

# Water Program & Ecosystem Protection FY09 Regional Guidance

## *Goal Two: Safe and Clean Water*

### *Subobjective 2.1.1: Water Safe to Drink*

## **Drinking Water Program**

The following are the PWSS expectations that will be reviewed during FY 09. The expectations reflect the basic requirements for State PWSS programs to be noted in each PPA.

### **A. Maintain Core Program**

The State agency must maintain and implement the core program as required by federal and State statutes and rules and as reflected in program delegations and other formal agreements. The primary reference defining the core program is 40 CFR Part 142 Subpart B. Public health will be best protected if the State uses multiple barriers to protect drinking water and water systems. In addition to the requirements in Parts 141 and 142, States are expected to have a balanced and integrated program that includes other SDWA programs such as implementation of the DWSRF (not covered by the PPA) and source water protection (covered elsewhere in the regional guidance).

### **B. National Strategic and Performance Activity Measures.**

Each State must provide written commitment in the PPA to the following five measures at the levels shown. These levels are the regional FY 08 targets for the national measures.

Strategic Target 2.1.1: Percent of the population served by community water systems that receive drinking water that meets all applicable health-based drinking water standards through approaches including effective treatment and source water protection. FY09 National Target = 90% FY09 Regional Target = 90%

Strategic Target SP-1: Percent of community water systems that meets all applicable health-based standards, through approaches that include effective treatment and source water protection. FY09 National Target = 90% FY09 Regional Target = 90%

Strategic Target SP-2: Percent of “person months” (i.e., all persons served by community water systems times 12 months) during which community water systems provide drinking water that meets all applicable health-based drinking water standards. FY09 Target = 95% FY09 Regional Target = 95%

SDW-1a: Percent of community water systems (CWSs) that have undergone a sanitary survey within the past three years (five years for outstanding performers) as required under the Interim enhanced and Long-Term 1 Surface Water Treatment Rules. FY09 Target for Delegated States = 90%

**C. Data Management/Maintain National Database**

Good data is fundamental to implementation of the PWSS program. Each State is expected to have a data management system capable of supporting its day-to-day activities and fulfilling federal reporting requirements. For those States with new systems, e.g., those still struggling to install SDWIS/State, some milestones commitments may be appropriate to have in the PPA. States will provide special interest arsenic and lead and copper information as periodically requested by the region on behalf of Headquarters. States must commit to reporting dates of sanitary surveys to National SDWIS database by end of 1Q FY09.

The State agency must maintain its data in the national database, ODS f/k/a SDWIS/FED. This includes timely data entry and quality assurance and data validation.

States are scheduled for data verification audits about every three years. States slated to have a data verification audit in FY 08 have not been identified as of the date hereof. As they are identified, those States will cooperate with the data verification process. If there are outstanding issues from the last data verification for any State, commitments to address the issues should be included in the PPA.

**Source Water Assessment and Protection Program**

States should continue to implement active Source Water Protection (SWP) programs in accordance with the Safe Drinking Water Act and EPA’s National Strategic Plan. Subobjective 2.1.1 includes the following environmental outcome measure relating to effective SWP program implementation:

PAM	PAM EXPLANATION	EXPECTATIONS FOR STATES
<p><b>Strategic Target SP-4</b>  <b>Minimize risk to public health through source water protection. Minimized risk is defined as substantial implementation (as defined by state) of actions in a source water protection plan or strategy.</b></p>	<p>The regional target(s) for SP-4 (a) and (b) for FY08 is <b>37%</b> of regional Community Water Systems meeting the measure, and <b>25%</b> of population. This measure is a state grant template measure</p>	<p>All states are required to <b>set an annual target</b> for this measure in the PPA, and to <b>report on achievement</b> at the end of the FY. Each state is expected to contribute meaningfully toward achievement of the regional target.</p> <p>States are expected to maintain staffing for the SWP program, and to commit to the following activities in the PPA in support of SP-4:</p> <ul style="list-style-type: none"> <li>• <b>Annually report</b> SWP Program progress as fully as possible using EPA-provided reporting matrix or electronic transfer protocol by the end of September of each year; at a minimum this reporting will address the percentage of</li> </ul>

PAM	PAM EXPLANATION	EXPECTATIONS FOR STATES
		<p>systems and population served achieving minimized risk through substantial implementation of SWP plans.</p> <ul style="list-style-type: none"> <li>• <b>Provide technical and programmatic assistance</b> to Public Water Systems, communities, and other entities working on local SWP issues.</li> <li>• <b>Provide technical assistance</b> to support Public Water Systems development and implementation of SWP Plans.</li> <li>• <b>Provide technical assistance</b> for the completion of Source Water Assessments for <u>new</u> water sources or systems.</li> <li>• <b>Coordinate as needed with other state programs</b> such as the Drinking Water State Revolving Fund, technical service providers such as National Rural Water state affiliates, and with EPA Region 8.</li> </ul>

## **UIC Program**

### *The UIC Program Activity Measures for FY2009 are:*

- **SDW-6:** Percent of identified Class V Motor Vehicle Waste Disposal wells that are closed or permitted
- **SDW-7a:** Percent of losses of mechanical integrity at Class I wells that are returned to compliance within 180 days, (see definitions below)
- **SDW-7b:** Percent of losses of mechanical integrity at Class II wells are returned to compliance within 180 days, (see definitions below)
- **SDW-7c:** Percent of losses of mechanical integrity at Class III wells are returned to compliance within 180 days, (see definitions below)
- **SDW-8:** Percent of high priority Class V wells identified in sensitive ground water protection areas that are closed or permitted

### **What do I report?**

PAMs, injection well inventory, and 7520's data.

### **When do I report?**

PAMs and/or 7520's data: twice a year – mid-year by April 20, and end of year by October 20.

Injection well inventory: by February 20<sup>th</sup>

### **How do I report and Who do I report to?**

*For PAMs and injection well inventory: by online reporting at:*  
(<http://uicinventory.cadmusweb.com>)

*For 7520's data:*

- send them to your assigned Project Officer (email or electronic is okay)
- OR**
- 'flow' your 7520's data into the national UIC Database through EPA's CDX and Exchange Network.

<b>FY09 UIC Measures</b>	<b>Report Due to R8</b>	<b>FY09 Reporting Instructions and Schedule What to Report</b>	<b>R8 Target</b>
<p align="center"><b><u>SDW-6</u></b></p> <p>Percent of identified <b><i>Class V Motor Vehicle Waste Disposal</i></b> wells that are closed or permitted. (cumulative)</p>	<p align="center"><b><i>Apr 20, 09</i></b></p> <p align="center"><b><i>Oct 20, 09</i></b></p>	<ol style="list-style-type: none"> <li>1. Number of MVWDWs <u>closed</u> in <i>program history</i>. (note that if you have already reported a “program” history number, do not repeat it)</li> <li>2. Number of MVWDWs <u>closed</u> in <u>FY09</u>.</li> <li>3. Number of MVWDWs <u>issued permits</u> in <i>program history</i>.</li> <li>4. Number of MVWDWs <u>issued permits</u> in <u>FY09</u>.</li> <li>5. Number of MVWDWs <u>identified</u> in <i>program history</i>.</li> <li>6. Number of MVWDWs <u>identified</u> in <u>FY09</u>.</li> </ol>	<p align="center">85%</p>
<p align="center"><b><u>SDW-7a</u></b></p> <p>Percent of deep injection wells that are used to inject industrial, municipal, or hazardous waste (<b><i>Class I</i></b>) wells that lose mechanical integrity and are returned to compliance within 180 days thereby reducing the potential to endanger underground sources of drinking water.</p>	<p align="center"><b><i>Apr 20, 09</i></b></p> <p align="center"><b><i>Oct 20, 09</i></b></p>	<p>Percent of losses of mechanical integrity at <b><i>Class I</i></b> wells that are returned to compliance within 180 days in FY09, expressed as numerator over denominator (see definitions above).</p>	<p align="center">95%</p>
<p align="center"><b><u>SDW- 7b</u></b></p> <p>Percent of deep injection wells that are used to enhance oil recovery or that are used for the disposal or storage of other oil production related activities (<b><i>Class II</i></b>) that lose mechanical integrity and are returned to compliance within 180 days thereby reducing the potential to endanger underground sources of drinking water.</p>	<p align="center"><b><i>Apr 20, 09</i></b></p> <p align="center"><b><i>Oct 20, 09</i></b></p>	<p>Percent of losses of mechanical integrity at <b><i>Class II</i></b> wells that are returned to compliance within 180 days in FY09, expressed as numerator over denominator (see definitions above).</p>	<p align="center">90%</p>
<p align="center"><b><u>SDW-7c</u></b></p> <p>Percent of deep injection wells that are used for salt solution mining (<b><i>Class III</i></b>) that lose mechanical integrity and are returned to compliance within 180 days thereby reducing the potential to endanger underground sources of drinking water.</p>	<p align="center"><b><i>Apr 20, 09</i></b></p> <p align="center"><b><i>Oct 20, 09</i></b></p>	<p>Percent of losses of mechanical integrity at <b><i>Class III</i></b> wells that are returned to compliance within 180 days in FY09, expressed as numerator over denominator (see definitions above).</p>	<p align="center">95%</p>
<p align="center"><b><u>SDW-8</u></b></p> <p>Percent of <b><i>high priority Class V</i></b> wells identified in sensitive ground water protection areas that are closed or permitted. [report both % and #]</p>	<p align="center"><b><i>Apr 20, 09</i></b></p> <p align="center"><b><i>Oct 20, 09</i></b></p>	<ol style="list-style-type: none"> <li>1. Number of <b><i>high priority Class V</i></b> wells in sensitive ground water protection that have been identified, <i>and</i> the number closed or permitted, <u>in program history</u>. (note that if you have already reported a “program” history number, do not repeat it)</li> <li>2. Number of <b><i>high priority Class V</i></b> wells in sensitive ground water protection that have been identified, <i>and</i> the number closed or permitted, <u>in FY09</u> (7520-2B IX.)</li> </ol>	<p align="center">70%</p>

## **FY09 Reporting Definitions**

**Motor Vehicle Waste Disposal Wells (MVWDWs): (SDW-6)** Under the 1999 revisions to the Underground Injection Control Regulations for Class V Wells (64 FR 68545, December 7, 1999), MVWDWs are permitted if they are individually permitted, come under a general permit, or under an area permit.

