



**Final GUIDANCE FY 2009  
Performance Partnership  
Agreements  
Environmental Protection Agency  
Region 8**

**Office of Enforcement, Compliance,  
and  
Environmental Justice**

**Colorado  
Montana  
North Dakota  
South Dakota  
Utah  
Wyoming**

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## Introduction

FY2009 begins the second year of a three year planning cycle for the U.S. Environmental Protection Agency. An updated Agency Strategic Plan for FY2006-2011 has been completed and the Office of Enforcement and Compliance Assurance (OECA) has released their National Program Managers (NPM) Guidance document covering the same time-frame, and is included in 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 2009. 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, 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 FY2009 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.”*

I. 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.
- 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.

## II. 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) and the minimum data element specified in the December 28, 2007 Addendum to the PCS Policy Statement (for those states migrated to ICIS-NPDES) 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 FY2009 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.
- 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). 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.

## III. 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:  
<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. FY2009 REGIONAL PPA AREAS OF EMPHASIS AND PRIORITIES**

Each of these areas of emphasis should be considered during negotiations for the PPA for FY 2009. 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 2009. Additional information is available on Region 8's website, [www.epa.gov/region8/about/priorities.html](http://www.epa.gov/region8/about/priorities.html). For those that are, additional information has been provided for consideration by the States.

a. Agriculture

Region 8's objectives include developing effective partnerships and ensuring the adequacy of programs that address agricultural impacts. The Region is committed to forging strong relationships with producers, federal, state and local agencies and others to enable agricultural economies to thrive while improving environmental performance. This includes work with partners to implement the new Concentrated Animal Feeding Operations (CAFO) rules, promote pollution prevention on farms and within agribusiness, encourage stewardship and conservation practices for agricultural lands, assess the potential impacts of biotechnology, and assist in the development of environmental management systems within agricultural businesses.

b. Direct Implementation

EPA Region 8 has a large workload directed toward implementing environmental programs on tribal lands, in states that have not accepted program delegation for certain programs, and for programs that legislation does not allow us to delegate. Our Region is home to 27 tribal nations with a land area of 15 million acres. In almost all cases, EPA Region 8 is charged with implementing the full range of environmental programs on these tribal lands. Region 8 staff also implements many programs or portions of programs in states, including the bulk of the Safe Drinking Water program in Wyoming. In addition, the Region implements Superfund, Radon, Underground Injection Control, Total Maximum Daily Load, Toxic Release Inventory and other programs, many of which legislation does not allow us to delegate to states.

EPA Region 8 is also committed to helping our partners develop and maintain effective environmental programs. Immediate concerns relate to state budget shortfalls caused by prolonged, difficult economic conditions. Many state environmental programs continue to struggle with budget reductions. EPA may be able to offer short-term assistance by directly implementing limited portions of programs, thereby helping states maintain their authorizations. In Indian Country – where EPA is still the primary authority for environmental programs – the Region will continue to focus on delivering adequate programs and developing tribal capacity.

***Suggested PPA Language:***

*“There is a long standing relationship between the State and EPA to protect the environment. The federal system of government delineates specific roles for federal and state agencies in the development and implementation of programs for environmental protection. Many programs established by federal law can be implemented by States that receive approval, authorization, or primacy. Other programs cannot be implemented by States, or States choose not to implement certain programs. For national programs not implemented by the State or where federal presence is determined by EPA to be appropriate, the Region will perform compliance assurance activities.”*

c. Energy

Region 8’s energy strategy goals are as follows:

Goal 1: Ensure efficient and timely environmental decisions about energy projects.

Goal 2: Continue to meet environmental requirements and maintain or improve environmental quality with respect to energy projects.

Goal 3: Promote energy efficiency and renewable energy.

Goal 4: Strengthen environment and energy partnerships with co-regulators and other stakeholders.

