appropriate.</p>

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<p>enforcement and compliance should be a key part of an overall holistic approach to environmental regulation and management in the 21st century.</p>	<p>(615) 532-0868</p>		<p>combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and municipal separate storm sewer systems (MS4s) by obtaining cities' commitments to implement timely, affordable solutions to these problems. In FY 2012, the EPA developed the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, which is posted at http://cfpub.epa.gov/npdes/integratedplans.cfm to provide further guidance on developing and implementing effective integrated planning solutions to municipal wastewater and stormwater management. This approach allows municipalities to prioritize CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first, while maintaining existing regulatory standards. All or part of an integrated plan may be incorporated into the remedy of enforcement actions. These remedies may include expansion of collection and treatment system capacity and flow reduction measures including increased use of green infrastructure and other innovative approaches. The EPA is committed to working with communities to incorporate green infrastructure, such as green roofs, rain gardens, and</p>	

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			permeable pavement, into permitting and enforcement actions to reduce stormwater pollution and sewer overflows where applicable. Regions should consider and promote the opportunity to utilize green infrastructure controls in municipal enforcement actions.	
<i>Issue Area: Strengthening State Performance and Oversight</i>				
iv. National Strategy for Improving State Enforcement Performance. We ask EPA to work with the states to develop a plan for fully engaging the states in the National Strategy for Improving State Enforcement Performance that is referenced on page 12.	ECOS President	State Oversight Section	As discussed on OECA’s call with ECOS, EPA will be working with states so they can review and offer comment on the draft Strategy and to develop a roll-out plan for communicating the Strategy as well. EPA welcomes state input.	Both the draft and final NPM Guidance already discuss state review of the draft National Strategy.
EPA enumerates four goals of the SRF. The fourth, and arguably most important, is to ensure “timely compliance with national environmental laws and regulations.” EPA assumes that only a “national approach to enforcement of the nation’s environmental laws” can produce this goal. DEP disagrees and notes that states know their state sources best, and should have broad	Florida Department of Environmental Protection (DEP)	III(8) p.12	In policies, guidance and in its oversight of state programs, EPA recognizes that states can and do apply a number of approaches to ensuring compliance. The State Review Framework recognizes and incorporates the flexibility that is built into enforcement guidance and policies	Revisions to the NPM guidance were not necessary in response to the comment.

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<p>discretion in promoting timely compliance by those sources. There is no “one-size-fits-all” approach, including over-reliance on enforcement. It is DEP’s opinion that a state that dedicates resources to front-end compliance assistance, that exceeds federal inspection requirements, and that finds compliance in excess of 98 percent (such as Florida), maximizes environmental protection, which is more important than national enforcement consistency.</p>				
<p>OECA directs the EPA regions to “review the number of SNCs/HPVs identified (and percent of universe) by state.” DEP believes that this requirement establishes a quota system that undermines efforts to promote full and timely compliance through front-end compliance assistance. Rather, this approach favors waiting until noncompliance has occurred to pursue enforcement and collect monetary penalties, which unnecessarily places citizens and the environment at risk.</p>	<p>Florida Department of Environmental Protection (DEP)</p>	<p>III(8) p.13</p>	<p>Thank you for you input. However, the comment is not correct in its interpretation of the SNC/HPV metric cited. Per the State Review Framework (SRF) guidance, this metric is not used to rate program performance. This metric is simply used to supply context. It therefore does not establish a quota nor suggests whether any particular rate (either high or low) is better than another.</p>	<p>Revisions to the NPM guidance were not necessary in response to the comment.</p>
<p>Page 12, “Strengthening State Performance and Oversight”, should consider exchange programs</p>	<p>Division of Solid Waste Management</p>	<p>Page 12</p>	<p>EPA appreciates this suggestion.</p>	<p>Revisions to the NPM guidance were not necessary in</p>

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and an organized system of meetings and joint-training to better ensure communication and national consistency.	(DSWM) Tennessee Department of Environment & Conservation (TDEC) Contact: Robert S. Nakamoto, P.E., CHMM Environmental Protection Specialist (615) 532-0868			response to the comment.
<i>Issue Area: EPA Agency-Wide Format for NPM Guidance</i>				
<u>Excerpt of Agency-Wide Comment</u> ECOS urges all NPM offices employ a uniform format throughout each NPM office guidance document of identifying activities by audience, and recommends OCFO work with all NPM offices to help them do so. Such an approach will aid state readers to quickly identify expected state activities for various programs.	ECOS President	Agency-wide comment sent to all of EPA	EPA identified a standard format for all of the draft FY 2014 NPM Guidance documents. OECA followed that standard Agency-wide format in its draft NPM Guidance. In the activities section of the NPM Guidance, the standard format calls for the up-front identification of the responsible party for carrying out activities followed by the expected bulleted activities. OECA's draft	OECA's draft and final NPM Guidance already follows the standard EPA-wide format for the FY 2014 NPM Guidance. For example, the activities section of the guidance may state: " <i>EPA Regions and authorized states and tribes should:...</i> " followed by the expected bulleted activities.