**Well Permitted: (SDW-6 and SDW-8)** A permitted injection well has an authorization, license, or equivalent control document issued by EPA or an approved primacy state to implement the requirements of parts 144 (Underground Injection Control Program), 145 (State UIC Program Requirements), 146 (Underground Injection Control Program: Criteria and Standards), and 124 (Procedures for Decision Making). A permitted well is not authorized by rule (§144.21). Citation: 40 CFR144.3.

**Well closed: (SDW-6 and SDW-8)** Well closures include: (1) discontinuation of unauthorized injection of fluids, and (2) authorized plugging and abandonment procedures. Citations: 7520-2B, 40 CFR 144.82 and 144.89.

**Mechanical Integrity (MI): (SDW-7a,b,c)** An injection well has maintained MI when: (1) there is no significant leak in the casing, tubing, or packer, and (2) there is no significant fluid movement into an USDW through vertical channels adjacent to the injection well bore. *Citation: 40 CFR 146.8* “Return to compliance” for the purpose of the measure, means the well has had a successful demonstration of mechanical integrity or has been plugged. Operator cessation of injection, operator plans to rework or convert the well in the future, and agency enforcement actions to compel operators to address a loss of mechanical integrity do not constitute “return to compliance.” The reporting format should **include in the denominator the number of losses of mechanical integrity over the “reporting period,” and the numerator should be the number of those same losses of mechanical integrity that were returned to compliance within 180 days.** The “reporting period” will include the FY2009 and may include the 6 months leading up to FY2009.

**High priority Class V wells: (SDW-8)** High priority Class V wells include motor vehicle waste disposal wells, large capacity cesspools, industrial wells, plus any other categories identified by the State. The considerations for adding categories are:

1. existence of the well type in the State,
2. likelihood of endangerment to USDWs based on geology and/or a quantitative assessment of the well types, and
3. whether the well type is or is not already sufficiently regulated by a governmental entity within the State.

(State definitions for high priority wells will be established by the UIC Director for a Direct Implementation state or between the State Director and EPA Region for primacy states by the end of the first quarter of the reporting year.)

**Sensitive ground water protection area: (SDW-8)** Defined by the UIC primacy program Director, but at a minimum must include ground water based community water system source water areas. This measure does not report all of the high priority wells that are being closed or permitted because some states do not distinguish between high priority wells in ground water based community water system source water areas and other areas.

## EPA Region 8 Underground Injection Control Program Contacts

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<b><u>Dan Jackson</u></b>	<b>UIC Deep Well Team Leader - Class I, II &amp; III</b> UIC Geologist - Permits, State Programs (CO 1425, UT 1425)	<i>Ground Water/UIC</i>	(303) 312-6155
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## ***Goal Two: Safe and Clean Water***

### ***Subobjective 2.2.1: Restore & Improve Water Quality on a Watershed Basis***

In FY 2009, EPA and the States need to continue to effectively implement and better integrate programs established under the Clean Water Act to protect, improve, and restore water quality on a watershed basis. Priorities for FY 2009 in each of these program areas follow.

Key tasks for FY 2009 include:

- Strengthen the water quality standards program;
- Improve water quality monitoring and assessment;
- Implement TMDLs and other watershed plans;
- Implement practices to reduce pollution from all nonpoint sources;
- Strengthen the NPDES permit program; and
- Support sustainable wastewater infrastructure.

### ***National Strategic Targets and Program Activity Measures***

In support of that Goal 2, protecting and restoring water quality on a watershed basis continues to be one of five national Water Program priorities for FY 2009. Under the watershed approach, focusing on the needs of a watershed or an individual waterbody allows us to bring to bear those programs and partners necessary for waters to support protection, improvement, or restoration of water quality.

Environmental outcome measures in the 2006-2011 Strategic Plan direct us to measure and report our overall successes on both a waterbody and watershed basis. A description of specific Program Activity Measures (PAMs) for each surface water quality programs follows; however, each of these programs is expected to contribute to achieving the environmental outcome measures described here. There are three environmental outcome measures under the Watershed Subobjective, strategic targets SP-10, SP-11, and SP-12 (see Table A below). **Continuing in FY2009, States are expected to set individual goals to support the National 2012 goals for these Strategic Targets, and to make specific, numeric commitments annually to demonstrate progress toward those goals.**

Table A Water Quality Outcomes Measures for FY2006-2011

<b>Measure</b>	<b>Description</b>	<b>National 2012 Goal (cumulative)</b>	<b>Anticipated Region 8 2012 Goal (cumulative)</b>	<b>Initial Straw Region 8 FY2009 Target</b>
<b>SP-10</b>	Number of waterbodies identified in 2002* as not attaining water quality standards where standards are now fully attained.(cumulative)	2,250	133	<b>96</b>
<b>SP-11</b>	Remove the specific causes of waterbody impairment identified by states in 2002*. (cumulative)	5600	250	<b>163</b>
<b>SP-12</b>	Improve water quality conditions in impaired watersheds nationwide using the watershed approach. Based on the 2002* 303(d) list. (cumulative)	250	20	<b>13</b>

- Baseline year is now 2002, or the nearest previously approved 303(d) list.



PAM	PAM EXPLANATION	<i>EXPECTATIONS FOR STATES</i>
<p><b>SP-10 - Full Waterbody Restoration -_Number of waterbodies identified in 2002* as not attaining water quality standards where standards are now fully attained.(cumulative)</b></p>	<p>SP-10 is required in the State Grant Template for CWA 106 water quality management programs. It is the sole strategic target identified during the 2005 OMB Program Accountability Rating Tool (PART) review of the EPA surface water quality program and state CWA 106 grant program. Consequently, this measure remains one of high visibility and significance</p> <p>This measure cumulatively tracks the number of waterbodies listed as impaired in 2002 (or 1998 if 2002 303(d) list is unavailable) where water quality standards are now attained due to one of the following reasons:</p> <ol style="list-style-type: none"> <li>1. Water no longer is impaired because of restoration activities (i.e. water now meets water quality standards based on the current assessment methodology.)</li> <li>2. Water reassessed - shown to be meeting water quality standards (based on current assessment methodology).</li> <li>3. Original basis for 303(d) listing is incorrect; water meets water quality standard (i.e. waterbody was not truly impaired).</li> <li>4. Change in WQS assessment methodology, water now meets water quality standard based on a reassessment using the new/revised assessment methodology.</li> <li>5. Water originally listed as threatened but has continued to meet water quality standards and is no longer considered threatened.</li> <li>6. Change in WQS; data shows that water meets new WQS based on current assessment methodology.</li> </ol>	<p>Starting in FY2009, EPA R8 will be switching to a biannual targeting and reporting cycle for measures SP-10 and SP-11 to reflect the biannual integrated reporting cycle. During odd numbered PPA years, states are not required to submit an integrated report to EPA, therefore, states will only be expected to provide an estimated target in PPAs for these measures during these years. However, during even numbered PPA years, states are required to submit an integrated report to EPA and therefore states will also be expected to include a commitment for measures SP-10 and SP-11 in their PPA agreements. <u>Since FY2009 is an odd numbered (i.e. non-IR report) fiscal year, states only need to provide an estimated value for this measure in their FY2009 PPA agreements.</u> <a href="http://www.epa.gov/water/waterplan/pamsfy08/def_wq08.html#sp10">http://www.epa.gov/water/waterplan/pamsfy08/def_wq08.html#sp10</a></p> <p>This target should be set to reflect the cumulative number of waterbodies expected to qualify as “Fully Restored” as defined in SP-10, and measured against the 2002 integrated report (or combined 303(d) and 305(b) reports). The baseline for this measure consists water bodies identified by states or EPA as not meeting water quality standards in 2002. <u>This includes all waters in categories 5, 4a, 4b, and 4c in 2002.</u> Impairments identified after 2002 are not considered in counting waters under this measure; such impairments will be considered when revising this measure for future updates of the Strategic Plan.</p>