***Suggested PPA Language***

*“As part of the Energy Regional priority, the Office of Enforcement, Compliance, and Environmental Justice in EPA Region 8 will continue to investigate facilities for potential violations of PSD/NSR requirements focusing on Oil and Natural Gas Production facilities. EPA investigations will be primarily focused on tribal lands but may include investigations of companies operating across tribal/state jurisdictions and will include*



*compliance evaluations for the MACT 40 CFR 63, Subpart HH and Subpart ZZZZ standards. EPA Region 8 will also continue to implement the Oil and Gas Action Plan.” “EPA Region 8 will also investigate practices on oil/gas development in the Region to determine NPDES compliance and address NPDES violations. “*

d. Homeland Security

As part of the federal government’s 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 delegated to EPA the responsibility for safeguarding the nation’s drinking water supplies and delivery systems and to take the lead on responding to biological, chemical and hazardous waste risks posed by potential terrorist attacks.

Prevention and safeguarding vulnerable infrastructure and materials is also an important part of our homeland security mandate. Region 8 has taken steps to promote security awareness for industrial and municipal facilities, as well as businesses and communities. We will continue to work with our federal, state, tribal and local partners to improve our ability to prevent, prepare for and respond to any types of incidents that threaten human health and the environment.

Our Region’s objectives in this area focus on strengthening the communications network we have established with federal, state and local response authorities; enhancing expertise and readiness through training and coordinated exercises; and taking additional steps to secure infrastructure and hazardous materials. In the long term, our efforts will minimize the likelihood of terrorist incidents and assure our ability to provide time-critical and coordinated responses to any incidents that do occur.

e. Revitalization

“Revitalization” is a term EPA uses to describe efforts to bring impaired ecosystems and polluted areas back into productive use. By restoring land and water to productive use, EPA and our partners are helping secure a sustainable quality of life for future generations. The revitalization initiative emphasizes that cleanup and reuse are mutually supportive goals. It emphasizes that property reuse be part of how EPA operates in support of state, tribal and local efforts to create and protect green spaces, natural areas and scenic landscapes, while minimizing undesired sprawl and encouraging economic reinvigoration.

Region 8 has adopted a set of goals to achieve even more measurable results and to further the understanding of its Revitalization Initiative. These goals include:

- Achieve effective outreach, communication and education for all revitalization activities.
- Achieve effective on-the-ground results that are part of the Revitalization Initiative, in geographic pilot projects and at site specific locations.

- Establish revitalization as a new operations model and as a part of our job

f. Supporting State Capacity

States are vital partners in achieving EPA's mission. A large percentage of EPA's programs are delegated to Region 8 states, which also carry out other environmental work through cooperative agreements, contracts and other arrangements. In 2004, EPA provided more than \$166 million to environmental health, protection and agriculture agencies in Region 8 states, including \$100 million for clean water and drinking water revolving loan funds.

To maintain and improve the effectiveness of the programs that we delegate to states, EPA continues to build strong, collaborative relationships with state agencies that leverage respective authorities and responsibilities. EPA plays an oversight role in these situations, and focuses on providing states with adequate resources and technical support.

Region 8 and the states have agreed to add a new State Capacity Enhancement priority to the Region 8 Strategic Plan. This priority is intended to further improve the federal-state working relationship and to identify opportunities to enhance state capacity to deliver environmental program services. The elements of the priority include: ensuring adequate resources and staff; partnering and work-sharing; technical assistance; training opportunities; and, innovations and flexibility.

Another focus area in our partnership with states is improving the ability to focus limited resources on priorities. In Region 8, EPA and states are collaborating on a priority-driven resource allocation process that makes sure that resources are deployed to the most critical environmental problems.

g. Climate Change

Following the suggestion of several State Environmental and Agricultural Directors at the June, 2007 meeting in Denver, "Climate Change" was added to the list of Region 8 priorities. Following that, a staff workgroup representing many Region 8 programs was assembled to prepare the first "Climate Change Action Plan". The first step was to assemble a compendium of the current activities that have a climate change nexus. For example, several programs focus on promoting energy savings, other activities include: climate change education, increasing the use of alternative fuels (such as biofuels), working with venues such as the Pepsi Center to promote adoption of climate change mitigation strategies, using NEPA to promote energy efficiency and green house gas emissions reductions, promoting increases in available renewable energy, promoting energy efficiency in water and waste water facilities, promoting energy efficiency through the use of recycled materials, etc.

