

*Regional Compendium of
Standard Operating Procedures
for Oversight*

April 2007 Edition

**U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado**

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Introduction

Regional Compendium of Standard Operating Procedures for Oversight

U.S. EPA Region 8 is pleased to introduce the second edition of its *Regional Compendium of Standard Operating Procedures for Oversight*. This *Compendium* constitutes a manual of procedures and standards for conducting oversight of performance for all authorized or delegated environmental programs and for continuing programs for which EPA funding is provided. It was developed following Regional Order 5700.04, which was signed on March 10, 2004. This edition reflects the Region's commitment to periodically review and refine its oversight procedures in keeping with the policies set forth in the Regional Order. Significant changes in this edition are in the addition of oversight procedures for the Pesticides program and revisions to oversight of several programs based on the EPA Office of Enforcement and Compliance Assurance "State Review Framework" which replaces the Region 8 Uniform Enforcement Oversight System. The standards and procedures for oversight contained in the manual will become effective in Federal fiscal year 2007.

Oversight of state and tribal environmental program performance is a core function of the Environmental Protection Agency. Program oversight is the process by which Region 8 carries out its responsibilities for periodically assessing, ensuring, and documenting that federally authorized programs are conducted by states and tribes adequately and in conformance with authorization agreements. Program oversight also encompasses continuing programs for which EPA funding is provided. Grant oversight focuses on deliverables, or action item commitments, and performance measures in grant work plans, and includes a fiduciary responsibility to ensure that grant funds are accounted for and used appropriately by recipients. Both program oversight and grant oversight are required by statute, rule, and Agency policy.

In Region 8, we will approach oversight as a joint effort with the states and tribes. Our purpose is to ensure effective environmental protection. We will establish and document clear goals and expectations in collaboration with the states and tribes. We will also establish clear roles, responsibilities, and measurable commitments. We will share responsibility and accountability for the success of environmental programs with the states and tribes in our Region.

EPA Region 8 will use performance assessment findings to determine the appropriate level and frequency of oversight that will be conducted in each Program. EPA oversight will be decreased for a program in which all substantive functions are found fully adequate. The level of oversight may be increased for a program for which substantial performance problems have been identified and remain uncorrected. The level and frequency of oversight will be documented in the work plan or agreement on a program-by-program basis.



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Oversight of State and Tribal Performance

1. **PURPOSE.** This Order establishes a set of principles for all EPA Region 8 organizations to follow in performing and integrating program and grant oversight of state and tribal agencies. It complements, but does not supersede, Regional Order R8.5700.1, AState/EPA Agreements and Assistance Management Process.@
2. **DEFINITION.** Oversight of state and tribal environmental program performance is a core function of the Environmental Protection Agency. Program oversight is the process by which Region 8 carries out its responsibilities for periodically assessing, ensuring, and documenting that federally authorized programs are conducted by states and tribes adequately and in conformance with authorization agreements. Program oversight also encompasses continuing programs for which EPA funding is provided. Grant oversight focuses on deliverables, or action item commitments, and performance measures in grant work plans, and includes a fiduciary responsibility to ensure that grant funds are accounted for and used appropriately by recipients. Both program oversight and grant oversight are required by statute, rule, and Agency policy.
3. **POLICY.** In Region 8, we will approach oversight as a joint effort with the states and tribes. Our purpose is to ensure effective environmental protection. We will establish and document clear goals and expectations in collaboration with the states and tribes. We will also establish clear roles, responsibilities, and measurable commitments. We will share responsibility and accountability for the success of environmental programs with the states and tribes in our Region.

- A. EPA and state and tribal agencies will jointly establish clear goals, measurable commitments, and performance expectations. The parties involved will work diligently and aggressively together to identify, develop, and adopt environmental results indicators at the earliest possible opportunity.
- B. Programs will develop, use and periodically review and improve standard operating procedures (SOPs) for program oversight. These procedures will be consistent with national guidance, Regional Order R8.5700.1 and this Order. These SOPs will be kept up to date and a copy will be filed to the Regional Compendium of Standard Operating Procedures. Each SOP will include instructions regarding the following key elements: 1) coordination of program assessment¹ schedules and reviews between the various functions of a program, e.g., permitting, data management, compliance, enforcement, quality assurance, and/or lab analyses; 2) end-of-year grant reviews, including incorporation of program assessment findings; 3) frequency of reviews and assessments; 4) notification of organization being reviewed; 5) review of files and documents; 6) when and how interviews of state and tribal staff and managers will occur; 7) bases for determining whether an action is a required or recommended action; 8) unified EPA presentation of findings, both verbal and written; 9) follow up with the organization reviewed; 10) required chain-of-command concurrences for various reports, required actions, and oversight decisions; and 11) the method for incorporating long-term required actions into grant work plans or other Agreements. Region 8 will maintain a Regional Compendium of Standard Operating Procedures for Oversight for all Regional programs covered by this Order.
- C. Project Officers and Grants Management Specialists will conduct post-award monitoring of grant recipients in accordance with EPA Order 5700.6, APolicy on Compliance, Review and Monitoring.@
- D. EPA Region 8 technical, regulatory, permitting, compliance, and enforcement performance assessments of individual programs will be coordinated, onsite reviews conducted jointly.
- E. The Performance Partnership Agreement (PPA) and equivalent Agreements and their established cyclic process will be used as the control and formal point at which program and grant commitments, program and grant assessments, and oversight determinations will be made and documented. Program Directors will serve as the control and focal point for continuing

¹For the purposes of this order, assessment or program assessment means a through review of program and fiscal responsibilities as specified in program authorizations.

programs that receive categorical grant funding or do not receive federal funding, but for which EPA oversight is required or as specified in an agreement with a state or tribal environmental organization.

4. APPLICABILITY.

This Order covers all EPA delegated or authorized continuing programs, federally funded or not, and other work as agreed to by EPA Region 8 and designated representatives of state or tribal governments. Included are those responsibilities specifically identified in an agreement with a state or tribal environmental organization.² The Order does not include State Revolving Funds, nor does it include EPA=s direct implementation of environmental programs.

5. RESPONSIBILITIES.

- A. Regional Administrator/Deputy Regional Administrator. The Regional Administrator and Deputy Regional Administrator will work with designated representatives of state and tribal governments to define mutual priorities and commitments toward addressing these priorities; oversee resolution of performance concerns that cannot be resolved by Assistant Regional Administrators; and will authorize extraordinary measures called for by state or tribal performance, including withholding or withdrawing funds, and significant changes in the level of oversight of a state/tribal agency=s program.
- B. Assistant Regional Administrators (ARAs). ARAs in the Region 8 Office will ensure that a systematic procedure for the oversight of state and tribal programs is in place. They also will ensure that their organization=s program reviews, assessments and grant end-of-year reviews are coordinated and consistent with the approach and findings used to evaluate other functions of the same program (e.g., permitting, data management, compliance, enforcement, quality assurance, and/or lab analyses). ARAs will ensure that identified performance and oversight issues are discussed with the designated representatives of state and tribal government. They will approve their

² This Order includes all Federally delegated or authorized programs, whether they receive Federal grants dollars or not. It includes all delegated or authorized continuing environmental programs, whether performed by environmental agencies, agricultural agencies, health, oil and gas commissions, or other designated governmental entities. Water quality and monitoring programs are included. An example of an unfunded program function is the Air Title V permitting function, which is ineligible for grant funds, but which is authorized by EPA and included as part of the program oversight for the Air Program. This Order also applies to State performance of Superfund core program activities that are documented in an agreement between EPA and the State. The Order *may* include State or Tribal performance of continuing environmental program work while developing the capacity to apply for program delegation or authorization.

organization=s program oversight guidance documents and ensure that program review guidance does not conflict with guidance for other functions of the same program.

- C. Program Directors. Program Directors will implement the four components of oversight delineated in Section 3 of this Order. They will ensure written standing operating procedures for oversight of their program(s) exist, are kept up to date, are consistent with national program guidance, and are implemented by staff in their organizations. The Program Directors will coordinate oversight with program directors for related program functions, ensure that their staff identify and schedule program oversight activities, notify state/tribal counterparts of plans for onsite reviews, approve written reports of onsite program review findings, and perform the appropriate follow-up actions to ensure problems are addressed and that adjustments in oversight level are made. Program Directors will provide copies of written program review reports and correspondence to the appropriate Continuing Program Grants Project Officer at the time the draft and final versions of the report are sent to the state or tribe.

Program Directors will work with state and tribal counterparts to jointly establish clear goals, measurable commitments, and performance expectations for programs covered by this Order. In addition, they will ensure that these goals, measures, and expectations are clearly communicated and understood by the stakeholders in this process. The parties involved will work diligently and aggressively together to identify, develop, and adopt environmental results indicators at the earliest possible opportunity.

Program Directors will jointly monitor, evaluate, and report continuing program grant end-of-year work plan and program performance with state and tribal counterparts, as required by 40 CFR Part 31.40 and 40 CFR Part 35.115 and this Order. The end-of-year report will consider data base information and information from all program functional areas.

Program Directors will elevate to their ARA those items on which they cannot reach agreement regarding the facts or interpretation of facts affecting work agreements or performance assessment. They will follow the issue resolution process defined in the program SOP and consistent with current Regional procedures.

Program Directors will provide information to Continuing Program Project Officers and State Planning Managers in preparation for meetings with designated representatives of state and tribal government, as appropriate or as requested.

- D. Continuing Program Grant Project Officers (Project Officers). Project Officers serve as grant project officers for Performance Partnership Grants, continuing program categorical grants, and other grant work plans defined in Section 4, Applicability.@ Project Officers will crosswalk each work plan component with its funding source; plan senior level planning or review meetings with the designated representatives of state and tribal government; coordinate work plan or Agreement negotiations, issue resolution, and end-of-year reviews; ensure the consolidated end-of-year report covers work plan or Agreement commitments, performance oversight reports, and other pertinent information; and consolidate EPA findings and comments. Except where otherwise specified, the joint end-of-year review will be performed in the quarter following the end of each grant year. Together, the recipient and EPA will assess the status of commitments in the Agreement and program and grant requirements referenced in the Agreement. The end-of-year report will consider data base information and program, compliance and evaluation reviews and assessments that have been conducted during the period for which the end-of-year report is prepared. EPA concurrence on the report as a grant report will occur shortly after completion and submittal of the report. Project Officers will work with technical program staff to ensure long-term problems and solutions are incorporated into the grant work plan or Agreement. The Project Officer also will perform post-award program reviews with EPA Order 5700.6, Policy on Compliance, Review and Monitoring.@
- E. EPA Region 8 Program Staff. EPA staff will provide technical oversight and assistance for delegated or funded programs covered by this Order, will perform formal off-site and onsite reviews and assessments, as called for by Agency policy or guidance, Program SOPs for oversight, and as assigned to them by Program Directors. The Program staff will perform joint end-of-year reviews with state or tribal staff and managers, following the end-of-year review protocol and schedules established by the Continuing Grant Project Officers. Program staff will inform Program Directors of performance issues identified in the course of these responsibilities.