PAM	PAM EXPLANATION	<i>EXPECTATIONS FOR STATES</i>
<p><b>SP-11 - Partial Waterbody Restoration - Remove the specific causes of waterbody impairment identified by states in 2002*. (cumulative)</b></p>	<p>Remove specific causes of waterbody impairment identified by states in 2002. This measure reflects improvement of water quality by cumulatively tracking the number of specific waterbody impairment causes removed by states in subsequent Integrated Reporting cycles.</p> <p>Whereas the Full Restoration measure (SP-10) tracks the number of waterbodies for which <u>all</u> impairments have been addressed, SP-11 tracks progress in restoring water quality by counting the number of specific impairments addressed. Two impairments restored on the same waterbody would count as two toward this measure. Progress for this measure is counted cumulatively against the 2002 integrated reports. The baseline for SP-11 includes all individual impairments for waterbodies segments included in categories 5, 4a, 4b, and 4c as of 2002 (or 1998 if in 2002 such data was not available).</p> <p><a href="http://www.epa.gov/water/waterplan/pamsfy08/def_wq08.html#sp11">http://www.epa.gov/water/waterplan/pamsfy08/def_wq08.html#sp11</a></p>	<p>Starting in FY2009, EPA R8 will be switching to a biannual targeting and reporting cycle for measures SP-10 and SP-11 to reflect the biannual integrated reporting cycle. During odd numbered PPA years, states are not required to submit an integrated report to EPA, therefore, states will only be expected to provide an estimated target in PPAs for these measures during these years. However, during even numbered PPA years, states are required to submit an integrated report to EPA and therefore states will also be expected to include a commitment for measures SP-10 and SP-11 in their PPA agreements. <u>Since FY2009 is an odd numbered (i.e. non-IR report) fiscal year, states only need to provide an estimated value for this measure in their FY2009 PPA agreements.</u></p>

PAM	PAM EXPLANATION	<i>EXPECTATIONS FOR STATES</i>
<p><b>SP-12 - Watershed Improvement</b>  <b>Improve water quality conditions in impaired watersheds using the watershed approach (cumulative)</b></p>	<p>This measure cumulatively tracks the number of impaired watersheds (12-digit HUCs) identified as priority watersheds where water quality is improved as a result of applying the watershed approach.</p> <p>Watersheds reported under SP-12 must meet the following guidelines.</p> <ul style="list-style-type: none"> <li>• Improvement or restoration comes from deliberately focusing on addressing water quality impairments on a watershed basis. The <i>watershed approach</i> is a coordinating process for focusing on priority water resource problems that: <ul style="list-style-type: none"> <li>▪ Is focused on hydrologically defined areas,</li> <li>▪ Involves key stakeholders,</li> <li>▪ Uses an iterative planning or adaptive management process to address priority water resource goals, and</li> <li>▪ Uses an integrated set of tools and programs.</li> </ul> </li> <li>• <i>Watersheds</i> for this measure are defined at the 12-digit scale, as determined by (a) the draft or final Watershed Boundary Dataset (WBD), or (b) state or regionally defined boundaries of comparable scale. Watersheds which may be counted toward this measure must have been identified in advance as priority watersheds by the State and have been the recipient of coordinated efforts to address the water quality impairments.</li> <li>• <i>Improved</i> means either that: <ul style="list-style-type: none"> <li>▪ One or more of the waterbody impairment causes identified in 2002 (or 1998) are removed, as reflected in EPA-approved state assessments, for at least 40% of the impaired waterbodies or impaired stream miles/lake acres in the watershed; OR</li> <li>▪ There is significant watershed-wide improvement, as demonstrated by valid scientific information, in one or more water quality parameters or related indicators associated with the impairments.</li> </ul> </li> </ul>	<p>By the end of FY2008, each Region 8 state must have identified their specific list of priority watersheds. As in 2008, states are expected include a numeric commitment in their PPA that demonstrates progress toward the goal, and to report against that annual commitment. Reporting under SP-12 requires the development of a narrative documenting the use of the watershed approach and the water quality improvement that led to delisting decisions.</p> <p>Guidance for reporting under SP-12 can be found at:  <a href="http://www.epa.gov/water/waterplan/pamsfy08/def_wq08.html#sp12">http://www.epa.gov/water/waterplan/pamsfy08/def_wq08.html#sp12</a></p>

## Water Quality Standards

PAM	PAM EXPLANATION	<i>EXPECTATIONS FOR STATES</i>
<b>WQ-1a: # of States and Territories that have adopted EPA approved nutrient criteria into their WQS. (cumulative)</b>	State/Territory has adopted nutrient criteria in their WQS and submitted those WQS to EPA and EPA has approved those WQS.	The Region is not expecting adoption of statewide numeric nutrient criteria in 09. Development and adoption, statewide, of technically defensible numeric nutrient criteria and the program flexibilities necessary for implementation is a longer-term goal. States are more likely to adopt site-specific numeric criteria in the short-term (as Colorado and Montana have done).
<b>WQ-1b: # of States/Territories that are on schedule with a mutually agreed-upon plan to adopt nutrient criteria into their WQS. (annual)</b>	States/Territories meeting its current year milestones in its nutrient criteria development plan.	The Region's expectation is that three States: Colorado, Montana and Utah will qualify to be counted under this PAM. The other States should continue to develop and implement their nutrient criteria plans.
<b>WQ-3a: #, and national %, of States and Territories that within the preceding three year period, submitted new or revised water quality criteria acceptable to EPA that reflect new scientific information from EPA or other resources not considered in the previous standards.</b>	State/Territory has submitted new or revised criteria, between May 1, 2006 and April 30, 2009, reflecting new criteria/guidance from EPA or other resources (e.g., criteria derived by State/Territory based on original work).	The Region's expectation is that five of six States will qualify to be counted under this PAM. CO, ND and WY have already adopted new or revised WQS that can be counted. The Region expects that two additional States will submit qualifying WQS revisions prior to April 30, 2009. The Region will work with all States to develop appropriate revisions to WQS.
<b>WQ-4a: % of State and Territorial WQS submissions (received in the 12 month period ending April 30<sup>th</sup> of the fiscal year) that are approved by EPA.</b>	Covers all WQS submissions between May 1, 2008 and April 30, 2009. The measure addresses the % of all submissions approved by EPA. No action or disapprovals do not count, but partial credit is counted (e.g., if 90% of the WQS revisions are approved).	A Regional priority is to work with States/Territories during the pre-rulemaking phase as well as during the rulemaking in an attempt to ensure adopted WQS are approvable. Occasionally, however, States/Territories will adopt WQS that the Region finds to be inconsistent with federal requirements. In such cases, disapproval is appropriate. Because the Region cannot anticipate total agreement on all aspects of revised WQS, the Regional commitment is 79% for this PAM. Nevertheless, our <u>goal</u> is 100% approvability.

**Additional FY 2009 Water Quality Standards Guidance...**

<b><u>ACTION</u></b>	<b><u>EXPLANATION</u></b>	<b><u>EXPECTATIONS FOR STATES</u></b>
<p><u>(1) Unresolved EPA Disapproval Actions -</u></p>	<p>* The backlog of unresolved EPA disapproval actions has been significantly reduced over the last seven years, but new EPA disapproval actions appear imminent in certain cases. A Regional priority is to make every effort to avoid situations that will require EPA to disapprove, and explore options to resolve, in a timely manner, any EPA disapprovals that cannot be avoided. Effective communication during the pre-rulemaking stage is very important.</p> <p>* Regional priority is to avoid the need for new EPA WQS disapproval actions.</p>	<p>The Region expects States with unresolved disapprovals to amend their standards, as necessary, to resolve the disapprovals.</p>
<p><u>(2) Endangered Species Act</u></p>		<p>The Region encourages States to <u>solicit early participation by the Fish and Wildlife Service</u> in reviewing draft water quality standards proposals, particularly for segments with occurrences of federally listed species.</p> <p>To the extent feasible, the Region encourages States to <u>address issues related to the protection of threatened and endangered species as amendments to the standards as they are being developed</u> (i.e., during the pre-rulemaking phase).</p> <p>The Region would like a commitment from each State stating that <u>the Service will be notified of planned WQS revisions</u> (i.e., ensure the Service is on the States'/Tribes' mailing lists); and, that <u>the Service will receive drafts of proposed amendments</u> when those are available for public review.</p>
<p><u>(3) Bacteriological Criteria</u></p>	<p>* Five States have adopted <i>E. coli</i> standards.</p>	<p>The Region encourages States to <u>adopt EPA's recommended bacteriological criteria</u> (<i>E. coli</i>) at the next opportunity.</p> <p>The Region will work with States to address implementation issues/questions.</p>

<b><u>ACTION</u></b>	<b><u>EXPLANATION</u></b>	<b><i>EXPECTATIONS FOR STATES</i></b>
<u>(4) Nutrients</u>	<p>* Issue: Completing the staff work necessary to develop technically defensible numeric nutrient criteria is an achievable goal given a reasonable time-frame, but completing a rulemaking action to adopt numeric values as WQS will likely face significant resistance due to the expected cost of implementation. Therefore, our priority is to focus on supporting development of the State technical approaches and implementation flexibilities (such as establishing authority to adopt discharger-specific variances) that will be needed to be successful. The Region is working with States to adopt numerical nutrient criteria (or narratives with implementation plans) or develop plans to adopt State-derived nutrient criteria.</p> <p>Regional priority is to provide technical and resource assistance to support development of final plans (North Dakota, South Dakota, and Wyoming) and implement final plans (Colorado, Montana, and Utah) all aimed at meeting the nutrient criteria adoption goal. Technical support, in the short-term, will include an RTAG meeting scheduled for the week of September 22, 2008 in Denver, CO and limited financial support.</p> <p>All of the States are now actively working on plans or projects to support numeric criteria development.</p>	<p>The Region is working with States to adopt numerical nutrient criteria (or narratives with implementation plans) or develop plans to adopt State-derived nutrient criteria.</p>
<u>(5) Biological Criteria</u>	<p>Issue: Since our States have not adopted numeric biocriteria in their WQS (and there are several obstacles that must be overcome to adopt numeric biocriteria), the focus for the Region will be on assisting States in developing acceptable implementation procedures for narrative standards. Colorado, Utah, Wyoming, and especially Montana have made progress in this area.</p>	<p>The Region recommends that States adopt narrative biological criteria and continue ongoing work aimed at developing methods by which these narratives can be implemented on a case-by-case basis</p>