The climate change activity matrix is organized in five sections (Region 8's website, [www.epa.gov/region8/about/priorities.html](http://www.epa.gov/region8/about/priorities.html).) Section 1 is headed:

Energy Efficiency, Section 2 is Energy Production and Supply, Section 3 is Manufacturing, Section 4 is Transportation Fuels, and Section 5 is Adaptation. New activities will be added over time and a more comprehensive work plan will be prepared.

h. Mercury

Following Mercury is a potent neurotoxin that is present in the natural environment and bioaccumulates in fish. Fetuses and young children are most susceptible to mercury exposure. This priority is intended to reduce mercury release to the environment, minimize potential for mercury spills at schools, recycle mercury, and educate communities and sensitive populations about fish consumption advisories that can reduce exposure risk.

The Region's goal is to increase region-wide knowledge about mercury and to share it with our states and tribes. This work includes understanding the "state of the science" about mercury. It also includes gaining a better understanding about mercury levels, sources and the consideration of potential actions to address concerns identified as threats to public health and the environment.

**3. OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA)  
NATIONAL PRIORITIES AND AREAS OF EMPHASIS**

a. National Enforcement Priorities

Below, is a brief description of the FY2009 National Priorities. As indicated earlier more detailed information regarding the priorities is available in the NPM Guidance document. Priority and Core program language and requirements will be provided in Section 5, Program Specific Guidance.

I. Clean Air Act (CAA) – Air Toxics

1. During the FY 2008-2010 period, the Air Toxics National Enforcement Strategy will focus on three problem areas for which there is potential widespread noncompliance with MACT standards. These areas are Leak Detection and Repair (LDAR), industrial flares, and surface coatings. The strategy treated FY2008 as the transition year in which the region selected the MACT universes to be addressed. (More detail on the strategy and the regional MACT selections is found in Section 5).

II. Clean Air Act (CAA) – New Source Review/Prevention of Significant Deterioration (NSR/PSD)

1. During the FY 2008-2010 period, the New Source Review/Prevention of Significant Deterioration (NSR/PSD) National Strategy will continue to focus on coal-fired power plants and the three newly selected sectors. The three newly selected sectors are Cement Manufacturing, Glass Manufacturing, and Sulfuric and Nitric Acid Manufacturing. EPA believes significant environmental benefits may be

derived from the resolution of NSR/PSD non-compliance and has established measurable NSR/PSD compliance-related goals for the additional sectors.

- III. Clean Water Act (CWA) – National Pollution Discharge Elimination System (NPDES), Wet Weather Priorities
  1. Protect public health and water quality in our nation's watersheds where violations resulting in CSOs, SSOs, CAFOs, and stormwater sources may adversely impact sensitive areas, environmental justice communities, or have the potential to cause other significant risks to the environment or human health
    - Concentrated Animal Feeding Operations (CAFO)
    - Combined Sewer Overflows (CSO)
    - Sanitary Sewer Overflows (SSO)
    - Storm Water
  
- IV. Resource Conservation and Recovery Act (RCRA) – Mineral Processing and Mining
  1. Ensure that high-risk facilities in the mineral processing and mining sectors are in compliance or on a path to compliance, or are otherwise working to reduce risk to human health and the environment through measures such as the implementation of best management practices. For purposes of the Strategy, "on a path to compliance" means: (1) EPA initiated the enforcement process and the facility is working cooperatively with regulators to resolve its violation(s) or reduce environmental risk, or (2) the facility is auditing its facility (ies) for compliance and correcting and disclosing any violations that it discovers, or (3) the facility is on an enforceable schedule to return to compliance or assess any contamination from environmental releases.
  