6. PROCEDURES

- A. Oversight Activities. Performance will be assessed through work plan or Agreement end-of-year reviews, program oversight visits, program reviews, and program assessments. EPA Region 8 will follow procedures and schedules for grant performance reviews set forth by the Continuing Program Grant Project Officers. Each Program will follow its adopted oversight procedures (SOPs) to perform oversight reviews and assessments of state performance.

- B. Level of Oversight. EPA Region 8 will use performance assessment findings to determine the appropriate level and frequency of oversight that will be conducted in each Program. EPA oversight will be decreased for a program in which all substantive functions are found fully adequate. The level of oversight may be increased for a program for which substantial performance problems have been identified and remain uncorrected. The level and frequency of oversight will be documented in the work plan or agreement on a program-by-program basis.

- C. Performance Problems. In cases of performance problems encountered in oversight covered by this Order, EPA Region 8 will take escalating actions: 1) meeting with designated representatives of state and tribal government to define the problem and how to correct it; 2) developing a plan to correct performance and increasing the level and frequency of oversight to ensure corrections are made as planned; 3) intervening on a real time basis in program areas with repeated and serious errors or deficiencies; 4) withholding of funds; and 5) withdrawing an authorized program.

- D. Assessment. Recipients and EPA will share in the end-of-grant year assessment and report preparation, as required by 40 CFR Part 35.115. The review will be of commitments in the work plan or Agreement, and an evaluation of state or tribal and EPA performance in meeting those commitments. EPA will follow Program Oversight SOPs to assess the performance of federally authorized programs and the capacity of programs to receive authorization.

7. DEFINITIONS OF TERMS. Definitions are provided in the Appendix.

--S--
 Robert E. Roberts
 Regional Administrator

March 10, 2004
 Date

APPENDIX

Definitions of Terms

- a. Agreements are Performance Partnership Agreements or equivalent agreements. They include, or incorporate by reference, enforcement agreements, inspection plans, MOAs, program delegation (authorization) documents, and existing definitions of minimally acceptable performance. In Region 8, a PPA serves as a grant work plan for a Performance Partnership Grant. Equivalent agreements include other commitments by the state and commitments by EPA. Agreements will: 1) be developed jointly by EPA, the recipient, and any other parties to the Agreement; 2) reflect the goals, objectives, priorities, and specific commitments of all parties to the Agreement; 3) demonstrate clear connections between program requirements, goals, objectives, and priorities, and the measures, activities and commitments in the Agreement; 4) define or refer to clear definitions of fully acceptable performance and any circumstances that must be present for fully acceptable performance to be achieved; 5) identify programs or program elements that will receive increased or diminished EPA oversight based on performance review findings of preceding performance period(s); and 6) describe the process that the recipient and EPA will follow to resolve issues associated with preparing the Agreement and with completing Agreement performance reviews and reports.
- b. End-of-year reviews are joint evaluation by state and EPA regional staff and managers representing all functional areas of a continuing program for which grant funds have been awarded. These reviews are coordinated by the Continuing Program Grants Project Officer and are performed in accordance with the requirements of 40 CFR Part 35 and this Order.
- c. Grant oversight includes monitoring of work plan activities and the recipient=s progress; reviewing progress reports and other work products to ensure that the recipient is complying with the applicable regulations and the programmatic terms and conditions in the agreement, providing comments to the recipient on the progress reports and other work products, and sending copies of comments to the designated grant specialist if funding is potentially affected.
- d. Grant work plans are the documents that specify the work product or measurable indicators of results that serve as deliverables for the grant. Work plans may be for categorical continuing program grants or they may be Performance Partnership Agreements. Grant work plans must be developed and monitored in accordance with 40 CFR Part 31 and 40 CFR Part 35.

- e. Measures. Measures are quantitative or qualitative descriptions of performance toward meeting a goal, objective, or subobjective in a grant work plan or Agreement. The recipient and the EPA will use their best technical and programmatic judgment in assessing progress or completion of commitments and requirements. Each core program measure will be used unless EPA HQ, EPA Region 8, and the recipient agree to waive the measure. If a measure is waived, it is likely that the measure will be replaced by another measure designed to assess the same goal and objective. Agreements will seek to reflect an appropriate balance between specific grant deliverables and environmental indicators, such as expected trends and results. Both the recipient and EPA must understand that these measures will be used.
- f. Program oversight is the process by which Region 8 carries out its responsibilities for assessing, ensuring, and documenting that federally authorized programs are conducted by states and tribes adequately and in conformance with authorization agreements. Program oversight protocol will be documented in program oversight Standing Operating Procedures developed and maintained by the Regional Program and recorded in the Regional Compendium of Standing Operating Procedures for Oversight.
- g.. Program oversight standard operating procedures are formal individual environmental program process guidance for the review of delegated programs or of other continuing programs of long-term projects for which EPA grant funds are awarded. Reviews are performed by staff and managers responsible for program functions. Program functions may include administrative, permits, monitoring, inspections, enforcement, and quality assurance functions. SOPs will include instructions on the key elements delineated in Section 3B of this Order.
- h. Regional Compendium of Standing Operating Procedures for Oversight is the centralized collection of all Standard Operating Procedures (SOPs) developed and used in accordance with this Order. It will also contain a copy of this Order and of EPA Order 5700.6, A Policy on Compliance, Review and Monitoring, which pertains to post-award grant monitoring.

DRAFT

Air Program Oversight Procedures

April 2005

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DRAFT: AIR AND RADIATION PROGRAM
STANDARD OPERATING PROCEDURES
FOR STATE OVERSIGHT

April 18, 2005

In order to oversee the performance of a State in conducting its air program, it is important to understand the uniqueness of the air issues between States. Regardless of the various issues surrounding air quality, the varying types of pollution sources and multitude of different ways States implement programs to control, air pollution all State air pollution control organizations have three overarching goals. The goals are: 1) protect and improve air quality to assure compliance with National Ambient Air Quality Standards (NAAQS) and protection of important airsheds; 2) develop and implement programs which will reduce the likelihood of future environmental and public health problems associated with air pollution; and 3) carry out both of these goals while maintaining or increasing the State's economic viability. To meet these goals, States have either been approved or delegated to implement federal air quality programs. Since States began implanting Federal air programs, State programs have matured and they are conducting their air quality programs with a high degree of proficiency.

The Performance Partnership Agreement (PPA) is the mechanism by which a State commits to carry out the federal air program. In a collaborative effort, EPA Region VIII and its States have developed a system by which the Region can and assess State air quality programs. The findings of the review will help each State Air Director manage its program and ensure that the State is attaining its air quality goals and is meeting its obligations under the PPA. The Standard Operating Procedures for State Oversight is designed to be an EPA audit system that can be used to demonstrate that States are meeting or exceeding their PPA commitments or provide assistance to the State by identifying areas where improvements to their programs can or should be made.

There are three key components to having a successful oversight program: 1) EPA and States should have a common understanding of the National Program and Grant Guidance and the expectations for EPA and State activities; 2) States in consultation with EPA should develop a PPA which has measures which can be tracked to determine the States success in meeting the commitments; and 3) a review and feedback process should be in place where EPA can gauge the success of the State in meeting its PPA commitments and report on those findings.

To initiate this oversight program, EPA staff and managers will become keenly familiar with the Office of Air and Radiation's National Program and Grant Guidance as it relates to their specific topical areas (i.e., SIP development, permitting, etc.). They will conduct internal discussions about the National Program and Grant Guidance and potentially develop Regional areas of focus based upon the guidance and the specific needs of the

Region. At the conclusion of this EPA internal process, the following should occur:

1. EPA staff and managers will initiate discussions with their State counterparts to determine the State=s program priorities and share Regional priorities.
2. EPA staff and managers will use the National Program and Grant Guidance to begin negotiations with State counterparts on the PPA.
3. EPA will negotiate specific PPA requirements with States, incorporating State goals, program areas contained in the National Program and Grant Guidance and Region specific areas of emphasis with an emphasis on including EPA/State agreed to strategic direction. PPA requirements will be tracked to evaluate the State=s performance during midyear and end-of-year evaluations and to ensure that EPA is able to report on GPRA requirements.
4. For midyear and end-of-year reviews, the EPA will conduct oversight activities to ensure States are meeting the work committed to in the PPA and are carrying out activities in a manner which at least meet statutory, regulatory, policy and program guidance requirements, within the time frames required. This requires that each specific EPA program area (SIPs, Permitting, Monitoring, Toxics) develop oversight requirements which will include the following: reason for oversight, EPA oversight procedure, EPA oversight description, ramifications of curtailment (ramifications resulting from reduced oversight) and oversight procedure documents. Draft oversight requirements for each Program area are attached as an addendum to this document.

Oversight activities by EPA will be conducted in such a way as to determine whether States are meeting or exceeding expectations of the PPA or whether there are areas in which the State could improve its performance. Below are the measurement goals for each main Program area.

SIPS

Meets/Exceeds Expectations: State develops SIPs in consultation with EPA as needed. EPA has few substantive comments on draft SIP language and is able to work out issues with State staff prior to formal submittal to EPA. Development of the SIPs follows national rules, regulations, guidance and policy³. Plans submitted to EPA are approvable upon final submittal⁴.

Areas for Improvement: State fails to develop SIPs in accordance with national rules, regulations, guidance and policy. State may have consulted with EPA during the development of the SIP stage and did not resolve EPA=s comments which

³ States are required to follow national rules, regulations, guidance and policy. EPA and States recognize that certain unique situations may occur, under specific circumstances which may lead to seemingly different interpretations of what guidance and policy require for different States. EPA and the State will work together to develop a common understanding of how guidance and policy will be interpreted under each unique situation. If a common understanding can not be reached then EPA will move forward as necessary based upon the State's.

⁴ Initial submittals should meet a threshold for substantial technical completeness as described in the PPA.

identified critical flaws or the State may not have consulted with EPA at all. Plans submitted to EPA are not approvable upon receipt or require significant further modification prior to consideration for approval.