<b><u>ACTION</u></b>	<b><u>EXPLANATION</u></b>	<b><i>EXPECTATIONS FOR STATES</i></b>
<u>(6) Updated Criteria for Toxic and Conventional Pollutants</u>		The Region expects States to revise criteria values to be consistent with the most recently published EPA recommendations or State- or -derived, defensible alternatives (e.g., the updated criteria recommendations in EPA's 2004 <i>National Recommended Water Quality Criteria</i> ).
<u>(7) Refined "Fishable/Swimmable" Designated Uses</u>	Several States have begun work on use refinement, but generally this is a longer-term goal that is associated with a number of challenging obstacles. For example, applying a refined designated use scheme (including new categories) requires site-specific information so that proposed use revisions are supported by evidence. UAAs are required where a site-specific change in designated use is accompanied by adoption of less stringent criteria (e.g., a change to less stringent dissolved oxygen or temperature criteria).	A longer term goal is that States refine, as needed, their aquatic life and recreational uses (including creation of new categories where appropriate) to more precisely describe the aquatic communities and recreational uses that are to be protected.  A short term Regional priority is to work with States on UAA approaches and implementation aimed at refining the level of protection, where appropriate, on a site-specific basis.
<u>(8) WQS submittals</u>	Regional priority is to complete action on 100% of submissions within statutory time frames.	The Region will act on WQS submittals in a timely manner.

## **Monitoring and Assessment**

EPA Region 8 embraces the EPA Office of Water's monitoring and assessment guidance and strongly encourages states to follow it. The guidance is contained in numerous documents, including, Elements of a State Water Monitoring and Assessment Program, Integrated Reporting Guidance, Consolidated Assessment and Listing Methodology, and the 106 Program Guidance and the Monitoring Initiative Guidance. These documents can be found on EPA's web site at:

<http://www.epa.gov/owow/monitoring>

<http://www.epa.gov/owow/monitoring/repguid.html>

[http://www.epa.gov/owow/tmdl/2008\\_ir\\_memorandum.html](http://www.epa.gov/owow/tmdl/2008_ir_memorandum.html)

Besides the continuation of core monitoring and assessment business, the areas of focus for FY09 should be on:

<b>PAM</b>	<b>PAM EXPLANATION</b>	<b>EXPECTATIONS FOR STATES</b>
<p><b><i>WQ-5 Number of States and Territories that have adopted and are implementing their monitoring strategies in keeping with established schedules.</i></b></p>	<p>Each of the Region 8 States has submitted a monitoring and assessment program strategy.</p>	<p>Region 8 strongly encourages States to review the strategies annually and, if necessary, update these documents to identify any programmatic shortcomings or gaps.</p> <p>Additionally, Region 8 encourages States to follow the Monitoring Initiative Guidance in order to obtain supplemental funds that address both monitoring strategy-identified needs and participation in the National Rivers and Streams Survey.</p> <p>Prior to submitting their 106 Monitoring Initiative workplans, states should review their monitoring strategies to ensure that any activities identified for 106 MI funds are described in the State's monitoring strategy.</p>
<p><b><i>WQ-7 Number of States and Territories that provide electronic information using the Assessment Database version 2 or later (or compatible system) and georeference the information to facilitate the integrated reporting of assessment data.</i></b></p>	<p>This action will improve the accuracy of the hard copy report and the electronic database and will minimize delays in providing the complete IR submittal (which includes the ADB and GIS files) to EPA.</p>	<p>Region 8 strongly encourages States to continue to prepare for the delivery of both the ADB Version 2.3 (or later) and NHD-referenced GIS layers of the IR segments and categories with their 2010 Integrated Reports by April 1, 2010.</p> <p>In preparation for the 2010 Integrated Report, EPA encourages states to load all assessment information into the ADB and to use the ADB to generate any documents that the State distributes for public comment.</p>



ACTION	EXPLANATION	<i>EXPECTATION FOR STATES</i>
Continued implementation of state monitoring and assessment strategies	<p>The focus on implementation of state monitoring and assessment strategies may require states to revisit their monitoring strategies.</p> <p>Preparation will help ensure that States will be able to meet EPA's April 1<sup>st</sup> deadline for the 2010 Integrated Reports.</p>	<p>EPA encourages States to review and revise their Assessment Methodologies.</p> <p>Region 8 strongly encourages States to make strategy revisions that satisfy 106 Monitoring Initiative requirements and address all waters of the state, including wetlands and ground water.</p> <p>Region 8 staff will continue to meet with State monitoring and assessment staff to ensure agreement on state monitoring and assessment priorities.</p>
Preparation for the 2010 Integrated Report and electronic data (ADB and GIS) submittals	preparation will help ensure that States will be able to meet EPA's April 1 <sup>st</sup> deadline for the 2010 Integrated Reports	<p>Begin planning for development of the 2010 IR</p> <p>States should work with their Region 8 State Monitoring Coordinator to identify and resolve any issues that may delay the submittal of the 2010 report.</p> <p>Region 8 staff will continue to meet with State monitoring and assessment on achieving quality Integrated Report and electronic submittals.</p>
Use of the 106 Monitoring Initiative funds	Clean Water Act Section 106 Supplemental Monitoring Initiative (MI) funds requires that states have a monitoring strategy that is consistent with EPA's FY06 <i>Guidelines for the Award of Monitoring Initiative Funds under Section 106 Grants to States, Interstate Agencies, and Tribes</i>	<p>Region 8 would like States to use the 106 Monitoring Initiative funds to implement the priorities identified in their monitoring strategies.</p> <p>To meet the minimum 106 Monitoring Initiative requirements, state strategies should include:</p> <ul style="list-style-type: none"> <li>An accurate description of the State's current monitoring and assessment activities</li> <li>A clear identification of improvements that would strengthen the State's monitoring and assessment program. The improvements may relate directly to monitoring efforts or may address programmatic needs noted in other elements of the strategy (e.g., data management, data analysis, assessment methodologies).</li> <li>A prioritized list of improvements and an established schedule for addressing the improvements, reflective of their ranking. We recognize a more generalized schedule may be provided for activities planned beyond a five-year period.</li> </ul>

## ***TMDL Program***

<b>PAM</b>	<b>PAM EXPLANATION</b>	<b><i>EXPECTATIONS FOR STATES</i></b>
<p><b>WQ-8b - Number, and national percent, of TMDLs that are established by States and approved by EPA [State TMDLs] on a schedule consistent with national policy.</b></p>	<p>Water quality restoration planning through the development of TMDL plans continues to be a major EPA focus in FY2009. This measure is required in the State Grant Template (attached) for CWA 106 water quality management programs. TMDL development pace tracks the annual number of TMDLs that are established by states consistent with the national policy that all waterbody/pollutant combinations need to be addressed within 8 to 13 years of originally being listed. An overriding factor may be the need for a particular state to stay compliant with a court order, consent decree, or settlement agreement derived from litigation.</p>	<p>States will be expected to report the calculated FY09 TMDL pace number, establish an FY09 TMDL development commitment in their PPA, and report out the actual number of TMDLs developed and submitted to EPA for approval at the end of the fiscal year (September, 30 2009).</p>
<p><b>(WQ-21) Restoration Planning Complete - Number of water segments identified as impaired in 2002 for which States and EPA agree that initial restoration planning is complete (i.e., EPA has approved all needed TMDLs for pollutants causing impairments to the waterbody or has approved a 303(d) list that recognizes that the waterbody is covered by a Watershed Plan [i.e., Category 4b or Category 5m]). (cumulative)</b></p>	<p>Number of water segments identified as impaired in 2002 (or 1998 if 2002 303(d) list is unavailable) for which States and EPA agree that initial restoration planning is complete (i.e., EPA has approved all needed TMDLs for pollutants causing impairments to the waterbody or has approved a 303(d) list that recognizes that the waterbody is covered by a watershed plan [i.e., Category 4b or Category 5m]). This is a cumulative measure which tracks progress in developing plans for restoration of known water quality impairments. The baseline for this measure consists of waters identified as impaired in state 303(d) lists in 2002 (i.e. this would include waterbodies in category 5 but not category 4). This measure counts waterbodies for which all EPA-approved TMDLs/Category 4b plans or category 5m plans are established. This measure <u>does not</u> count Category 4a segments (i.e., segments for which a TMDL to address a specific segment/pollutant combination has been approved or established by EPA) unless all causes of impairment for the segment have been addressed by TMDLs (or 4b/5m plans) approved by EPA. This measure also does not count segments where restoration planning is now unnecessary (i.e., restoration planning is now unnecessary because the waterbody is no longer impaired [counted under SP-10]).</p>	<p>Starting with the FY2009 PPA, and annually thereafter, states are expected to include a numeric target in their PPAs for measure WQ-21. Additionally, at the end of the FY2009 PPA cycle, states will be expected to provide a list of current and previously WQ-21 qualifying waterbodies, including ADB (version 2 or later) associated georeferencing information.</p> <p><a href="http://www.epa.gov/water/waterplan/documents/WQ-21.pdf">http://www.epa.gov/water/waterplan/documents/WQ-21.pdf</a></p>

## **Non-Point Source Program**

Region 8 strongly encourages States to maintain active and effective Non-Point Source (NPS) Programs in accordance with EPA's Strategic Plan and CWA Section 319. The State NPS program should continue to focus on restoring waters impaired by NPS pollution, and should be used by the states as a cornerstone in restoring impaired water bodies and watersheds. EPA will continue to work with the states toward this end.