- V. Financial Assurance
  1. Reduce harm to human health and the environment by addressing noncompliance and optimize EPA's financial protection and resources. EPA is currently developing procedures and measures to carry out this goal by creating a screening process to assess risks caused by a failure to have financial responsibility so that high-risk entities are identified and addressed on a priority basis and ensuring that all inspected entities are in compliance or on a path to compliance.

b. Areas of Emphasis

- I. Environmental Justice
  1. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development,

implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

2. States should incorporate environmental justice into their programs, and document their commitments in the Agreement. There are five general areas where environmental justice commitments can be made, including development of environmental justice information; integration of environmental justice in ongoing programs; training of staff in environmental justice principles; full and appropriate involvement of the communities in environmental decisions, and development and application of measures of success.

### **Suggested PPA Language**

*"The State will conduct the following environmental justice activities: identify major sites and/or locations of environmental hazards in low income and minority communities; identify and address disproportionate impacts of permitting of major facilities on low income and minority communities; and identify and address disproportionate impacts of enforcement activities on low income and minority communities. The State will also determine advisability of creating a review entity, such as an advisory board, to deal with environmental justice issues that arise in the State; determine whether any new action, including enforcement and program implementation activities, contribute to or cause adverse impacts on low income or minority populations. The State will ensure public input to state environmental program activities through public comment opportunities, task forces, and other communication tools; ensure that opportunity for community input from low income and minority populations is meaningful and obtained early in the process; evaluate the success of current public participation practices in reaching low income and minority populations; participate as a partner with EPA in site-specific teams; develop a strategy to coordinate environmental justice issues and track environmental justice complaints; assist low income and minority communities in developing understanding of environmental issues; and participate in meetings with environmental justice groups. EPA will provide state access to Geographic Information System environmental justice tools; provide information to the State on environmental justice grants; provide Environmental Justice training, on request; and share any available environmental justice resources. EPA will work jointly with the State to develop measures for evaluation."*

## **II. Inspection Projections**

1. Regions are asked to provide projections of program activity, for regional and state inspections and for addressing drinking water significant noncompliance (SNC). The inspection targets for CAA, CWA and RCRA and SNC rates are tracked in the Annual Commitment System (ACS). For FY 2008 the State and Region will hold discussions on projections of program activity target levels. Activities should be discussed concerning both state and regional coverage of work, and then recorded in the Agreement. These figures will also be entered into the ACS for fiscal year tracking.

### **Suggested Language**

*"The State provides target projections for state inspections for each media program by the end of September of each year."*

#### III. Compliance Assistance

1. In FY 2009 Compliance Assistance (CA) will continue to be a focus area for OECA and Region 8. To maximize the effectiveness and results of the National CA Program, Region 8 asks its states partners to also make a commitment to using CA as a viable compliance assurance tool. Specifically, Region 8 would like its states to include language in their PPA Agreements within each program section as indicated in the following Suggested PPA Language.
2. In addition to including the suggested PPA language placed in each PPA program section, Region 8 asks its states to comply with the following commitments:
  - Build and maintain a strong CA core program infrastructure to encourage effective communication networks. This would include the identification of one state contact that would represent the state on all CA issues and efforts. This primary contact person would interface regularly with the Region 8 CA Program to ensure effective communication between the state and federal levels.
  - Identify opportunities for collaboration with Region 8 in terms of CA projects. This approach maximizes limited resources within both offices and provides a great learning opportunity for both parties.

### **Suggested PPA Language**

*"This program will include strategic planning as part of its yearly program planning process, for up front consideration and appropriate use of compliance assistance in addressing environmental problems (either single media or multi-media)".*

#### IV. Facility Watch List

1. OECA has asked the Region's to place a high priority on addressing enforcement "watch lists" which includes unaddressed Significant Non-Compliers. The Region will ask the states to commit to: 1) review watch lists, 2) discuss unaddressed facilities with EPA, and 3) coordinate with the Region on a plan to address them (which may include work-sharing)."