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			<p>guidance follows and complies with the current Agency-wide format.</p> <p>There are numerous identical activities that should be carried out by both the EPA regions and authorized states. If we repeated those same activities under <i>separate</i> headings for EPA regions versus states and tribes, the length of the guidance would substantially increase and we would not meet the Agency’s page guidelines for the FY 14 NPM Guidance.</p> <p>Currently, the activities section of the guidance may state: “<i>EPA Regions and authorized states and tribes should: ...</i>” followed by the expected bulleted activities.</p> <p>In OECA’s final guidance, the order of the lead-in sentence in the activities section will be changed so that it reads as appropriate: “<i>Authorized states and tribes and EPA Regions should: ...</i>”.</p> <p>We’ll reference authorized states and tribes first, as applicable, in the lead-in sentence. This should further highlight where states and tribes are impacted.</p>	<p>In OECA’s final guidance, the order of the lead-in sentence in the activities section was changed so that it reads as appropriate: “<i>Authorized states and tribes and EPA Regions should: ...</i>”.</p> <p>The final NPM Guidance references authorized states and tribes first, as applicable, in the lead-in sentence.</p>

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Issue Area: Tribal Input on Existing NEIs for FY 2011-2013				
<p>The draft Guidance states “the FY 2011-2013 initiatives were chosen after state and public input”, yet the Summary of Key Changes for Tribes states the “2011-2013 NEIs were chosen after EPA sought input from federally recognized Indian tribes (“tribes or tribal”), states, local agencies and other external stakeholders. Please indicate where tribal input was sought or received and why this input was left out of draft guidance.</p>	<p>Eight Northern Indian Pueblos Council, Inc.</p>	<p>Section III, Page 2</p>	<p>EPA did seek input from federally recognized Indian tribes, states and other external stakeholders in the process of selecting <u>both</u> the existing FY 2011-2013 National Enforcement Initiatives (NEIs), as well as the FY 2014 – 2016 NEIs.</p> <p>For the FY 2014- 2016 NEIs, input was sought via a Federal Register (FR) Notice, by seeking comment on the draft NPM Guidance and by EPA sending an invitation to consult on the draft NPM Guidance to every federally recognized Tribe.</p> <p>On January 23, 2013, OECA initiated consultation and coordination with federally-recognized Indian tribes on whether EPA should continue or change the Agency’s National Enforcement Initiatives (NEIs) for fiscal year (2014-2016). EPA invited tribes to provide input and information on three issues: (1) whether to extend the current six NEIs for the fiscal year (FY) 2014-2016 cycle; (2) whether new sectors or strategic areas are appropriate for consideration; and (3) whether current or new significant environmental problems</p>	<p>The final NPM Guidance was updated to indicate that current and FY 2014-2016 initiatives were chosen after EPA sought input from federally recognized Indian Tribes, states and other external stakeholders.</p>

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			<p>in Indian country or affecting Indian country exist that are appropriate for consideration. EPA held a conference call with tribal leaders on February 13, 2013 to discuss the NEIs and also sought tribal leader input throughout the draft FY 2014 NPM Guidance consultation and coordination process. This effort was consistent with the EPA Policy on Consultation and Coordination with Tribal Governments.</p> <p>The fact that input was sought from federally recognized Indian tribes, states and other external stakeholders has been clarified in the final FY 2014 NPM Guidance.</p>	
Issue Area: CROMERR compliance				
<p>iii. CROMERR compliance. Page 9 of the guidance indicates that EPA regions should “evaluate their states’ readiness to implement the electronic reporting rule, including: Cross-Media Electronic Reporting Regulation compliance electronic reporting tools compliant with EPA’s electronic reporting regulations.” States request that before any of them are evaluated on CROMERR compliance, EPA</p>	ECOS President	Page 9	<p>EPA’s Office of Environmental Information (OEI) is actively working with its state co-regulators to assist them in meeting the requirements of the CROMERR and recent improvements identified below should improve states’ ability to meet the requirements and EPA’s review and approval process.</p> <p>1) Automating EPA Internal Review Processes: EPA developed an automated workflow system to expedite</p>	<p>The comment did not impact the language in the NPM Guidance but instead addressed an associated process.</p>

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finish addressing any backlog of CROMERR applications.			<p>the CROMERR application review process for all new EPA and co-regulator e-reporting data systems that are required to meet the CROMERR performance standards (e.g., electronic signature, non-repudiation).</p> <p>2) Providing Technology Support Services: EPA built a generic suite of reusable services offered through the Central Data Exchange (CDX) that EPA and its co-regulators (states, tribes, and territories) can use as they develop e-reporting systems to meet EPA's CROMERR performance standards (e.g., electronic signature, non-repudiation) for reporting under Title 40 of the CFR.</p> <p>The Shared CROMERR Services Integrated Project Team (IPT), made up of state and EPA representatives, recommended making the CROMERR services reusable and managed in a centralized way so that state and tribes can leverage them for their own reporting programs in a more efficient and cost-effective manner. The following technology support options are currently available: User Registration; Identity Proofing; Electronic Signature; and Copy of Record.</p>	

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			<p>EPA developed specifications and documentation for states, tribes, and territories to adopt and implement the generic suite of reusable services offered through CDX that meet CROMERR performance standards. This will also enable third party software developers to offer solutions to the regulated community if desired. It would enable states and tribes without existing electronic reporting programs to more easily develop completely electronic reporting processes and may provide efficiency to others that currently have a system in place.</p> <p>3) Extending Outreach among Co-Regulators: EPA is aggressively reaching out to states and tribes to support them in the CROMERR application approval process and provides assistance in addressing outstanding issues. EPA is actively engaging state applicants on all phases of their application: completeness review, approval review, and Agency approval. EPA will provide expanded access to approved solutions, updates and status on CROMERR applications. EPA will enhance available CROMERR application guidance materials, technical assistance, and develop additional</p>	

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			<p>materials as needed. EPA will establish a CROMERR central customer help desk. Finally, the IPT will conduct ad hoc state forums to highlight and identify approaches that facilitate CROMERR compliance.</p>	