The priority objective for the use of CWA Section 319 grant funds is to implement the state nonpoint source program expeditiously to achieve the goals of the CWA, including the restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters. To achieve this objective, EPA places top priority on implementing on-the-ground measures and practices that will reduce pollutant loads and contribute to the restoration of impaired waters. The Program Activity Measures (PAMs) described below achieve this objective by directing the use of Section 319 funds to the development and implementation of watershed-based plans that are designed to restore waters that have been listed by States as impaired under CWA Section 303(d).

<b>PAM</b>	<b>PAM EXPLANATION</b>	<b>EXPECTATIONS FOR STATES</b>
<b><u>WQ-9 (a,b,c)</u> <i>Estimated annual reduction in million of pounds of phosphorus and nitrogen and in tons of sediment from nonpoint sources to water bodies (Section 319-funded projects only).</i></b>	EPA collects this information in its Grants Reporting and Tracking System (GRTS) for Section 319-funded on-the-ground implementation projects where one or more of these three pollutants is addressed by the project. States are not strictly required to enter this information into GRTS until after one full year of project implementation, although they may enter data prior to the one-year period if they so choose. Therefore, load reduction data entered into GRTS in a particular year usually reflect the results of a project that was implemented during a previous grant year. Load reduction data must be entered into GRTS by February 15-  EPA HQ will <b>report</b> this information <b>on a national basis</b> based on data entry in GRTS.	States are required to enter this information into GRTS after one full year of project implementation.

PAM	PAM EXPLANATION	EXPECTATIONS FOR STATES								
<p><b>WQ-10</b>  <i>Water bodies identified by States (in 2000 or subsequent years) as being primarily NPS-impaired that will be partially or fully restored (cumulative).</i></p>	<p>This is the main environmental outcome measure for the NPS program. A more detailed description of how this measure will be computed will be available at: <a href="http://www.epa.gov/ow/waterplan/">http://www.epa.gov/ow/waterplan/</a>  By “fully restored,” EPA means that all designated uses are now being met. By “partially restored,” EPA means <u>either</u> of the following two conditions are being met:  a) A water body that has a use that is initially impaired by more than one pollutant, but after restoration efforts meets the criteria for one or more (but not all) of those pollutants; or  b) A water body that initially has more than one use that is less than fully supported, but after restoration efforts one or more (but not all) of those uses becomes fully supported.</p> <p>The national target of 250 waters by 2008 and 700 by 2012 includes both partially and fully restored water bodies.</p> <p>Since the main referent for this measure will be State 303(d) or Integrated Reports, States which did not submit 2000 303(d) lists may substitute the 1998 list for their base year. “Water bodies” therefore refer to 303(d)-listed segments or Category 4 or 5 waters on the Integrated Report. The measure is not meant to include only water bodies restored by 319-funded projects, but instead counts all primarily NPS-impaired water bodies that a state restores subsequent to the base year of 1998/2000. The water must have been impaired as of the year 1998/2000. Waters listed <b>after</b> 1998/2000 which are then delisted from the 303(d) list (for some or all pollutants) or which move from categories 4 or 5 to category 1 or 2 may also be counted against this measure  Please note that a water cannot be counted simply because it has been delisted from a state 303(d) list, or moves from categories 4 or 5 to 1 or 2, for reasons other than actual restoration (e.g., it is determined that it was inappropriately listed in the first place, it has a TMDL done for it, etc.).</p> <p>For a water to be counted as “partially or fully restored,” it must be described by a story on EPA’s NPS Success Story Website (<a href="http://www.epa.gov/owow/nps/Success319/">http://www.epa.gov/owow/nps/Success319/</a>).</p>	<p>States are expected to make numeric commitments for WQ-10 in their PPA and/or Section 319 grant workplan, and to develop success story narratives using the WQ-10 template to support WQ-10 submittals. Region 8 targets for WQ-10 are as follows:</p> <table border="1" data-bbox="1325 375 1913 927"> <tbody> <tr> <td data-bbox="1325 375 1619 521"><b>FY2007 REGION 8 COMMITMENT</b></td> <td data-bbox="1619 375 1913 521">6</td> </tr> <tr> <td data-bbox="1325 521 1619 667"><b>FY2007 ACTUAL REGION 8 PERFORMANCE</b></td> <td data-bbox="1619 521 1913 667">0</td> </tr> <tr> <td data-bbox="1325 667 1619 781"><b>FY2008 REGION 8 COMMITMENT</b></td> <td data-bbox="1619 667 1913 781">6</td> </tr> <tr> <td data-bbox="1325 781 1619 927"><b>FY2009 REGION 8 DRAFT TARGET</b></td> <td data-bbox="1619 781 1913 927">8</td> </tr> </tbody> </table> <p>State commitments are expected to meaningfully support these regional targets.</p>	<b>FY2007 REGION 8 COMMITMENT</b>	6	<b>FY2007 ACTUAL REGION 8 PERFORMANCE</b>	0	<b>FY2008 REGION 8 COMMITMENT</b>	6	<b>FY2009 REGION 8 DRAFT TARGET</b>	8
<b>FY2007 REGION 8 COMMITMENT</b>	6									
<b>FY2007 ACTUAL REGION 8 PERFORMANCE</b>	0									
<b>FY2008 REGION 8 COMMITMENT</b>	6									
<b>FY2009 REGION 8 DRAFT TARGET</b>	8									

**Non-Point Source Program Continued**

<b>ACTION</b>	<b>EXPLANATION</b>	<b>EXPECTATIONS FOR STATES</b>
<p>Given the increasing budget pressure and scrutiny directed at water quality programs, it is important that states and EPA evaluate the overall effectiveness of Region 8 Nonpoint Source programs at protecting threatened waters and improving the quality of impaired waters.</p>	<p>The framework for program evaluation should be designed to answer questions such as:</p> <ul style="list-style-type: none"> <li>• Do funded projects align well with the location and type of water quality impairments; in other words, is the solution appropriate to the problem?</li> <li>• Are measures of effectiveness for information and education efforts capable of assessing and documenting behavior change?</li> <li>• What percentage of completed projects have post-project environmental monitoring done to assess whether projected load reductions were achieved and expected water quality improvement occurred?</li> <li>• Is effectiveness monitoring addressed as a component of the state monitoring strategy?</li> <li>• Are funds expended in a timely way prior to the closing of project/budget periods?</li> </ul> <p>The 2004 guidance provide States with a framework to use Section 319 grant funds in a manner that will implement their NPS management programs effectively. Region 8 will be working with the states to move forward with program effectiveness evaluation over the FY2009-10 time frame.</p>	<p>States should consider developing a comprehensive framework for program evaluation that complies with Section(s) 319(h) 2, 8 and 11, and Section 319(1) of the Clean Water Act.</p>

## **NPDES Permitting Program**

The following are the NPDES expectations that will be reviewed during FY 09. The expectations reflect the basic requirements for State NPDES programs to be noted in each PPA.

### **A. Maintain Core Program**

#### **Statement to be included in all PPAs/SEAs**

The State Environmental Agency shall fully implement and enforce its delegated NPDES program (including, as appropriate, general permitting, pretreatment and biosolids programs) as required by 40 CFR Parts 122-124, 403, 501 and 503, its delegation MOA, SEA, Inspection Plan, and any other agreements with EPA regarding program implementation. The PPA may specify goals and objectives for activities beyond the base level of performance, but, in no way, should this be interpreted as relief from full implementation of the base program.

### **B. National Performance Activity Measures.**

Each State must provide written commitment in the PPA to address 2009 national Performance Activity Measures.

WQ-11: Number of follow up actions completed as result of a comprehensive assessment of NPDES program integrity.

#### **Background on WQ-11:**

In FY 2003, EPA worked with States to develop the “Permitting for Environmental Results Strategy” to address concerns about the backlog in issuing permits and the health of State NPDES programs. The strategy focused limited resources on the most critical environmental problems and addresses program efficiency and integrity. EPA continues to emphasize the importance of these follow-up actions. If additional actions are identified by EPA Region 8 or Headquarters they will be discussed with the States and added to the action item list as appropriate.

WQ-12a: Percentage of all non-tribal NPDES permits that are considered current.

Each year, 90% of all permits are current and 95% of the priority permits targeted for issuance are current. If the number of expired permits is greater than 30% at any time, provide an overall permit issuance/backlog reduction plan showing how the state will expeditiously reduce the backlog to 10%.

WQ-13a-d: Number of facilities covered by individual or general permit under the following categories (reported separately).