## **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 forwarded to each state environmental director. Oversight activities planned for FY 2009 are based on program performance as determined through the OECA/ECOS State Review Framework (SRF) and, for PWSS, Uniform Enforcement Oversight System (UEOS) evaluations completed in FY 2007 as well as in the FY 2007 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 2009 PPA Guidance to States) and as described in the state-specific State Oversight Plan."*

## **5. PROGRAM SPECIFIC GUIDANCE**

### **a. CAA**

#### **I. National Priority: Air Toxics – Maximum Achievable Control Technology (MACT)**

1. The MACT program has been identified by OECA as a national priority. During the FY 2008-2010 period, the Air Toxics National Enforcement Strategy will focus on three areas that contribute to significant noncompliance with MACT standards, result in violations of emission standards, and have a broad geographic scope. The areas selected are Leak Detection and Repair (LDAR), industrial flares, and surface coating at major facilities. EPA Region 8 has selected Municipal Solid Waste Landfills (MACT Subpart AAAA), Gasoline distribution (MACT Subpart R), and Wood Furniture (MACT Subpart JJ) for focus under the strategy. Region 8 will begin with Municipal Solid Waste Landfills and move to the other two MACT sectors if/when 80% of landfills in Region 8 have been either evaluated or investigated to determine MACT applicability and compliance status, or that significant noncompliance is not found at landfills. Region 8 will coordinate with States to implement the Strategy.

### **Suggested PPA Language**

*"During the FY2008-2010 period, EPA and the State will collaborate on investigating and inspecting facilities in the Municipal Solid Waste Landfills (MACT Subpart AAAA),*

*Gasoline distribution (MACT Subpart R), and Wood Furniture (MACT Subpart JJ) sectors to accomplish the goals under the FY2009-2010 Air Toxics National Enforcement Strategy.”*

2. 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).
3. EPA Region 8 will also conduct lead inspections targeting facilities for those MACTs which the state has not received delegation.
4. 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 2009, 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.”*

5. 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.

II. National Priority: New Source Review/ Prevention of Significant Deterioration (NSR/PSD)

1. EPA Region 8 will continue to work towards settling cases involving Coal Fired Power Plants, Ethanol Plants, Oil & Gas Facilities and Refineries. EPA Region 8 will continue to develop regional cases potentially involving PSD compliance issues for Sugar Beet Processing Facilities, Cement Plants, Sulfuric/Nitric Acid Plants, Glass Manufacturing Facilities and Oil & Gas Facilities

**Suggested PPA Language:**

*“The Office of Enforcement, Compliance, and Environmental Justice in EPA-Region 8 will continue to investigate facilities for potential violations of PSD/NSR requirements focusing on Coal Fired Power Plants, Refineries, Ethanol Plants, Sugar Beet processing facilities, Cement Plants, Glass Manufacturers, Sulfuric/Nitric Acid Plants and Oil and Natural Gas Production facilities. EPA investigations will be primarily focused on tribal*



*lands but may include investigations of companies operating across tribal/state jurisdictions.”*

- III. 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.
- IV. The Annual Commitment System (ACS) for FY2009 requires that draft targets (inspection numbers) be entered into the system by July 1<sup>st</sup>, 2008 and are finalized September 30<sup>th</sup>, 2008. States will provide EPA with its inspection numbers so that EPA can submit the data into the system by the required timelines.
- V. During the FY2009, the States shall be implementing the National Stack Testing Guidance.

b. CWA-NPDES

I. NPDES/Wet Weather

- EPA will perform inspections in regional and national priority areas and initiatives according to national guidance and the national wet weather 2008-2010 Performance Based Strategies. This includes the wet weather initiatives, the Great South, and Great West regional priorities. EPA will conduct inspection follow up and enforcement for those facilities it inspects.
- EPA may perform evaluations of State’s wet weather enforcement programs to determine if violations are being escalated to enforcement.
- States are encouraged to pilot the Wet Weather SNC Policy in FY09. Once the ICIS-NPDES Policy Statement is finalized, states will begin full implementation of the Wet Weather SNC Policy.