PERMITTING

Meets/Exceeds Expectations: State develops permits with consultation from EPA as needed. EPA has few substantive comments on draft permits and is able to work out issues during the review periods with State permit engineers prior to issuance of final permits. The State submits draft permits which meet the requirements specified in rules, regulations, guidance and policy. Permits require no significant adverse comments by EPA upon receipt. (For NSR/PSD permits there are no comments which would later become objection issues under Title V. For Title V permits there are no objection issues.)

Areas for Improvement: State fails to develop draft permits in accordance with national rules, regulations, guidance and policy. State may have consulted with EPA during the draft permit review period and did not resolve EPA's comments with identified critical flaws in the permit or the State may not have consulted with EPA at all. Permits submitted to EPA receive significant adverse comments upon receipt.

MONITORING

Meets/Exceeds Expectations: State carries out its monitoring efforts following requirements specified in federal rules, regulations, guidance and policy. State consults EPA as needed. Work products delivered to EPA can be approved with no further work from the State.

Areas for Improvement: State fails to conduct its monitoring activities in compliance with federal rules, regulations, guidance and policy. State may have consulted with EPA on monitoring related issues and did not resolve EPA's comments prior to taking final action on an issue or State may not have consulted at all. Work products submitted to EPA are not approvable or indicate the State is not implementing its program as required.

Note: Program reviews are intended to cover all related Air Program areas and be a screening level evaluation to document the State's performance in relation to PPA and grant requirements. When necessary, more formal audits may be required to fully assess individual program aspects.

Program Oversight Standard Operating Procedures

1. **Coordination of audit schedules between all functions of the program (Air and Radiation Program and the Air Enforcement Program of ECEJ)**

The EPA Air and Radiation Program and The Air Enforcement Program managers

meet weekly to discuss issues of mutual interest. One of the topics which will be discussed, as needed, is the schedule to conduct State Program oversight activities. Managers from the

Air and Radiation Program and Air Enforcement will schedule midyear and end-of-year oversight activities jointly where possible to lessen the burden on the State to respond to multiple overlapping inquiries at different times.

2. **Process used for end-of-year grant reviews including incorporating audit findings**

As part of end-of-year grant reviews, Air Program managers and staff will analyze findings from the midyear and end-of-year oversight activities to help determine whether the State's performance met the PPA and grant requirements. A focus of these reviews will be on gathering information from State staff to determine the State's performance under the grant requirements. EPA will conduct a midyear evaluation (March/April) and prepare a report which will include the status to date of the State in meeting the PPA and grant requirements. At the conclusion of the fiscal year (October/November), EPA and the State will prepare draft reports on the work accomplished to date and include any significant findings from the midyear evaluations. These reports will be discussed by Staff and where appropriate Managers of each organization. At the conclusion of this process, State and EPA Managers will meet to discuss their findings and how to report those findings to their respective Senior Managers. EPA will prepare a report for its Senior Managers on the status of the States overall program. The report will help EPA and the State track future progress in meeting PPA and grant requirements.

3. **Frequency of reviews and/or audits**

EPA will conduct midyear (March/April) and end-of-year reviews (October/November) to determine the status of the State's program in meeting the PPA. EPA may conduct specific program area audits at any other time of the year based upon additional external review/oversight requirements. The Region will make every effort during the PPA negotiation process to make the State aware that one of these audits will take place during the upcoming year. (Because some of these special audits or information requests may be ordered on short notice by Headquarters, the Region may not be able to notify the State of all of them during PPA negotiations.) The audits could include intense reviews of specific program areas. The scope of the audits/reviews is usually dictated by Headquarters requirements. In the past audits/reviews have been conducted for the following program areas:

- A. Title V Permitting Program Reviews (including file reviews)
- B. New Source Review/PSD Permitting Program Reviews (including file reviews)

- C. Monitoring Systems Audit - Federal regulations require the Region to conduct a systems audit on State/Tribal monitoring programs once every 3 years.
- D. Emission Inventory Reviews

4. **Notification of organization being audited**

Prior to notifying the State of EPA=s intention to initiate program oversight activities, the Air and Radiation Program and Air Enforcement Program will work together to try to ensure that those activities in a coordinated manner to reduce the impact on the State.

Midyear Evaluations: Prior to the midyear review (March/April), EPA=s Air and Radiation Director will send a letter to the State Air Director that EPA intends to initiate the evaluation. The letter will outline the process that EPA intends to use to determine the State=s progress in meeting PPA and grant requirements to date. It will also address the meeting dates or conference call schedule for staff and mid-level manager discussions if appropriate, the schedule by which EPA expects to complete the evaluation and when the State should expect to get EPA=s written initial findings. Based upon the findings, State and EPA Program Directors may meet or have a conference call to discuss progress, review and set priorities and plan for future work.

End-of-year Evaluations: At the end of the federal fiscal year (October/November) EPA and the State will prepare draft reports on their work accomplishments over the previous PPA period, taking into consideration information from the midyear evaluation. During preparation of the reports, staff and mid-level manager discussions may occur on the accomplishments of the goals and objectives. EPA and the State will exchange draft reports by mid-December. EPA and State Program Directors will conduct face-to-face meetings or conference calls to review their respective findings. They will discuss how to align the drafts, and report results to their respective Senior Managers. Senior Managers may meet or have conference calls to discuss any outstanding issues not resolved by Air Division Directors.

Program Specific Reviews: If a program specific audit is required (as discussed in #3 above), the Region will contact the State to schedule it. During this initial contact, the Region should also arrange a tentative schedule for meetings with key personnel during the audit. At the same time, a schedule should be set for the exit interview used to debrief the State=s management on the findings.

If a specific program area audit questionnaire must be filled out by the State prior to the commencement of that process, the questionnaire must be provided to the State six weeks prior to the audit date. The State should complete and return the questionnaire to EPA at least two weeks prior to the audit. Once EPA receives the

completed questionnaire, it should be analyzed to determine areas of focus during the on-site review activities. EPA should prepare information detailing specific points for discussion with the State personnel prior to the audit. Once the review is completed, EPA will prepare a draft findings report for the State to review. Following State review, and potential edits to the report based upon information the State may submit during the draft review, EPA will finalize the document and submit it to the State Air Director.

5. **Instructions for file and document review**

File reviews may be a very important aspect of oversight review activities and for program audits if they are required. At the time EPA notifies the State of its intent to conduct the midyear and end-of-year reviews or program audit, it will also provide instructions regarding file and document reviews. EPA should provide a list of the files and/or documents it would like to evaluate during the reviews/audit. The State should have those files/documents available for EPA on site or electronically if possible at the time of the reviews.

6. **Instructions for interviews of managers and staff**

Appropriate EPA program staff will conduct phone or in-person interviews with State counterparts to determine the status of the State in meeting PPA and grant requirements. EPA staff should have thorough knowledge of the statutory, regulatory, and policy/guidance requirements, requirements of the EPA Program Guidance, the State=s PPA and any grant requirements that they oversee.

7. **Basis for determining fully adequate program performance and determining required and recommended actions**

EPA staff will consult with State counterparts either in face-to-face meetings or conference calls to review the status of the State=s activities in meeting the requirements of the PPA and where appropriate grant requirements. EPA will also focus on whether the State has met meet or exceeded the expectations for successful program performance. Based upon the findings, EPA may require or recommend that the State undertake future action to ensure they meet or exceed expectations for specific program areas

8. **Procedures for presenting findings (both verbal and written)**

There will be several steps in the process of presenting EPA=s findings resulting from oversight activities. Those steps are outlined below:

Step 1: During the midyear and end-of-year reviews, staff from EPA will work directly with State counterparts to discuss the status of the State=s performance. The majority of these discussions will take place over the phone unless adequate

travel funds are available for face-to-face discussions.

Step 2: Within 15 working days of the conclusion of the midyear and end-of-year reviews, EPA staff will prepare a draft report on the results of its findings and discussions. That report will be forwarded to the State counterparts for review. The draft should contain an executive summary that provides EPA=s overall assessment of the State=s program as a whole. Where the State disagrees with the conclusions of the assessment, it should provide EPA written comments outlining its perspective within 15 working days of receipt of the draft. These comments may be incorporated into the final end-of-year report. EPA=s final report should highlight strengths, deficiencies, areas for improvement and outstanding and/or innovative program procedures at the State. The report should also provide recommendations for rectifying identified deficiencies. It is important that the report recommend measures or steps to treat the causes determined to be responsible for the inadequacies.

Step 3: Once EPA staff has finalized the oversight reviews findings, and after having discussed those findings with State counterparts, the final findings will be compiled into an overall report and be presented to EPA Air and Radiation Program managers. The EPA Air and Radiation Director will then call or visit the State Air Director to discuss the findings. If areas for improvement are identified, the EPA and State Directors will negotiate any appropriate changes to the PPA. The findings for each air program area reviewed (for midyear and end-of-year reviews) will be compiled by the Air Program and forwarded from the Division Director to the State Assistance Program for further routing within EPA and eventual submission to the State.

9. Procedures for follow-up with the organization reviewed

The results of the midyear review will be incorporated into EPA=s end-of-year review for the State=s PPA. If either the midyear or end-of-year reviews find the need for State changes or attention to certain program areas, the EPA and the State will jointly develop a strategy to improve the performance and that strategy may or may not be incorporated into the PPA. EPA will follow up with the State at the next review to determine the progress that the State has made in addressing the deficiency. The results of that follow-up will be noted in the next review cycle.

10. Chain-of-command concurrence required for reports, decisions and required actions

EPA staff will conduct the midyear and end-of-year State program reviews. The State Assistance Program will coordinate end-of-year reports. The findings for each Program area reviewed (for midyear and end-of-year reviews) will be compiled by the Air Program and forwarded from the Division Director to the State Assistance Program for further routing within EPA and eventual submission to the State.

11. **Incorporating long-term required actions into grant work plans or other agreements**

The findings from the midyear and end-of-year program reviews will dictate actions required in future grant work plans or PPA. If EPA identifies areas for improvement, EPA and the State will develop future plans or agreements which will identify the area for improvement and a plan and time frame to improve the performance.

If during the reviews, EPA and the State identify an area that the State would like to focus on which is not included in the National Program and Grant Guidance, EPA and the State should negotiate new plans and agreements which would help the State to address that area as long as critical work is not jeopardized.