13a: Number of MS4s;

13b: Number of industrial stormwater facilities;

13c: Number of construction stormwater facilities; and

13d: Number of CAFOs

WQ-14a: Number and Percent of Significant Industrial Users (SIUs) in POTWs with Pretreatment Programs that have control mechanisms in place.

WQ-14b: Number and Percentage of Categorical Industrial Users (CIUs) in non-pretreatment POTWs that have control mechanisms in place that implement applicable pre-treatment requirements.

WQ-15a-b: Percent of major dischargers in significant noncompliance at any time during the fiscal year and number on impaired waters.

WQ-16: Number and national percentage of major POTWs that comply with permitted discharge standards.

WQ-19a: Number and Percentage of scheduled "high priority NPDES permits" that are current for States.

#### **Proposed revision to WQ-19a:**

EPA is working with States to structure the permit program to better support comprehensive protection of water quality on a watershed basis including expanding the definition of a "priority permit" to include those that have expired or will expire in the current fiscal year that are located on an impaired water body where a TMDL has been developed. The priority permit universe was expanded in this manner beginning in FY 2008, in order to capture a larger universe of environmentally significant permits. In addition, in order to simplify the process and to be more transparent, EPA is proposing to shift the time period for locking down the priority permits universe. EPA intends to work with States to develop the process to achieve this transition.

#### **Background on WQ-19a**

**CURRENT:** FY 2009 targets and commitments are fixed at 95% prior to a universe that will be determined in January 2009.

**PROPOSED REVISION:** For FY 2010, the measure will be revised to provide a universe of priority permits in time for the setting of national and regional targets in early 2009, draft commitments in July 2009, and final commitments in September 2009, consistent with the Agency target and commitment schedule. Regions will commit to issue a certain number of permits from the fixed universe of priority permits in FY 2010. **The national target will be the sum of all Regional commitments. There will be no percentage goal for this measure.** The universe of priority permits will be updated annually.

WQ-20: Number of dischargers with permits providing for trading between the discharger and other water pollution sources

### **C. Other Point Source Program Commitments for 2008**

1. Implement the Storm Water Phase 2 Regulations - December 8, 1999, to the maximum extent possible. Specific commitments include:
  - a. Adopt, if necessary, the storm water Phase 2 regulations into State Rules; and
  - b. Provide information on compliance assistance activities and trainings conducted for permitted small MS4s.
2. Involve regulatory agencies and the public as necessary to effectively permit storm water discharges.
  - a. The State program is accessible by the public and regulated entities (i.e., contact information, hotlines, web sites, etc.);
  - b. include EPA in the review process prior to issuing general permits for storm water discharges and individual Phase 1 permits for municipal separate storm sewer systems (MS4s); and

- c. Track storm water general permit coverage and provide data to EPA on regulated agencies consistent with national efforts for data management (e.g., WENDB/RIDE data elements within EPA's (PCS/ICIS-NPDES)).
3. Implement a process for incorporating TMDLs with storm water allocations into general permits.
4. Implement Pretreatment Program in authorized states (ND, SD, UT) including:
  - a. Perform audits on all approved pretreatment programs at least once every five years.
  - b. Update State rules and procedures to incorporate pretreatment streamlining regulations as appropriate to allow for implementation.
  - c. Identify CIUs, when feasible, in areas served by non-approved programs and develop appropriate control mechanisms.
  - d. Receive and appropriately evaluate annual reports submitted by local pretreatment programs.
5. Update State rules and procedures to incorporate pretreatment streamlining regulations as appropriate to allow for implementation.
6. Implement the Sewage Sludge (Biosolids) regulations
  - a. % and # of NPDES permits that contain biosolids language.
  - b. Maintain data in the Biosolids Data Management System (BDMS) or equivalent database. Submit the data electronically by May 1 each year for the preceding monitoring year.
  - c. If 40 CFR 503 was adopted by reference maintain current reference. (Most recently revised as of July 1, 1998 and August 4, 1999).
7. Implement the Unified National Strategy for Animal Feeding Operations - March 9, 1999 to the maximum extent possible. Specific commitments include:
  - a. Permit all CAFOs in accordance with the deadlines established in the February 12, 2003 and February 10, 2006 federal regulations.
  - b. For all permitted CAFOs enter permit facility data, permit event data and inspection data into PCS/ICIS-NPDES.
  - c. Implement the State's program to address all animal feeding operations that are impacting water quality. Provide progress on implementation to EPA.
8. Sustainable Infrastructure Addendum to 2009 PPA language. We request that you establish a point of contact / liaison for Sustainable Water Infrastructure to help develop and implement a Sustainable Infrastructure Strategy as well as serve as a communication link between EPA and key stakeholders in your state. The proposed language is provided below and was provided by Sadie Hoskie, EPA Water Program Director to State Water Director's on March 20, 2008:

***Sustainable Water Infrastructure Background and Information.*** *The State and EPA are committed to ensuring the long-term viability of water infrastructure through promoting sustainable practices that will reduce the gap between funding needs and financial capability at the local, state and national levels. The State and EPA will work with key stakeholders to develop and implement the Sustainable Water Infrastructure Initiative to reduce/optimize future infrastructure needs and costs, and ensure that current and future infrastructure is planned and managed more effectively. To achieve these goals, the State and EPA will collaborate to: 1) promote better management practices, 2) encourage efficient water use, 3) promote full-cost pricing of water, and 4) promote a watershed approach to planning and protection.*



9. If your State is scheduled for an NPDES audit in the current fiscal year, specific language will be inserted into the agreement as follows: “State recognizes that their NPDES program is scheduled for an audit by EPA Region 8’s NPDES permitting program in FYXX”. EPA’s schedule for 5-year audits is as follows:

State	Next Audit
North Dakota	FY 09
Montana	To be determined by MT office.
South Dakota	FY 10
Wyoming	FY11
Utah	FY12
Colorado	FY 13

### ***Ground-Water Program***

<b>ACTION</b>	<b>EXPLANATION</b>	<b>EXPECTATIONS FOR STATES</b>
State, Tribal and Federal water resource management agencies need to effectively manage all ground-water resources in a way that promotes sustainable use <b>and quality</b> of the resource and protects vital ecological resources that rely on ground-water discharge.	Within Region 8, ground-water uses have increased significantly during the past decade. Many areas within the Region rely heavily on ground water to supply domestic, irrigation and municipal needs. Large areas within Region 8 have experienced a significant drought. Global climate change is likely to increase the frequency and severity of droughts. This will result in significant decrease in annual recharge to critical aquifers. The combination of increased use of ground-water and decreased recharge makes it imperative to bring a renewed emphasis to the comprehensive management of ground-water resources.	<p>Region 8’s Ecosystem Protection Program requests that the States address the following activities in their <b>2009</b> Performance Partnership Agreement:</p> <ul style="list-style-type: none"> <li>- Participate in the Ground-Water Protection Strategy Workgroup (<b>now being promoted by GWPC</b>)</li> <li>- Develop and /or continue to implement ground-water monitoring programs as part of the State Water Quality Monitoring Strategies or otherwise.</li> <li>- Continue work on mapping and characterizing major and minor aquifers within each State</li> <li>- Assess the status of State ground-water management activities and increase coordination among State agencies that are responsible for ground-water management.</li> </ul>

## ***Goal Three: Land Preservation and Restoration***

### **Underground Storage Tanks Program**

EPA Regional offices are responsible for working cooperatively with states to identify and implement needed program improvements, as well as negotiate the terms and amounts of Underground Storage Tanks (UST) program State and Tribal Assistance Grants (STAG) awards, Leaking Underground Storage Tanks (LUST) Trust Fund cooperative agreements, and PL 105-276 assistance agreements to Tribes. Regional offices also directly implement and enforce UST regulations in Indian Country and, to a limited extent; they supplement state activities in areas that are under state jurisdiction.

#### **1. Interim Measure and Associated Definitions for Region 8**

**“Number of corrective action plans (CAPs) implemented” through your regular STARs reporting schedule Continuing in FY09.**

*Number of Corrective Action Plans (CAPs) implemented. The cumulative number of CAPs implemented where the site has been identified as a leaking underground storage tank site (LUST) from a Subtitle I regulated petroleum UST system, submitted a CAP that was approved by a state agency and started remedial activities.*

*Clarification: “Corrective Actions Plans Implemented” is identified as an approved CAP by a state agency in which the state or responsible party has : 1) removal of free product, 2) management or treatment of contaminated soils, 3) management or treatment of dissolved petroleum contamination, or 4) monitoring of groundwater or soil being remediated by natural attenuation. Excavation of petroleum contaminated soils following the removal of tank(s), site investigation, and pilot study activities do not qualify as a “corrective action plan implemented”.*

#### **2. National Priorities**

##### **A. Cross Cutting Initiatives**

- **Implement USTCA:** Key requirements include: Complying with the requirements described in current EPA Guidelines implementing Subtitle B, Underground Storage Tank Compliance Act, of Title XV, of the Energy Policy Act.
- **Conduct Enhanced Program Evaluations:** Key objectives include: (1) continuing to provide analytical reports that track national and Regional program performance; (2) improving data quality; (3) examining viability and identifying ways to improve underground storage tank financial assurance mechanisms, including state cleanup funds, (4) conducting evaluations of specific state cleanup workloads to determine strategies for expediting and improving state cleanups programs; (5) developing methods to explicitly highlight the environmental and public health outcomes and benefits of completing LUST cleanups; and (6) continued participation in advancing OSWER's Revitalization Initiative including leading EPA-state efforts to evaluate the need for vapor intrusion guidance for petroleum sites, and participating in cross-media task forces on ground water and long-term stewardship.