***Suggested PPA Language***

*“EPA will perform inspections in regional and national priority areas and initiatives according to national guidance and the national wet weather 2008-2010 Performance Based Strategies. This includes the wet weather initiatives, the Great South, Great West, energy and mining regional priorities. EPA will conduct inspection follow up and enforcement for those facilities it inspects. “*

*“EPA may perform evaluations of the State’s wet weather compliance and enforcement programs to determine if violations are being escalated to enforcement. “*

*“States are encouraged to pilot the Wet Weather SNC Policy in FY09. Once the ICIS-NPDES Policy Statement is finalized, States will begin full implementation of the Wet Weather SNC Policy. “*

1. 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, 2008 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:
  1. The facility is under a final federal 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
  2. The facility is named in a federal civil judicial complaint that has been filed; or
  3. The facility is subject to an enforceable state administrative or judicial order that meets federal requirements for compliance expeditiously and includes appropriate penalties; or
  4. The facility received a federal 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 goal of investigating and addressing 50% of the medium municipal systems and their associated satellites by FY10. 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**

*“The State will continue to implement its SSO response plan. The State will 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, 2008 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 commit to conducting inspections at 10% of its Phase I storm water construction sites, and 5% of Phase II storm water construction sites, giving priority to 303(d) listed or state protected/priority waters. States should also commit to conducting inspections at 10% of its industrial storm water sites, giving priority to 303(d) listed or state protected/priority waters. If states are unable to commit to these storm water inspection targets, EPA will conduct additional inspections in the State. EPA will conduct inspection follow-up and enforcement for those facilities it inspects. Storm water inspections should be entered in PCS/ICIS-NPDES or reported to EPA manually by March 31, 2009 and September 30, 2009 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.
- In FY09, states should develop an audit and inspection plan for Phase II MS4s to ensure that compliance determinations for these systems are completed within the next 6 years. The audit and inspection plan should be submitted to EPA for review and comment by March 31, 2009. The plan should be finalized within 15 days of EPA's comments.
- States should continue to implement their approved storm water compliance and enforcement strategies. States without an approved storm water compliance and enforcement strategy should work with EPA to

address storm water non-compliance in the construction and sand and gravel sectors. States should focus on non-filers and on permitted facilities where there is water quality degradation and/or a threat to public health.

- 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, 2008 and April 30, 2009. Quarterly, States shall provide EPA with a current number of industrial and Phase I and Phase II construction storm water permits (October 15, 2008, January 15, 2009, April 15, 2009, and July 15, 2009).
- 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 decree 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 FY09. 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."*

*If the State is unable to commit to the storm water inspection targets, it should include the following language in the PPA: "EPA will conduct \_\_\_\_ storm water inspections in the State. EPA will conduct inspection follow-up and enforcement for those facilities it inspects."*

*"Storm water inspections will be entered in PCS/ICIS-NPDES or reported to EPA manually by March 31, 2009 and September 30, 2009 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."*

*"In FY09, the State will develop an audit and inspection plan for Phase II MS4s to ensure that compliance determinations for these systems are completed within the next 6 years. The audit and inspection plan should be submitted to EPA for review and comment by March 31, 2009. The plan should be finalized within 15 days of EPA's comments."*

*"The State will continue to implement their approved storm water compliance and enforcement strategies. If the States does not have an approved storm water compliance*

*and enforcement strategy it will work with EPA to address storm water non-compliance in the construction and sand and gravel sectors.”*

*“The State will 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, 2008 and April 30, 2009. Quarterly, the State will provide EPA a current number of industrial and Phase I and Phase II construction storm water permits (October 15, 2008, January 15, 2009, April 15, 2009, and July 15, 2009).”*

*“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 decree is final. The agreed upon subset will be memorialized in the State’s Inspection Plan.*

#### 4. Biosolids

- States which have been conducting biosolids inspections should commit to continue to conduct biosolids inspections. Specifically, States should include in the SEA/PPA a commitment to the number of biosolids inspections to be conducted, so that each major POTW and POTW biosolid land disposal operation are inspected at least once every 5 years.