12. **Issue Elevation Plan**

If at the conclusion of the midyear or end of year evaluations EPA and State Division Directors have identified significant program issues, those issues will be raised to Senior Managers to discuss.

13. **What Would Reduced EPA Oversight of a State Program Look Like?**

If EPA were to reduce oversight it would expect a State to operate all areas of its Air Program at a level that surpasses the A meets or exceeds expectations@ criteria described on Pages 2 and 3 of this document. The State would be expected to correctly apply all applicable federal rules, regulations, guidance and policy with greatly reduced technical assistance from EPA on the interpretation of those regulations and guidance. All materials (e.g., SIPs, emission inventories, network reviews, permits) would be free of error and be fully approvable by EPA upon submission by the State.

EPA would continue to conduct mid-year and end of year PPA oversight activities to ensure that the State is meeting grant requirements. Actual site visits will not be conducted unless requested by the State. Conference calls between staff to discuss the status of specified PPA work and activities required in grants will continue. Brief reports to EPA and State managers from their respective staffs will be prepared at the conclusion of the mid-year and end of year reviews to update them on the status of the State=s program in meeting grant requirements.

Specific program reviews, as described on Page 4, would continue regardless of whether a State is operating its air program in a manner which exceeds the A meets or exceeds expectations @ criteria described for each program area on Pages 2 and 3. These program reviews are usually Headquarters directed. The Regional office is often able to negotiate with Headquarters about the timing of the review but not

negotiate on whether one would or would not be conducted.

PERMITTING PROGRAM OVERSIGHT REQUIREMENTS - TITLE V

Reason for Oversight	EPA Oversight Procedure	EPA Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
1. State is required to submit proposed permits for EPA review under 40 CFR 70.8(a).	EPA has a 45 day review period on the proposed permit and application.	Review proposed permits and provide comments as deemed necessary to meet minimum requirements of 40 CFR Part 70 and (insert appropriate State rules).	If State does not submit permits for EPA review, it does not meet CFR requirements. Also, Region 8 will not be able to provide tracking information that is requested quarterly from Headquarters.	Permits are logged in by EPA to Access Title V Database when received from the State and tracked during the various review stages. Any EPA comments submitted are noted in the database.
2. EPA is required to object to any permit that does not meet the requirements under 40 CFR 70.8(c).	Review permit during 45 day period and if the permit does not meet Part 70 requirements, EPA must object to the permit.	Review proposed permits and object to their issuance if they do not meet the minimum requirements of 40 CFR Part 70 and (insert appropriate State rules).	If there is no review, EPA will not object to any permits that may be deficient. EPA would not be fulfilling its obligation under 40 CFR 70.8(c). This could potentially result in more public petitions for EPA objections, as provided for under 40 CFR 70.8(d).	1) 40 CFR Part 70 ⁵ outlines minimum requirements, as do (insert appropriate State rules). 2) Region 7 Title V Guidance Policy Database. ⁶ 3) Region 9 Title V Permit Review Guidelines (Draft). * 4) CAM Guidance Documents. ⁷
3. EPA oversight of implementation and enforcement of an approved program is required by 40 CFR Part 70.10(b).	Conduct periodic Program Reviews to determine adequacy of the program implementation and enforcement.	During the course of the Title V program, one program review for (insert appropriate State name) has been conducted by Region 8. This review consisted of an evaluation questionnaire completed by the State. It also included a permit file review conducted by EPA.	Program reviews of all State programs are required by Headquarters as a result of an OIG audit of the Title V program. Program oversight for implementation and enforcement of an approved program is required by 40 CFR 70.10(b) and requires withdrawal of the State program if it is determined to be deficient.	1) 40 CFR Part 70 ¹ outlines minimum requirements. 2) OIG Title V Program Review Guidelines.*
Adequate Program	Timely issuance and enforcement of Title V major source permits for the original Title V sources, new Title V sources, modified Title V sources, and the renewal of expired Title V permits. All permits issued shall meet the minimum requirements of 40 CFR Part 70, (insert appropriate State rules), and shall consider all applicable guidance documents. State permit writers shall use best engineering judgment in developing the permit conditions.			

⁵ <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=0204936352+1+0+0&WAISaction=retrieve>

⁶ <http://www.epa.gov/region7/programs/artd/air/title5/title5pg.htm>

⁷ <http://www.epa.gov/ttn/emc/cam.html>

* Copy can be furnished upon request.

PERMITTING PROGRAM OVERSIGHT REQUIREMENTS - NEW SOURCE REVIEW				
Reason for Oversight	EPA Oversight Procedure	EPA Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
1. OAQPS Technical Program Guidance, Memorandum of Agreement, Performance Partnership Agreement	<p>Review draft construction permits during the 30-day public comment period and make comments as appropriate.</p> <p>Program reviews are conducted on <u>intervals</u> determined by OAQPS.</p>	<p>Review of all PSD permits is made to ensure they meet the requirements of (insert appropriate State name) SIP-approved regulations and EPA regulations and guidance. This may also include working in consultation with the State during permit processing, if requested. Some synthetic minor permits are also reviewed in a similar manner.</p> <p>Program reviews are conducted <u>per instructions</u> from OAQPS.</p>	<p>PSD permits may be issued that do not meet all of the regulatory requirements and EPA=s NSR guidance. EPA would not be able to exercise its ability to order a stop of construction for sources with deficient PSD permits provided under Section 113(a)(5) of the Clean Air Act. EPA would no longer be reviewing any permits that are taking federally-enforceable limits to avoid the requirements of major source permitting for either Title V or New Source Review.</p> <p>Would not meet regional requirements for program reviews dictated by OAQPS.</p>	<p>1) 40 CFR Part 51⁵ outlines minimum requirements, as does (insert appropriate State rule/rules).</p> <p>2) Region 7's EPA New Source Review Policy and Guidance Database.⁶</p> <p>3) OAQPS NSR Program Review Guidelines.</p>
Adequate Program	Timely issuance and enforcement of comprehensive and legally-acceptable construction permits for new and modified sources in (inset appropriate State name) including major source PSD and non-attainment NSR permits, synthetic minor source permits, and minor source permits. All permits issued shall meet the minimum requirements of (insert appropriate State) SIP-approved regulations, EPA regulations, and shall consider all applicable policy and guidance documents. State permit writers shall use best engineering judgment in developing the permit conditions.			

⁵ <http://frwebgate6.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=10716090116+1+0+0&WAISaction=retrieve>

⁶ <http://www.epa.gov/region7/programs/artd/air/nsr/nsrpg.htm>

AIR TOXICS PROGRAM - SECTION 112 OF THE CAAA OF 1990

Reason for Oversight	EPA Oversight Procedure	EPA Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
1. EPA approval is required by 40 CFR 63, Subpart E	Maximum Achievable Control Technology (MACT) emission standard - delegation of authority to State for <u>unchanged federal section 112 rules</u>	Automatic delegation of MACT standards that are incorporated by reference (IBR) into State regulations unchanged from Federal section 112 rules. States are encouraged to adopt MACT standards in a timely manner.	Potential for States to not adopt MACT standards in timely manner while defacto implementing program through Title V program. Potential for enforcement against facilities who fail to report required information to EPA due to false belief that State is the implementing and enforcing agency.	40 CFR 63, subpart E. ⁸⁸ May 16, 2001, letter to states confirming automatic delegation for unchanged rules. ⁹ National database MACSTRAX used to report delegations to state and if IBR or changed from federal rule - semiannual reporting. MACSTRAX is used to demonstrate that the Agency is meeting GPRA goals related to MACT standards. EPA ONLY - NO STATE ACCESS to MACSTRAX database.
2. EPA review and approval is required by 40 CFR 63, Subpart E	Maximum Achievable Control Technology (MACT) emission standard - delegation of authority to State for rules, programs or requirements <u>that are different from Federal rule</u>	Review and approval or disapproval of rules, programs or requirements that are different from the Federal rule must meet the requirements of 40 CFR 63, subpart E including publication of approval or disapproval in Federal Register.	Potential for State rules, program or requirements that are less stringent than Federal requirements. Sources complying with less stringent requirements may be subject to enforcement actions by EPA for failure to comply with Federal requirements. State program may not meet minimum requirements for overall program approval. Possible reopening of part 70 permits containing less stringent rule to include Federal rule requirements.	40 CFR 63, subpart E. ⁸ National database MACSTRAX used to report delegations to state and if IBR or changed from federal rule - semiannual reporting. MACSTRAX is used to demonstrate that the Agency is meeting GPRA goals related to MACT standards. EPA ONLY - NO STATE ACCESS to MACSTRAX database.
3. EPA approval is required by 40 CFR 63, subpart B	Case-by-Case Maximum Achievable Control Technology (MACT) determination review and approval	Review and approval of case-by-case MACT determination required by 40 CFR 63, subpart B for new or reconstructed sources of HAPs not subject to MACT emission standard included in permit or as independent document.	Potential for case-by-case MACT determinations that do not meet minimum Federal requirements with possible increased expense to source to meet Federal standard if and when subject to future MACT emission standard.	40 CFR 63, subpart B. ¹⁰ Guidance document - Preparing A Notice Of MACT Approval under '63.43(g) of 40 CFR 63, Subpart B Maximum Achievable Control Technology Emission Limitation For Constructed or Reconstructed Sources, June 8, 1999. ¹¹
4. EPA review and approval required by CAAA of 1990, section 507(a)	Small Business Assistance Program (SBAP)	Assure that State is operating an effective SBAP. EPA Headquarters has a small business office that almost exclusively provides assistance and oversight of State SBAP.	No ramifications if EPA Region 8 curtails oversight assuming HQ continues with its level of involvement.	No. Section 507 of CAAA of 1990 describes elements of satisfactory state program.