- ***Funding and Oversight:*** Key objectives will be developed after discussions with the Regional Division Directors and Regional UST/LUST Program Managers on issues related to the allocation of both STAG and LUST funds to the states.
- ***Fostering and Expanding Partnerships:*** Key objectives include: (1) fostering existing partnerships among EPA (headquarters and Regions), states, communities, Tribes and industry to prevent releases and clean them up quickly when they occur; and (2) expanding partnerships by including non-OSWER EPA offices and the UST/LUST Regional program offices to achieve an integrated approach on tank issues (e.g., vapor issues and source water issues.) See <http://www.epa.gov/OUST/swaustmemo.pdf> .

**B. Program Specific Initiatives**

- ***Improving Compliance:*** Key objectives will be developed after discussions with the Regional Division Directors in mid-March 2006. Please note that the USTCA imposed a number of conditions on States receiving LUST funding. The key objectives will include what EPA has to do under the law to implement these conditions (e.g., issuing guidelines).
- ***Reducing the Cleanup Backlog:*** Key objectives include: (1) piloting innovative and cost-effective approaches (such as the use of multi-site cleanup agreements) for cleanup resulting from the cleanup workload study; (2) expanding efforts to optimize cleanups of difficult sites; (3) providing technical and financial assistance to address fuel additives including oxygenates, MTBE, and lead scavengers; and (4) achieving a better understanding of the current backlog of sites and remaining administrative legal and technical impediments to cleanup.
- ***Promoting Redevelopment of Abandoned Gas Stations:*** Key objectives include: (1) working with Brownfields and OSWER Revitalization programs as key participants in implementing the petroleum provision of the Brownfields law, (2) working to increase state tank program participation in revitalization of petroleum contaminated sites; and (3) identify lessons learned from EPA's investment in USTfields pilots.

**C. Program Development**

In FY 2005, a new LUST measure was reported internally that supports OSWER's approach to revitalization. The new internal measure, acres available for reuse or in continued use at LUST sites, is based on the number of sites at which cleanups are completed each year, multiplied by an estimated average of one acre per LUST site. Total acres also include contaminated land that was abandoned, cleaned up and made available for development. Specific measurements are not currently reported for land that remains in continued use during cleanup, and for abandoned land that is available for reuse. This measure was a joint effort with the Regional and state LUST programs. See <http://www.epa.gov/ocfopage/plan/2003sp.pdf> .

One of the influences in program development is the Federal government's Program Assessment Rating Tool (PART). The PART was developed to assess and improve program performance so that the Federal government can achieve better results. The LUST program was reviewed to identify its strengths and weaknesses to make the program more effective. In FY 2004, the LUST Program received a final numerical score of 68 and an overall rating of "adequate" from OMB's PART review. To achieve this rating, the LUST Program created two long-term performance measures that focus on

environmental outcomes. The first measure is to increase the number of sites that meet risk-based standards for human exposure and groundwater migration. This measure focuses on the LUST program's sole mission, which is to cleanup LUST sites, and is correlated with the annual performance goal of LUST cleanups completed. This measure tracks EPA's performance on overseeing cleanups performed largely by states. The second long-term measure is to reduce the backlog of cleanups that exceed state risk-based standards for human exposure in Indian Country.

The LUST Program developed a measure of program efficiency in FY 2004 that will compare LUST cleanups completed over a 3-year rolling average with public and private sector cleanup costs. In FY 2006, the LUST program will determine whether this efficiency measure results in a meaningful measure of efficiency or whether a new one needs to be developed.

The UST program may undergo a PART review in FY 2006, with the results to be released in the FY 2008 President's budget request.

### **3. Program Funding**

EPA provides funds to help states implement their programs through grants or cooperative agreements under the authorities and appropriations described below. Specific activities eligible for funding are determined through discussions between the states and tribes and the EPA Regional offices based on national guidance<sup>17</sup> issued by OUST for implementation of the Energy Policy Act. In FY 1999, through PL 105-276, Congress gave EPA authority to provide assistance agreements to federally-recognized tribes to develop and administer underground storage tank (UST) prevention programs and leaking underground storage tank (LUST) cleanup programs. In general, such assistance agreements can be used for the same purposes for tribes as they are used for states, however, EPA does not have authority under RCRA to approve tribal programs to operate in lieu of the Federal program. Examples of eligible projects that can be conducted under these grants include the development and administration of an UST or LUST program, conducting an unregistered tank survey, providing leak detection and installer training, and cleaning up releases.

#### **A. UST State and Tribal Assistance Grants (STAG) Program**

Any STAG funding appropriated in FY 2009 for the UST leak prevention programs will be given as grants under the authorities of the Solid Waste Disposal Act (SWDA) of 1976, as amended by the Superfund Reauthorization Amendments of 1986 (Subtitle I), Section 2007(f), 42 U.S.C. 6916(f)(2); and such additional authority as may be provided for in EPA's annual appropriations acts. For the Tribal Grants: P.L. 105-276. STAG funding is provided in grants and cooperative agreements to assist states, territories, Federally-recognized Indian tribes and Intertribal Consortia that meet the requirements at 40 CFR 35.504, in the development and implementation of underground storage tank (UST) programs. The UST State Grant program is implemented by regulations at 40 CFR 35.330. There is a 25-percent matching requirement for states under 40 CFR 35.335.

#### **B. LUST Trust Fund Cooperative Agreements for UST Release Prevention Activities**

Any LUST funding appropriated in FY 2009 for the UST release prevention programs will be given as grants under the authorities of Section 9011 and other applicable provisions of Subtitle I of the Solid Waste Disposal Act (SWDA) of 1976. This funding will be used in cooperative agreements to the states and tribes to carry out the Energy Policy Act (EPAct) of 2005 provisions related to the prevention of underground storage tank (UST) releases. The cooperative agreements will be for prevention and compliance assurance activities, such as inspections, as well as for enforcement activities related to release prevention. Priority will be given to providing funds to enable the states to meet their

responsibilities under Title XV, Subtitle B of the Energy Policy Act of 2005. States that have entered into cooperative agreements with EPA have the authority to inspect and take other compliance and related enforcement actions to prevent releases from USTs. EPA provides financial assistance to tribes to develop and implement programs to manage USTs. This financial assistance program is not eligible for inclusion in Performance Partnership Grants under 40 CFR 35.133. Cooperative agreements are only available to states that have UST programs. LUST prevention funding is awarded under an allocation process developed by the Agency. The Agency distributes funds based on the number of federally-regulated USTs in a State and other indicia of State needs. States will provide a twenty-five (25) percent match for cooperative agreements awarded under Section 9011 and other applicable provisions of Subtitle I. There is no matching requirement for LUST prevention cooperative agreements for tribes or Intertribal Consortia awarded pursuant to annual appropriation acts.

### **C. LUST Trust Fund Cooperative Agreements for Corrective Action Activities**

Any LUST funding appropriated in FY 2009 for the UST cleanup programs will be given as grants under the authorities of Section 205 of the Superfund Amendments and Reauthorization Act of 1986. EPA awards cooperative agreements to states under the provisions of EPA's annual appropriations act, Subtitle I of the Solid Waste Disposal Act of 1976 (SWDA), as amended, and Public Law 105-276, Title III, October 2, 1998, Section 9003(h)(7) of the SWDA. Under Public Law 105-276, Congress authorized EPA to use LUST Trust Fund appropriations to award cooperative agreements to tribes for the same purposes as those set forth in Section 9003(h)(7). Policies and procedures applicable to EPA-State LUST Trust Fund cooperative agreements are presented in detail in OSWER Directive 9650.10A, issued May 24, 1994.<sup>19</sup> LUST corrective action funding awarded under Section 9003(h)(7) of the Solid Waste Disposal Act is subject to an allocation process developed by the Agency. By guidance, the Agency has established a process for allocating funds to states under Section 9003(h)(7) based on the cumulative numbers of confirmed UST releases, cleanups initiated, cleanups completed, the percentage of the population using groundwater for drinking water, and the number of states with approved UST programs. This program allocates funding to tribes and Intertribal Consortia non-competitively based on their programmatic needs and national guidance. States must provide a 10-percent cost share for cooperative agreements awarded under Section 9003(h)(7). There is no matching requirement for corrective action cooperative agreements for tribes or Intertribal Consortia awarded pursuant to Public Law 105-276.

EPA provides funds to help states implement their programs through grants or cooperative agreements under the authorities and appropriations described above, and when funding is available, from EPA's Headquarters' Environmental Program Management (EPM) and LUST Extramural Operating Plan resources. Specific activities eligible for funding are determined through negotiations between the states and Tribes and the EPA Regional offices based on national guidance issued by OUST for implementation of the USTCA.

## **4. Regional Coordination**

Regional Planning Meetings, annual Regional Division Directors' meetings, and regularly scheduled monthly conference calls between OUST and the Regional UST/LUST Program Managers provide opportunities for OUST and Regional management to assess the strengths and weaknesses of state programs and decide where EPA's support is most needed and would be most productive. OUST will hold additional Regional Planning Meetings, as needed.

## **5. State Reporting Requirements and Schedule**

Regional offices and states must work out reporting schedules that will enable the Regional offices to submit states' data to OUST in a timely manner.