#### **Suggested PPA Language**

*“The state agrees to conduct \_\_\_ biosolids inspections; this represents \_\_\_% of the universe,”*

#### 5. Concentrated Animal Feeding Operations (CAFO)

- States should continue to implement and update as necessary state-specific CAFO compliance and enforcement strategies and conduct compliance assistance and enforcement as appropriate.
- States should submit by December 31, 2008, 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 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, 2008, 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 CAFO and requires an NPDES permit. During FY09, 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 FY09, in addition to other oversight inspections.”*

## II. Federal Facilities

1. Region 8 will ask states to conduct single and/or multimedia inspections at federal facility NPDES majors with recurrent effluent violations. Region 8 will conduct these inspections in Colorado and in other Region 8 states if the state does not plan to conduct these inspections. Region 8 will ask authorized states work with EPA to target federal facilities for multimedia inspections. States will be asked to lead the NPDES portion of a multimedia inspection at the selected federal facility if the facility is located in an authorized state and regulated by NPDES. If the state does not want to conduct the inspection, EPA will conduct the inspection in lieu of the State.
2. During FY09, EPA Region 8 may perform inspections at all Federal Facility construction sites that have been awarded contract dollars for site construction.

## III. State EPA NPDES Inspections

1. States should submit a draft inspection plan for FY10 (October 1, 2009 -September 30, 2010) by August 1, 2009. EPA will provide comments by August 15, 2009. States should submit a final inspection plan no later than September 1, 2009. When developing the annual State/EPA NPDES inspection plan, States address national, regional, and State priority areas and sectors which are applicable to the state.
2. States must maintain an effective inspection program in each of the water program areas. States should begin implementation of the NPDES Compliance and Monitoring Strategy in FY09. 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 wet weather priorities will be allocated in FY09. Minimum numbers of inspections for the core programs and priority areas are identified in the Compliance Monitoring Strategy.
3. EPA will conduct up to 10 oversight inspections in each state (plus additional oversight inspections in priority areas). 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 wet weather priority areas. EPA will target facilities for oversight inspections with states.

IV. Non-major Facilities Non-compliance Report

- States should include a commitment to submit the annual non-major facilities noncompliance report for the period of 1/01/2008 - 12/31/2008 in accordance with 40 CFR §123.45 (c) by April 30, 2009. States may opt to maintain PCS/ICIS-NPDES and have this information pulled from PCS/ICIS-NPDES in lieu of annual reporting. If a state elects to maintain PCS/ICIS-NPDES in lieu of annual reporting, the state must 1) have taken the necessary steps to ensure that the SNC flag is turned on for minor facilities by October 1, 2007 and 2) notified EPA of this decision in writing prior to October 31, 2007, to allow EPA to pull the information from PCS/ICIS-NPDES. States should specify in the PPA which option they are choosing for this report.

V. 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.

VI. Reporting Inspections at Mid-Year and End-of-Year

- States need to report at Mid-Year (due March 31, 2009) and in the State End-Of-Year reports the following inspections:
  - 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 and #of industrial inspections 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
- States may opt to report inspections in the PCS or ICIS-NPDES database in lieu of Mid-Year and End-of-Year manual reporting. In order to do so, states must: 1) enter all types of inspections noted above in PCS/ICIS-NPDES by March 31, 2009 for midyear and

September 30, 2009 for End-Of-Year and 2) so indicate in the PPA. For purposes of the annual EPA/State review, only inspections entered into the PCS/ICIS-NPDES database prior to the closure of the database (on or around the first week of October 2009) will be credited.