AIR TOXICS PROGRAM - SECTION 112 OF THE CAAA OF 1990				
Reason for Oversight	EPA Oversight Procedure	EPA Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
Adequate Program	A state demonstrates adequate program performance through the timely adoption, implementation and enforcement of section 112 emission standards (MACT, 112(g)), programs and requirements			

- 8. 40 CFR 63, subpart E can be found at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr63_00.html for 63.90 - 63.99
- 9. Letter confirming automatic delegation can be found in the Air and Radiation Program reader file for May 2001
- 10. 40 CFR 63, subpart B can be found at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr63_00.html for 63.40 - 63.56
- 11. Guidance document can be found at <http://www.epa.gov/ttn/atw/112g/112gpg.html>

AIR MONITORING OVERSIGHT REQUIREMENTS				
Reason for Oversight	Oversight Procedure	Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
1. EPA is required by 40 CFR, Part 58, App. A to conduct Technical Systems Audits (TSAs) every 3 years	Conduct TSAs	Review, investigate, comment and provide findings on all air monitoring procedures and provide a summary report.	Potential unsupported or inaccurate air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort are expended and EPA would be vulnerable to lawsuits.	EPA oversight procedures available in the EPA Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Section 2.0.11 (http://www.epa.gov/ttn/amtic/qabook.html)
2. EPA is required by 40 CFR Part 50, App. K, Appendix I and Appendix N to review any documentation packages supporting flagged data per EPA guidance.	Review documentation package	Check Air Quality System (AQS) for state flagged data, review documentation package for supporting evidence, and place EPA concurrence or non-concurrence flag on data in AQS.	Potential misuse of data in AQS, by end users and/or potential SIP impacts. EPA would be vulnerable to lawsuits for not following regulations and EPA guidance. Flagged data cannot be adjusted or excluded without EPA reviews.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
3. EPA is required by 40 CFR Parts 35 and 58 to review and approve a Quality Assurance Project Plan (QAPP), except where a Quality Management Plan (QMP) is approved prior to federal issuance of environmental grant.	Review and approve QAPP document	Review, comment, and approve QAPP.	Potential unsupported or inaccurate air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
4. EPA is required by 40 CFR, Part 58.20 to review and approve Annual Network Review documents	Review and approve Annual Network Review documents	Review, comment, and approve monitoring network design and siting.	Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures are available in the Region 8 Ambient Air Monitoring Network and Site Approval Process document (hard copy provided) and in other guidance (see attachments).
5. EPA is required by 40 CFR, Part 58.25 to review and approve ambient air monitoring network modifications	Review and approve Network Modification Requests	Review, comment, and approve network modification request.	Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures are available in the Region 8 Ambient Air Monitoring Network and Site Approval Process document (hard copy provided) and in guidance (see attachments).
6. All EPA Regions were requested to conduct regional network assessments per the National Monitoring Strategy	Conduct Network Assessments	Conduct statistical analysis and review of monitoring networks jointly with state monitoring agencies. Assessments are currently proposed to be completed every 5 years.	Region 8 would not be in alignment with new monitoring strategy for future sampling requirements, thus, States would not be adequately prepared for monitoring upcoming changes required by CFR.	General Headquarters guidance available (see attachments). State participation is optional until new regulations are final.

AIR MONITORING OVERSIGHT REQUIREMENTS				
Reason for Oversight	Oversight Procedure	Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
7. EPA Regions are required by Headquarters guidance to review and approve particulate matter sampling frequency waiver requests	Issue Particulate Sampling Frequency Waivers	Review statistical tests for support of waiving CFR required particulate matter sampling frequencies.	Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
8. EPA is required by 40 CFR, Parts 58.20 and 58.25 that a monitoring station meet network design and siting criteria	Ambient Monitoring Station Evaluations	Onsite review of monitoring station adequacy.	Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
9. Headquarters requests EPA regions to review and comment annual state data certification as required by 40 CFR, Part 58.26	Annual State or Local Air Monitoring Stations (SLAMS) Data Certification review and comment	Regional review and comment is viewed by Headquarters as required.	Potential unsupported or inaccurate air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
10. Headquarters requests EPA regions to review and ensure data submittals to AQS are meeting timeliness and completeness in 40 CFR Part 58, requirements	Review and comment on quarterly data submittals to AQS	Regional review and comment is viewed by Headquarters as required.	Potential unsupported or inaccurate air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
11. EPA assists per state monitoring agency request with the national Performance Evaluation Program (PEP) on PM2.5 monitoring networks required by 40 CFR Part 58, Appendix A	Coordinate PEP field performance audits	Regional review and comment is viewed by Headquarters as required.	Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).

AIR MONITORING OVERSIGHT REQUIREMENTS				
Reason for Oversight	Oversight Procedure	Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
12. EPA assists per state monitoring agency request with the National Performance Audit Program (NPAP) criteria pollutant audits required by 40 CFR Part 58, Appendix A	Coordinate National Performance Audit Program (NPAP)	Coordinate which monitoring stations will receive the external NPAP audits and discuss with State less than adequate audit results.	Lack of independent audits presents risk of systematic errors and invalidation of large data blocks. Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
13. EPA is required by 40 CFR Part 50, App. K and the Mary Nichols May 30, 1996 policy memorandum to review Natural Event Action Plans (NEAP)	Natural Event Action Plan (NEAP) review and comment	Review NEAP document.	Insufficient document review could leave EPA at risk for lawsuit.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).
14. EPA reviews and comments on Performance Partnership Agreements (PPAs)	Assists state monitoring agencies with PPA development, Mid-Year and End of Year review reporting	Uses Headquarters guidance and CFR requirements to assist State with PPA development and mid-year and end of year reporting.	Insufficient review could leave project officers at risk from audit.	Headquarters MOA guidance and CFR requirements used in lieu of specific guidance.
15. EPA assists states with having their Primary Ozone Standard verified against an EPA Standard Reference Photometer	Conducts Primary Ozone Standard Verifications	EPA conducts a comparison between state Primary Ozone Standard and the EPA Standard Reference Photometer.	Lack of independent verification presents risk of systematic errors and invalidation of large data blocks. Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	State requirements, guidance and/or procedures available in regulation and guidance (see attachments).

AIR MONITORING OVERSIGHT REQUIREMENTS				
Reason for Oversight	Oversight Procedure	Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
16. EPA provides good science review of in field monitor performance	Conduct Air Monitoring Performance Audits	Compares NIST traceable standards to in field monitor responses.	Lack of independent verification presents risk of systematic errors and invalidation of large data blocks. Potential unsupported characterization of air measurements available to public and potential disapproval of State Implementation Plans (SIPs) after funding, time and effort expended and EPA would be vulnerable to lawsuits.	EPA oversight procedures available in the Region Specific Audit Procedures document (due to technical difficulties a hard copy will be provided later).
Adequate Program	All air monitoring tasks are defined as adequate based on compliance with CFR requirements, Headquarters and Regional guidance, and a great deal of professional judgment			

AIR QUALITY PLANNING AND MANAGEMENT UNIT OVERSIGHT REQUIREMENTS -SIPS

Reason for Oversight	Oversight Procedure	Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
<p>1. To assure that any SIP submitted meets the requirements of the Clean Air Act, Regulations and Guidance and assures attainment of the NAAQS</p>	<p>Review State=s technical documents (e.g., emission inventories, modeling, etc.), SIP narrative, rulemaking process, rules and statutes to assure State has an adequate program to assure protection of the NAAQS</p>	<p>EOA evaluates State emission inventory data to assure that it is complete and accurate; evaluates State modeling to assure that appropriate modeling parameters were used and that modeling demonstrates attainment; evaluates the SIP narrative to assure that items not required to be in rule format or other items required to be addressed were addressed appropriately; evaluates any State rules adopted to assure they are enforceable and meet the requirements of the Act, regulations, policy and guidance.</p>	<p>EPA can't curtail review of a SIP; the Clean Air Act and regulations require review and action on each SIP that is submitted by the State. EPA reviews each SIP to make sure that it is consistent with the Act, regulations, policy and guidance before taking action.</p> <p>Potentially EPA could minimize its level of review of pre-public draft documents but States run the risk of EPA not identifying any problems until a SIP is submitted. Where there is a short time frame to get a SIP approved to avoid an unwanted consequence, failing to identify a problem early on could require the State to go back and start over or EPA may have to disapprove SIPs.</p>	<p>There are statutory and regulatory requirements and a multitude of guidance documents available pertaining to SIPs. The guidance documents are specific to pollutants (e.g., ozone, PM, etc), programs (e.g., visibility, stack heights, etc.), modeling, emission inventorying, and some guidance documents have general applicability (e.g., startup, shutdown and malfunction, etc.). Some guidance documents date back to the 1970's and 1980's. The guidance documents are not all located in one easily accessible location.</p>
<p>Adequate Program</p>	<p>States follow the appropriate administrative procedures before submitting a SIP; SIP assures attainment of the NAAQS; necessary emission inventorying and modeling are complete and follow EPA rules, regulations, policy and guidance; State regulations adopted are enforceable and meet the Act; rules, regulations, policy and guidance.</p>			
<p>2. To assure NAAQS are met or programs/rules meet the requirements of the Act and are being implemented..</p>	<p>General Review of Ambient data or modeling data, State rules, increment analyses, implementation, etc.</p>	<p>EPA reviews State ambient data (and modeling data) to assure that the NAAQS are being attained. If NAAQS are not being met EPA would determine whether or not a SIP call should be made or an area designated as nonattainment. EPA would also look at increment analyses to assure that the PSD increments are being met and as time permits look at existing State rules to see if they are consistent with the Act. EPA also checks to assure that States are implementing their rules and SIP.</p>	<p>EPA can't curtail its activities. Act requires Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQS or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.@</p> <p>The Act requires that if EPA finds a State is not implementing its SIP that sanctions be imposed.</p>	<p>There are statutory and regulatory requirements and a multitude of guidance documents available pertaining to SIPs. The guidance documents are specific to pollutants (e.g., ozone, PM, etc), programs (e.g., visibility, stack heights, etc.), modeling, emission inventorying, and some guidance documents have general applicability (e.g., startup, shutdown and malfunction, etc.). Some guidance documents date back to the 1970's and 1980's. The guidance documents are not all located in one easily accessible location.</p>
<p>Adequate Program</p>	<p>All the areas of the State meet the NAAQS, PSD increments are met everywhere, existing State rules meet the requirements of the Act and are being implemented.</p>			

AIR QUALITY PLANNING AND MANAGEMENT UNIT OVERSIGHT REQUIREMENTS- EMISSION INVENTORIES				
Reason for Oversight	Oversight Procedure	Oversight Description	Ramifications of Curtailment	Oversight Procedure Documents
<p>3. Consolidated Emission Reporting Rule (40 CFR Part 51) says that States must report statewide emissions every 1 or 3 years. CAA 110 (p) and 110(a)(2)(F)(ii) require States to submit data.</p>	<p>Review States emission submittal for adequacy and correctness.</p>	<p>State submits emission data to the National Emission Inventory database.</p> <p>EPA oversees data submitted because State=s failure to submit data may be deemed a failure to implement the SIP.</p> <p>Adequacy of the program will be State=s timely submittal of an accurate statewide emission inventory of criteria and air toxic pollutants.</p>	<p>The CERR allows for efficiency of the emission inventory program and provides more consistent and uniform data. The State=s failure to complete and periodically update the inventory means that EPA would estimate emissions for the State that will lead to errors in the amount of air emissions released.</p>	<p>Consolidated Emission Reporting Rule National Emission Inventory Preparation Plan Several policy guidance documents on emission inventory development</p>