The FY 2008 National GPRA Goal for Cleanups Completed is 13,000.

At the end of FY 2007, states and Regional offices reported a baseline of 63% for the percent of UST facilities that are in significant operational compliance with both release detection and release prevention (spill, overfill, and corrosion protection) requirements. OUST's goal for each of the next four years is to increase compliance by one percent (1%) each year.

Regional offices are expected to verify the accuracy and completeness of data provided by states. Verification must be an ongoing process, in order to avoid "last minute" reviews, each time states submit data. Regional offices must either develop their own verification processes or follow verification guidance provided by OUST; in general, such processes should involve sufficient interaction with states that the Regional offices can be confident that the data submitted at the end of each reporting period are complete, up-to-date, and accurate. Each Regional office should conduct at least one on-site review of each state's data.

## 6. Underground Storage Tanks Program Performance and Efficiency Measures

Goal	Obj	Measure	Baseline	Unit of Measure	FY 06	FY 07	FY 08	FY 09 Draft	Comment
3	1	Percent increase of UST facilities that are in significant operational compliance with both release detection and release prevention (spill, overfill, and corrosion protection requirements). [APG/APM: ST6]	63%	%	+1%	+1%	+1%	+1%	At the end of FY 2007, a total of 63% of the estimated universe of approximately 237,685 facilities were in significant operational compliance with both release detection and release prevention (spill, overfill, and corrosion protection) requirements.
3	1	Number of confirmed UST releases national. [APG/APM: ST1]	7,570 confirmed releases for FY 2006	UST Releases	<10,000	<10,000	<10,000	<10,000	Baseline: Between FY 1999 and FY 2005, confirmed UST releases averaged 10,844, and the annual number of confirmed releases in FY 2007 was 7,570
3	2	Number of cleanups that meet state risk-based standards for human exposure and groundwater migration (tracked as number of LUST cleanups completed). <b>PART</b> [APG/APM: 108]	13,862 cleanups completed for FY 2007	Cleanups	Under negotiation with OMB	13,000	13,000	13,000	At the end of FY 2007, EPA completed 365,361 leaking underground storage tank cleanups.
3	2	Comparison of LUST cleanups completed over a 3-year rolling average with public and private sector cleanups costs. <b>PART</b> [APG/APM: 109]	Baseline Development	TBD	TBD	TBD	TBD	TBD	
3	2	Number of acres of land available for reuse or in continued use at leaking underground storage tank sites. [APG/APM: 114]	13,862	TBD	13,000	13,000	13,000	13,000	
3	1	Number of cleanups that meet state risk-based standards for human exposure and groundwater migration in Indian Country. [APG/APM: 113]	54 cleanups completed in Indian Country in FY 2007	Cleanups	30	30	30	30	At the end of FY 2007, 783 leaking underground storage tank cleanups were completed in Indian Country.

## ***Goal Four: Healthy Communities and Ecosystems***

### ***Subobjective 4.3.1: Increase Wetlands***

#### **Wetlands Program**

To support the national goal of “No Net Loss” of wetland quantity and quality, EPA developed a National Wetland Program Strategy that includes building capacity of State and Wetlands Programs as one objective. In partnership with States, EPA has begun planning for the 2011 National Wetland Condition Survey. EPA and the U.S. Army Corps of Engineers have recently released a Final Mitigation Rule that contains new requirements for using best available science to assess ecological condition and to implement compensatory mitigation in a watershed context. EPA, in partnership with NatureServe, has developed new technical guidance on ecological integrity assessments and mitigation performance standards. The FY09 Program Activity Measures (PAMs) noted below are key State and/or wetland program capacity measures. EPA Region 8 requests that States include activities in their PPAs that support these measures, recognizing that full implementation of a comprehensive wetlands protection program will be a multi-agency effort.

EPA Wetlands Program guidance documents can be found on EPA’s web site at:

<http://www.epa.gov/owow/wetlands/initiative/fy02elements.html>

<http://www.epa.gov/owow/wetlands/monitor>

<http://www.epa.gov/owow/monitoring>

<http://www.epa.gov/wetlandsmitigation/>

<b>PAM</b>	<b>PAM EXPLANATION</b>	<b><i>EXPECTATIONS FOR STATES</i></b>
<b><u>WT – 1</u></b> <i>Number of wetland acres restored or enhanced, under the President’s 2004 Earth Day Initiative.</i>	This measure reflects EPA’s “no net loss” goal of increasing the quantity and quality of wetlands, and is measured by the number of acres restored or enhanced under EPA’s Five-Star Restoration Program.	EPA Region 8 also asks that States and Tribes make the most of opportunities to restore wetlands through other Clean Water Act programs. State and nonpoint source programs should include wetland and riparian protection and restoration as part of watershed plans, and track wetland and riparian restoration supported by 319 nonpoint source grants in the 319 program’s GRTS database. States and Tribes should also consider, where appropriate, including wetland restoration and protection as part of a suite of TMDL implementation activities to meet watershed goals. State Wetland Conservation Strategies can address both conservation and restoration needs and opportunities.



PAM	PAM EXPLANATION	EXPECTATIONS FOR STATES
<p><b>WT – 2</b>      <i>Number of States that have built capacities in wetland monitoring, regulation, restoration, water quality standards, mitigation compliance, and partnership building.</i></p>	<p>This measure reflects EPA’s goal of increasing State and capacity in wetland protection. In reporting progress under this measure, EPA will be looking for substantial progress toward development of a State or Wetland Program in three of the six core elements of the measure during the last three years. EPA’s 104(b)(3) Wetland Program Development Grants are available to States, Tribes and local governments to support building wetland program capacity.</p>	<p>For the monitoring core element, EPA Region 8 will track development and implementation of State Monitoring and Assessment Strategies that address wetlands consistent with the “Elements” document. EPA will continue to work with States that have not yet developed monitoring and assessment strategies for wetlands to identify current wetland activities that can be included in State strategies. EPA and State discussions will then focus on identifying priorities and gaps and developing a plan to address gaps and areas for enhancement.</p>
<p><b>WT–4</b> <b>Number of States measuring baseline wetland condition – with plans to assess trends in wetland condition – as defined through condition indicators and assessments. (cumulative)</b></p>	<p>By 2013, a State will document, in the State’s Water Quality Inventory Report/Integrated Report submitted under CWA 305(b)/303(d), the baseline condition of at least one wetland type for the entire state or all wetlands in one major river basin. States may use either Level 1, 2, or 3 methods or the combined 3-Level approach.</p> <p>Region 8 will make a determination and report on whether the state is making progress and “on track” to meeting this measure by FY 2013. Examples of activities indicating the state is “on track” include, but are not limited to:</p> <ul style="list-style-type: none"> <li>- building technical and financial capacity to conduct an “intensification study” as part of the 2011 National Wetland Condition Assessment</li> <li>- developing or adapting wetland assessment tools for use in the state.</li> <li>- monitoring activity is underway for wetland type(s)/watershed(s) stated in strategy or goals.</li> <li>- developing a monitoring strategy with one goal of evaluating baseline wetland condition</li> </ul> <p>EPA Region 8 will coordinate with the National Wetlands Monitoring and Assessment Workgroup, National Wetlands Program, and Office of Research and Development to solicit</p>	<p>To maximize financial resources, states are encouraged to use a probability survey design for measuring baseline condition. The state should also plan to re-survey for the purposes of evaluating trends using a rotating basin or other step-wise approach.</p> <p>The state also has plans to re-survey for the purposes of evaluating trends using a rotating basin or other step-wise approach.</p> <p>EPA Region 8 has identified a target of four States for this measure, with each State conducting an “intensification study” or focus area survey. “Intensification study” boundaries may be a major river basin, watershed, ecosystem, ecoregion, or other comparable geographic area. States should discuss potential focus areas with EPA Region 8, including opportunities to integrate surveys with the 2011 National Wetland Condition Assessment and utilize surveys to build State program capacity.</p> <p>All Region 8 States and Tribes with wetland-related programs are encouraged to participate in the National Workgroup.</p>

<b>PAM</b>	<b>PAM EXPLANATION</b>	<b><i>EXPECTATIONS FOR STATES</i></b>
	<p>and provide technical assistance on monitoring designs, indicators, methods, and other technical issues.</p> <p>Improving monitoring, assessment, and reporting of wetland condition are National Water Program priorities. In March 2003, EPA released guidance to States outlining the Elements of a State Water Monitoring and Assessment Program. This was followed in April 2006, by release of an “Elements” document specific to wetlands to help EPA and State program managers plan and implement a wetland monitoring and assessment program. Also in 2006, EPA re-initiated the National Wetlands Monitoring and Assessment Work Group (NWMAWG) to provide national leadership in implementing State and Tribal wetland monitoring strategies. NWMAWG has also begun planning for the 2011 National Wetland Condition Assessment, which will be supported with CWA 106 funding similar to other National Assessments. Since 2004, EPA Region 8 has supported seven Regional and State technical training workshops on development and enhancement of wetland monitoring and assessment tools and programs within Region 8 States and Tribes.</p>	<p>State focus area surveys should be described in State Monitoring and Assessment Strategies for wetlands. Development of State ambient monitoring programs to measure wetland condition through conducting focus area surveys also supports wetland conservation, restoration, and compensatory mitigation in a watershed context.</p>