#### VII. 404/402 Enforcement Actions

1. 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, 2008, 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, 2008, 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. 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 conduct enforcement prior to the state obtaining primacy for these rules.

##### III. SDWA Enforcement

1. Annotate the Quarterly SNC list by indicating the state actions planned for each SNC, 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 SNCs (through formal enforcement or appropriate return to compliance code if applicable) within 8 months of

meeting the SNC definition, with the goal of taking action before systems reach SNC statuses. OECA is working with the Regions to develop a new Enforcement Response Policy (ERP) that will define significant non-compliers by system-based approach versus the current rule-based approach. It is expected that the new approach will run concurrently with the old approach during FY09, however, it is possible that the full implementation of the new ERP may occur later in the second half of FY09, and negotiations may have to take this into consideration).

3. If EPA will conduct a UEOS evaluation or targeted oversight of State penalty actions in FY09, provide EPA a copy of all settlement agreements, both administrative and judicial. Include penalty calculations (documenting gravity and economic benefit calculations) and any penalty justifications. These need to be provided no later than November 15, 2008.
4. State enforcement escalation policy:
  - Until such time as a State's enforcement escalation policy is approved, EPA will evaluate State performance, and take direct enforcement actions as needed, in order to prevent SNCs from becoming Exceptions, or to address existing Exceptions.

#### IV. SDWA Oversight

1. The following commitments will need to be made by the States in order for EPA to conduct Enforcement Oversight:
  - Conduct sanitary surveys every 3 years for community surface water systems and every 5 years for non-community surface water and ground water systems. Alternatively, the State shall commit to conducting sanitary surveys for a minimum of 20% of groundwater and non-community surface water systems; and 33.3% of community surface water systems, considering any "unplanned" surveys which will be necessary for violation follow-up. Sanitary survey reports are to be completed within 90 days of completion of field work. If EPA will conduct a UEOS evaluation or targeted oversight of State sanitary surveys in FY09 EPA will be requesting copies of up to 25 sanitary survey reports after the end of the FY, for the purpose of conducting the uniform enforcement oversight evaluation.
  - If EPA will conduct a UEOS evaluation or targeted oversight of State sanitary surveys in FY09, EPA will evaluate how the State meets the regulatory requirements for sanitary survey frequency. To facilitate this evaluation, the State must commit to entering all sanitary surveys and technical assistance

visits into SDWIS by November 15, 2008, *or*, by that date, the State will need to submit a list of sanitary surveys completed in FY08 to EPA (by PWS type and source as above).

- Cooperate with EPA and provide access to State PWS files and data for EPA's enforcement audit at the State office.
- Upload all enforcement actions and applicable return to compliance codes into SDWIS-Fed quarterly.
- 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.

d. RCRA

I. 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.

II. 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.

III. 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.

IV. Core Program Requirements

1. Treatment, storage and disposal facilities: Inspect at least once every two years each operating treatment, storage and disposal facility, as required under SWDA §3007(e), i.e., 50% of TSDF universe annually.
  - Generators (LQGs): 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

- i. Information on how the RCRA compliance monitoring resources will be redirected (e.g., national priority facilities, state priority facilities, never-inspected SQGs).
  - ii. How LQGs will otherwise be monitored (e.g., file reviews, watch list).
  - iii. 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 2008 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 15<sup>th</sup>, an inspection plan which meets the requirements of the Core Program with emphasis on never inspected LQGs, citizen complaints, and national priorities.*

2. 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):
  - i. 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, areas of environmental justice concerns and particularly recalcitrant violators. When the universe of TSDFs and LQGs is very small a lesser number of Regional lead inspections will be negotiated. The Region commits to Inspection State or Local government TSDFs as required by Statute”.*

### 3. Financial Assurance

- OECA has identified financial assurance as a national priority for FY2009. 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”.*

*DATA: Maintain RCRAInfo database*