REGION VIII AMBIENT AIR MONITORING
NETWORK AND SITE APPROVAL PROCESS

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

April 2004

1.0 INTRODUCTION

This procedure has been created by EPA Region VIII to assist the Region and Air Monitoring Agencies in establishing, tracking, and maintaining ambient air monitoring networks consistent with ensuring data quality and applicability to characterizing pollutant levels. The procedure provides the necessary guidance to record the siting selection process and individual site characteristics. This procedure is based on the Code of Federal Regulations, Title 40, Part 58 (40 CFR, Part 58) requirements for air monitoring network siting and coverage. **This procedure replaces the "Region VIII Ambient Air Monitoring Network/Site Approval Process, March, 1994" for network modifications. However, this procedure does not address Network Review guidance contained in Section 4.0 of the original document. Section 4.0 should be utilized for Network Review guidance until the EPA provides a new document.**

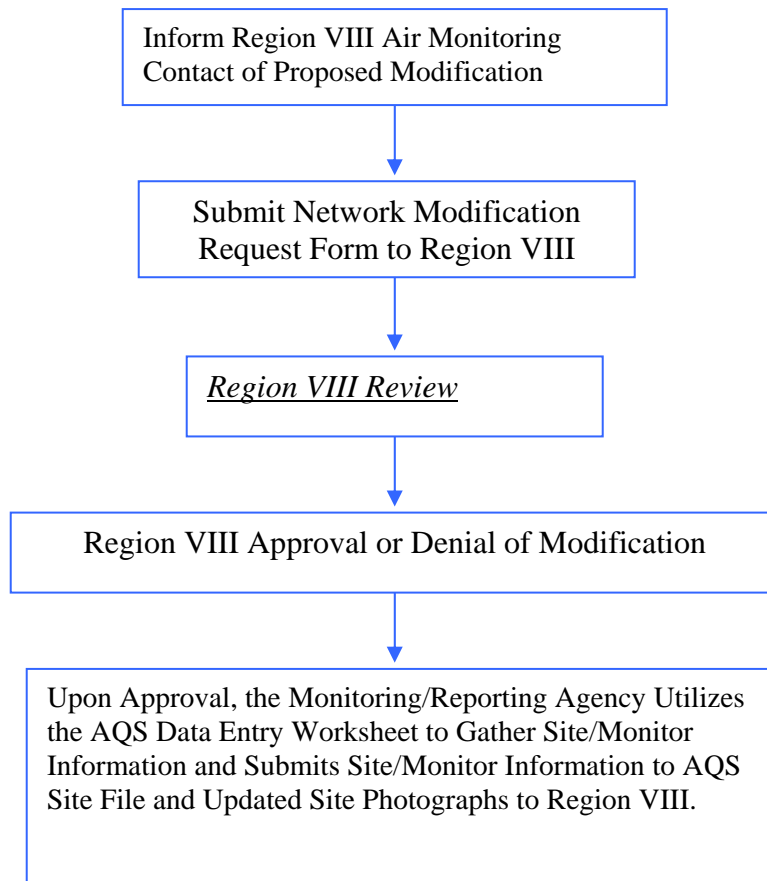
The procedures described herein are applicable to NAMS and SLAMS monitoring and SPM monitoring if applicable to the SIP or attainment status, when the following modifications are planned: starting a new site, shutting down an existing site, adding a parameter to an existing site, eliminating a parameter from an existing site or relocating a site. Starting a new site and adding a new parameter are generally proposed for gathering more data to supplement an existing network. The shutting down of a monitoring station or eliminating a parameter from an existing station are generally proposed based on other monitoring data showing duplication of effort or the limitation or denial of access to a site by the property owner. Lastly, a station relocation proposal pertains primarily to stations not able to meet the EPA siting criteria. A site relocation is defined as a probe, inlet, or station being moved within 100 meters of the original site, instead of being categorized as starting a new station.

The 40 CFR, Part 58 states how ambient air monitoring networks are to be established and maintained for characterizing the six Criteria Pollutants: (1) Carbon Monoxide; (2) PM (PM10 and PM2.5); (3) Ozone; (4) Sulfur Dioxide; (5) Nitrogen Dioxide and (6) Lead. Within Part 58, four monitoring objectives are listed for usage in establishing monitoring networks: high concentration, high population, source and background. Also, sites can be classified as a combination of these objectives, as appropriate. The types of sites are broken into categories based on the scale of representativeness. *Microscale* and *middle scale* sites represent pollutant areas from several meters to 100 meters and from 100-500 meters, respectively, while a *neighborhood scale* site represents an area from 500 meters to 4 kilometers and a *regional scale* represents areas from tens to hundreds of kilometers.

Each type of site, depending upon parameter, has siting criteria that were established by EPA. Siting criteria are guidelines for selecting and establishing an air monitoring station or network. Examples of these criteria include: the distance a probe or inlet is from the nearest roadway and from nearby obstructions or the distance a probe or inlet is above ground level. Other site selection and continued site operation considerations include maintaining a station at the location where it has measured a violation of a criteria pollutant standard. The station can

then be used for tracking progress towards attainment of the standard, as established in the State or Tribal Implementation Plans.

In order to uniformly evaluate the networks and network modification requests, Region VIII has designed procedures and this document to clearly define what supporting information is needed for requesting a network modification. The procedures are depicted graphically in the flow chart shown below.



The most efficient procedure for requesting network modification approval is a two-part process. The first part (Part One) involves all the work done **before station installation or modification** and the second part (Part Two) is work done **after station installation or modification**.

In Part One, the monitoring/reporting agency should first inform verbally the assigned Region VIII air monitoring contact of the proposed network modification for some initial

feedback. If after this discussion takes place no problems are discovered, the monitoring/reporting agency should next gather all information needed to be addressed in detail for the formal submittal, including estimated measurements. Then, the monitoring/reporting agency must fill out the "Region VIII Ambient Air Monitoring Network Modification Request Form" and submit the form to Region VIII. The referenced form is included in this document. After submittal of the form, EPA will review the form for completeness and will start a 30-day clock for approval or disapproval, if the form is found complete.

In Part Two (after station installation or modification), the monitoring/reporting agency must conduct measurements to determine the actual distances and information, as detailed in the "AQS Date Entry Worksheet" contained in this procedure for establishing sites and monitors in AQS. Next, the monitoring/reporting agency must submit this information to AQS and updated site photographs to Region VIII. This should be completed within 30 days of the station installation.

PART ONE - INSTRUCTIONS AND FORM

FIRST PAGE OF THE FORM:

The first page of the form contains three basic parts: General information; Estimated Measurements and Certification. The general information includes the date of form preparation, city, state, AQS Site ID, site name, proposed modification, reason for the modification, air quality parameter, monitor type, the monitoring objective, sampler equipment and the proposed date for making the modification (sampling start-up). The estimated measurements part includes all the necessary information pertaining to monitoring objective and siting, as detailed in 40 CFR Part 58, Appendices D and E. Even though these measurements are estimates, it is recommended that tape measures and other precise measurement devices be used for the estimates, to prevent problems in meeting EPA siting criteria after installation. The last part is a brief certification statement indicating the Appendix E siting criteria will be met except as noted.

SECOND PAGE OF THE FORM:

The second page of the form is to be used only if a modification to a meteorological site is proposed. The monitoring/reporting agency must include: purpose, objectives, whether the data are to be used for SIP or modeling purposes, and numerous site characteristics. If the meteorological modification is proposed at the same location as the criteria pollutant modification contained on the first page, the city, AQS Site ID, site name, location and start date will be assumed the same, unless otherwise indicated with the submittal. Estimated measurements should again be used for the distances and other information requested by the form. If the data are required for the SIP or modeling purposes, the monitoring/reporting agency must seek additional approval of the modification from the Region VIII Meteorologist.

MAP PAGES OF THE FORM:

On the next two pages of the form, the monitoring/reporting agency must provide maps of the area where the modification is proposed with other supporting information included on the map, as noted at the top of the map pages, unless a previous network modification request has been made at the same station including maps. Topographic features are desired for the "Regional Map" on the third page. The proposed modification location, traffic counts, point and area sources, nearby monitoring station(s), and the prevailing wind direction must be indicated on the map. If the map becomes too crowded to be viewed easily, additional maps or supporting information may be necessary. The "Regional Map" on the third page should be of regional or air basin scale between 5 and 30 miles in range. Good maps that cannot be reduced to fit a single page should be attached as a substitute "Regional Map". The "Site Map" on the fourth page should be .25-1 mile in range. A diagram may be substituted, if a map is not available. If a diagram is used, accurate measurements of distance should be used for the drawing.

PHOTOGRAPH PAGES OF THE FORM:

On the last two pages of the form, the monitoring/reporting agency must provide photographs of the area for the modification, unless a previous network modification request has been made at the same station including photographs of the appropriate probe or inlet. The first four photographs must be looking in the cardinal directions (North, East, South, West). The last page is intended for special photographs depicting something unique about the site, such as, the nearest obstacle or source, etc. Also, please identify the obstacle or source if indicated on the first page listings. An example is: "Obstacle NW" or "Source E". It should be kept in mind that photographs with sampler or probe inlet will be needed after site installation at the end of Part Two.

Lastly, any additional information supporting the request, such as modeling results, saturation study results, etc. should be attached to the form.

**REGION 8 AMBIENT AIR MONITORING NETWORK MODIFICATION REQUEST FORM
(VERSION 2, 4/1/04)**

DATE:	CITY:	STATE:
-------	-------	--------

AQS SITE ID:	SITE NAME:
--------------	------------

PROPOSED MODIFICATION/REASON WHY:

AIR QUALITY PARAMETER (PM10, SO2, CO, NO2, ETC.)	MONITOR TYPE (NAMS, SLAMS, SPM, TRIBAL, etc.)	CHECK ONE OR MORE OF THE APPLICABLE CATEGORIES BELOW:				LIST SAMPLER EQUIPMENT
		MAX CONC	SOURCE IMPACT	POPULATION EXPOSURE	BACKGROUND	

PROPOSED SAMPLING START OR REMOVAL DATE OR DATE STARTED OR REMOVED:

ESTIMATED MEASUREMENTS FOR AIR QUALITY PARAMETERS:

LOCATION (LAT./LONG. OR UTM=S):

SITE ELEVATION (M. MSL):	PROBE HEIGHT (M. AGL):
--------------------------	------------------------

DISTANCE TO TREE DRIPLINE (M)	DIRECTION TO TREE	DISTANCE TO OBSTACLE (M)	DIRECTION TO OBSTACLE	OBSTACLE HEIGHT ABOVE PROBE (M)	OBSTACLE COMMENTS

UNRESTRICTED AIR FLOW:	>270 DEG.	>180 DEG.	<CRITERIA _____ DEG.
------------------------	-----------	-----------	----------------------

DISTANCE TO FLUES/INCINERATORS (M):

DISTANCE TO INTERSECTIONS (M):	DISTANCE FROM SUPPORTING STRUCTURES (M): VERT. _____ HORIZ. _____
--------------------------------	---

DISTANCE TO EDGE OF NEAREST ROADWAY	NAME OF ROADWAY	DIRECTION	DAILY TRAFFIC ESTIMATES	YEAR OF TRAFFIC ESTIMATES	TYPE OF ROADWAY	COMMENTS
		NORTH				
		EAST				
		SOUTH				
		WEST				

DISTANCE TO NEAREST POINT SOURCES (MILES)	DIRECTION TO POINT SOURCES	DISTANCE TO NEAREST AREA SOURCES (MILES)	DIRECTION TO AREA SOURCES	COMMENTS

CERTIFICATION: I certify the network modification proposed above meets all 40 CFR 58, Appendix E siting criteria, except as noted with submittal.

Printed Name: _____ Signature: _____

FOR METEOROLOGICAL PARAMETERS ONLY:

MONITORING PURPOSE/OBJECTIVES:

PROPOSED MONITORING SCHEDULE/DURATION:

PROPOSED START/REMOVAL DATE OR DATE STARTED/REMOVED:

DATA ACQUISITION SYSTEM:

PRIMARY	PARAMETERS:			APPLICABLE √ those that apply	SENSOR HT (M)
BACKUP	WINDSPEED/DIRECTION				
EQUIPMENT MANUFACTURER/MODEL:	SOLAR RADIATION				
	RELATIVE HUMIDITY				
WILL THE DATA BE USED FOR MODELING?	YES	NO	PRESSURE		
IS SITE REQUIRED FOR SIP?	YES	NO	SIGMA THETA		
UNRESTRICTED AIRFLOW?	YES	NO	PRECIPITATION		
DISTANCE TO TREE DRIPLINE (M)	TEMPERATURE				
NEARBY TERRAIN:	SMOOTH	ROLLING	ROUGH	OTHER (DESCRIBE)	

TOPOGRAPHIC FEATURES (E.G HILLS, MOUNTAINS, VALLEYS, RIDGES, BODIES OF WATER):

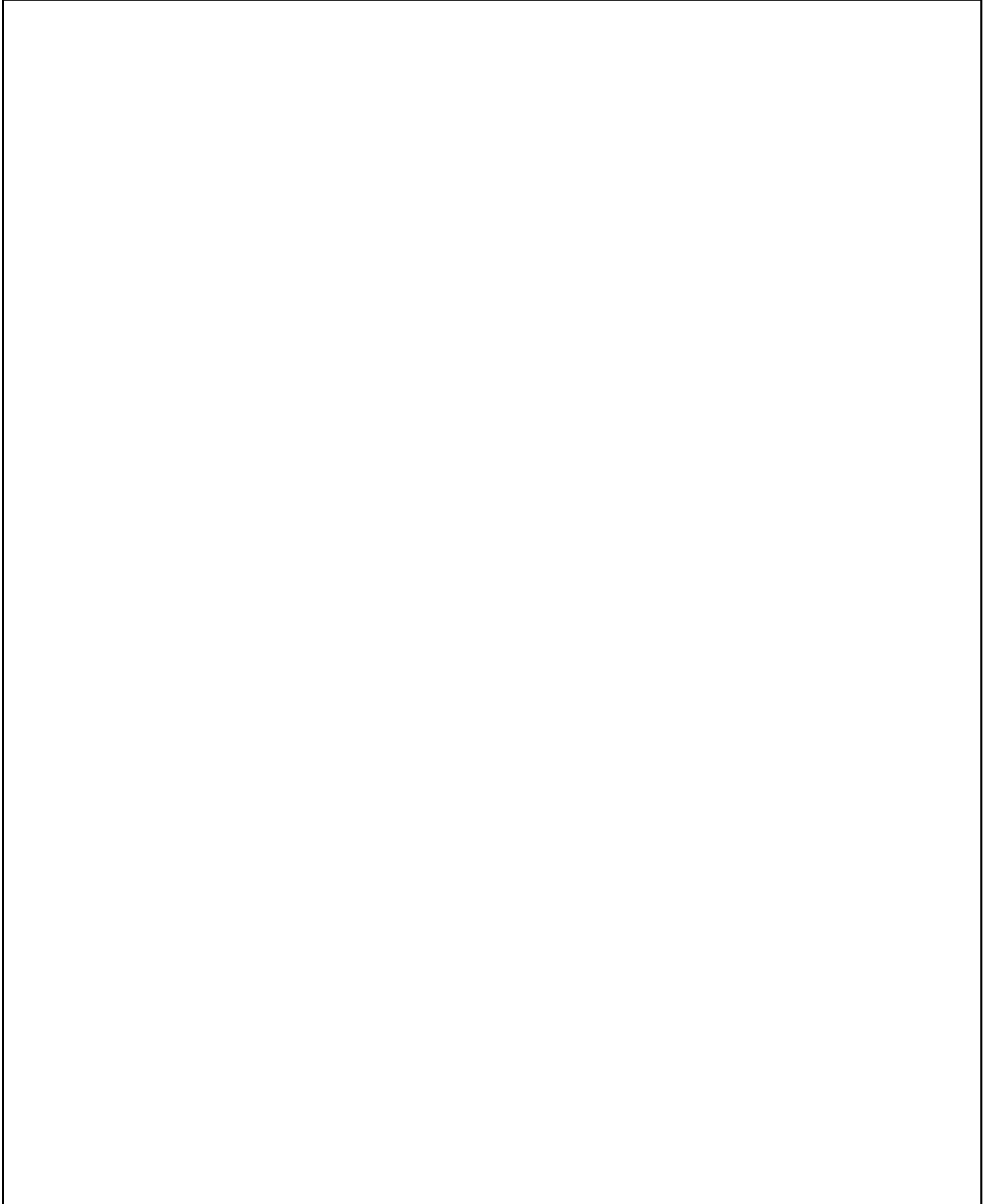
COMMENTS:

**FORM KEY:
PAGE 1:**

MONITOR TYPE: NAMS = 1, SLAMS = 2, SPM = 3, TRIBAL = A
 SITE ELEVATION = GROUND LEVEL ELEVATION
 PROBE HEIGHT (M. AGL) = PROBE HEIGHT METERS ABOVE GROUND LEVEL

Regional Map (5-30 miles) with sources, sites, traffic, and wind.

Site Map (1/4-1 mile) with sources, sites, traffic, and wind.



Photographs:	Site: _____	Location: _____	Date: _____
NORTH		EAST	
SOUTH		WEST	

Photographs:	Site: _____	Location: _____	Date: _____
Obstacle or source direction from site: _____		Obstacle or source direction from site: _____	
Obstacle or source direction from site: _____		Obstacle or source direction from site: _____	

PART TWO – AQS Site Entry Worksheets

After approval of your network modification request and prior to establishing sites and monitors in AQS, the monitoring/reporting agency should fill out the Region VIII AQS Site Entry Worksheets. **These optional worksheets were designed to assist monitoring/reporting agencies with gathering the necessary information prior to submitting site and monitor data to the AQS database. These worksheets are not intended to be submitted to Region VIII.**

Each of the following pages contains a screen capture of the AQS page and an informational table. Each worksheet informational table contains the cell description (from the AQS page), whether or not field population is required, optional or mandatory, AQS Data Coding Manual (AQ2, 12/23/03) reference section and space for the monitoring/reporting agency to record their cell entry.

List of Acronyms used in AQS Data-Entry Assistance Forms:

AQS:	Air Quality System database
LOV:	List of Values (pull down List-of-Values for a parameter; available on-line in AQS)
Required:	Field must be populated with acceptable value in order to accomplish creation of site or monitor transactions
Optional:	Field population is not required to accomplish creation of site or monitor transactions.
Mandatory:	Field must be populated with acceptable value in order to create <u>optional</u> site or monitor transactions
MDL:	Minimum Detection Limit for a monitoring method
Cell Entry:	This section is intended to assist the user in gathering and recording site/monitor information for entry into the AQS database.

Maintain - Site Data (Region 8 Denver Air Program)

Basic Site Data | Agency Roles | Tangent Roads | Open Paths | Comments

State Code County Code Site Id Status Ind

Required Optional

Site Latitude Site Longitude Utm Zone Num

Utm Easting Utm Northing

LDP Coll Method LDP Horiz Datum

LDP Src Scale LDP Accr Value

LDP Vert Meas LDP Vert Accr Value

LDP Vert Method LDP Vert Datum

Street Address

City Code UA Code AQCR Code

Land Use Type Loc Setting

Site Estab Date

Create Moni...

Site required information: Basic Site Data

Cell Description	Field Population	Coding Manual Reference	Cell Entry
State Code	Required	4.1.3	
County Code	Required	4.1.4	
Site ID	Required	4.1.5	
Status Ind	<AQS automatically inserts value>		
Site Latitude	Required (either Lat-Lon or UTM)	4.1.6	
Site Longitude	Required (either Lat-Lon or UTM)	4.1.7	
UTM Zone Num	Required (either Lat-Lon or UTM)	4.1.8	
UTM Easting	Required (either Lat-Lon or UTM)	4.1.9	
UTM Northing	Required (either Lat-Lon or UTM)	4.1.10	
LDP Coll Method	Required	4.1.11	
LDP Horiz Datum	Required	4.1.12	
LDP SRC Scale	Required	4.1.13	
LDP Accr Value	Required	4.1.14	
LDP Vert Meas	Required	4.1.15	
LDP Vert Accr Value	Required	4.1.45	
LDP Vert Method	Required	4.1.43	
LDP Vert Datum	Required	4.1.44	
Street Address	Required	4.1.18	
City Code	Required	4.1.19	

UA Code	Required	4.1.20	
AQCR Code	Required	4.1.21	
Land Use Type	Required	4.1.22	
Loc Setting	Required	4.1.23	
Site Estab Date	Required	4.1.24	

Maintain - Site Data (Region 8 Denver Air Program)

Basic Site Data | Agency Roles | Tangent Roads | Open Paths | Comments

State Code County Code Site Id Status Ind

Required Optional

Time Zone Terminated Date

Zip Code Congr Distr Num

Census Tract Block Group Block Num

Class 1 Area Local Region

Local Site Name Hq Eval Date Reg Eval Date

Compass Sector City Dist Local Site Id

Met Site Type Met Site Dist Direct Met Site

Met Site Id: State Code County Code Site Id

Create Moni...

Site optional information: Basic Site Data

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Time Zone	Optional	4.1.16	
Terminated Date	Optional	4.1.25	
Zip Code	Optional	4.1.26	
Congr Distr Num	Optional	4.1.27	
Census Tract	Optional	4.1.30	
Block Group	Optional	4.1.29	
Block Num	Optional	4.1.28	
Class 1 Area	Optional	4.1.31	
Local Region	Optional	4.1.32	
Local Site Name	Optional	4.1.33	
HQ Eval Date	Optional	4.1.34	
Reg Eval Date	Optional	4.1.35	
Compass Sector	Optional	4.1.36	
City Dist	Optional	4.1.37	
Local Site ID	Optional	4.1.42	
Met Site Type	Optional	4.1.38	
Met Site Dist	Optional	4.1.40	
Direct Met Site	Optional	4.1.41	
Met Site ID (St, Co, site ID)	Optional	4.1.39	

Maintain - Site Data (Region 8 Denver Air Program)

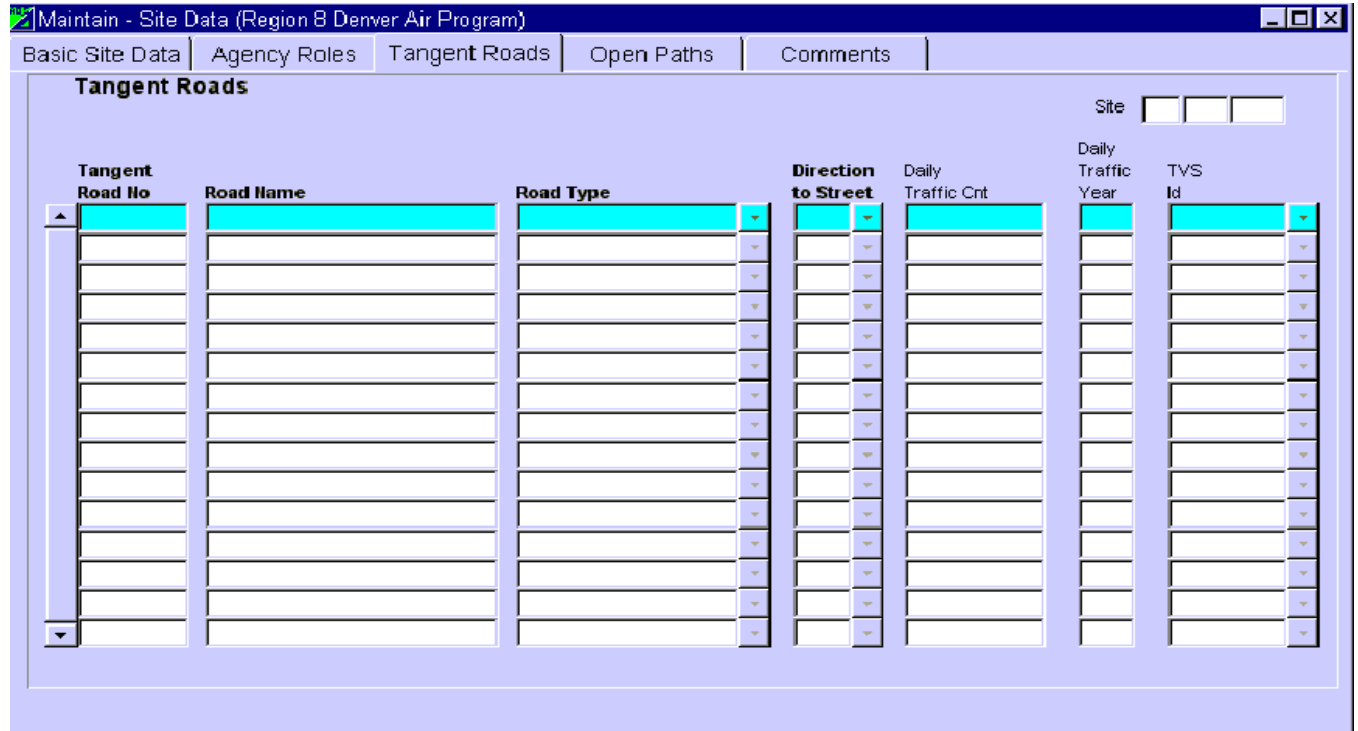
Basic Site Data | Agency Roles | Tangent Roads | Open Paths | Comments

Agency Roles Site

Agency Role	Agency Code	Begin Date	End Date

Site required information: Agency Roles

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Site	<AQS automatically inserts value>		
Agency Role (Supporting-required, reporting and analyzing-optional)	Required	5.4.8	
Agency Code	Required	5.4.9	
Begin Date	Required	5.4.10	
End Date	Required (if shutting down)	5.4.11	



Site optional information: Tangent Roads

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Site	<AQS automatically inserts value>		
Tangent Road No	Required	4.2.6	
Road Name	Required	4.2.7	
Road Type	Required	4.2.8	
Direction to Street	Required	4.2.11	
Daily Traffic Count	Required	4.2.9	
Traffic Year	Required	4.2.10	
TVS ID	Required	Traffic Volume Source lookup ID	

Maintain - Site Data (Region 8 Denver Air Program)

Basic Site Data | Agency Roles | Tangent Roads | **Open Paths** | Comments

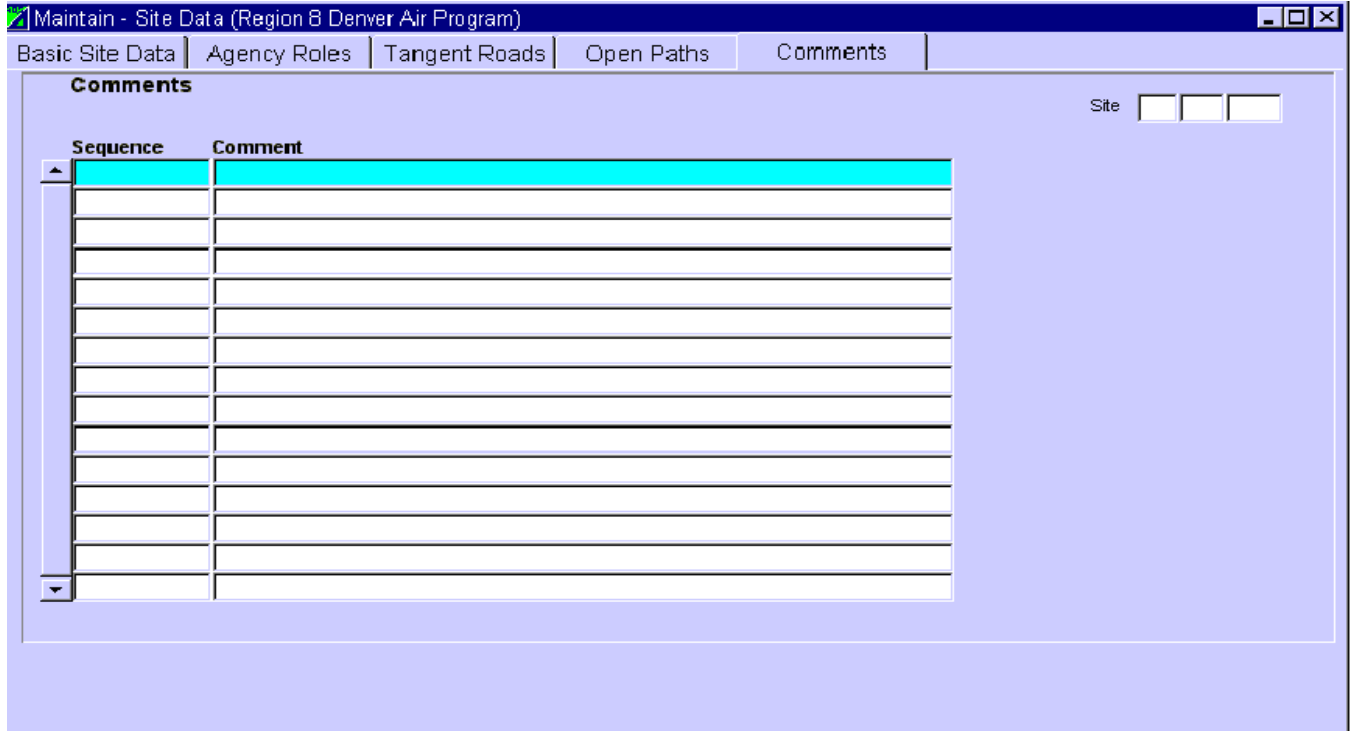
Open Paths

Site

Open Path No	Land Use Type	Dir to Transmitter	Beam Length	Min Beam Height	Max Beam Height	Transmitter Height	Receiver Height

Site optional information: Open Paths

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Site	<AQS automatically inserts value>		
Open Path No	Optional	4.3.6	
Land Use Type	Optional	4.3.13	
Dir to Transmitter	Optional	4.3.7	
Beam Length	Optional	4.3.8	
Min Beam Height	Optional	4.3.11	
Max Beam Height	Optional	4.3.12	
Transmitter Height	Optional	4.3.9	
Receiver Height	Optional	4.3.10	



Site optional information: Comments

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Site	<AQS automatically inserts value>		
Sequence	Optional	4.4	
Comment	Optional	4.4	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agenc... | Objec... | Pollu... | Req F... | Tange... | Probe... | Reg C... | Colla... | ▶▶

State Code County Code Site Id
 Parameter Code POC Status Ind

Project Class
 Meas Scale
 Probe Location
 Probe Vert Dist
 Samp Res Time

Dominant Source
 Open Path Num
 Probe Height
 Surrogate Ind
 Last Samp Date

Probe Hor Dist
 Unrest Air Flow
 Last Post Date

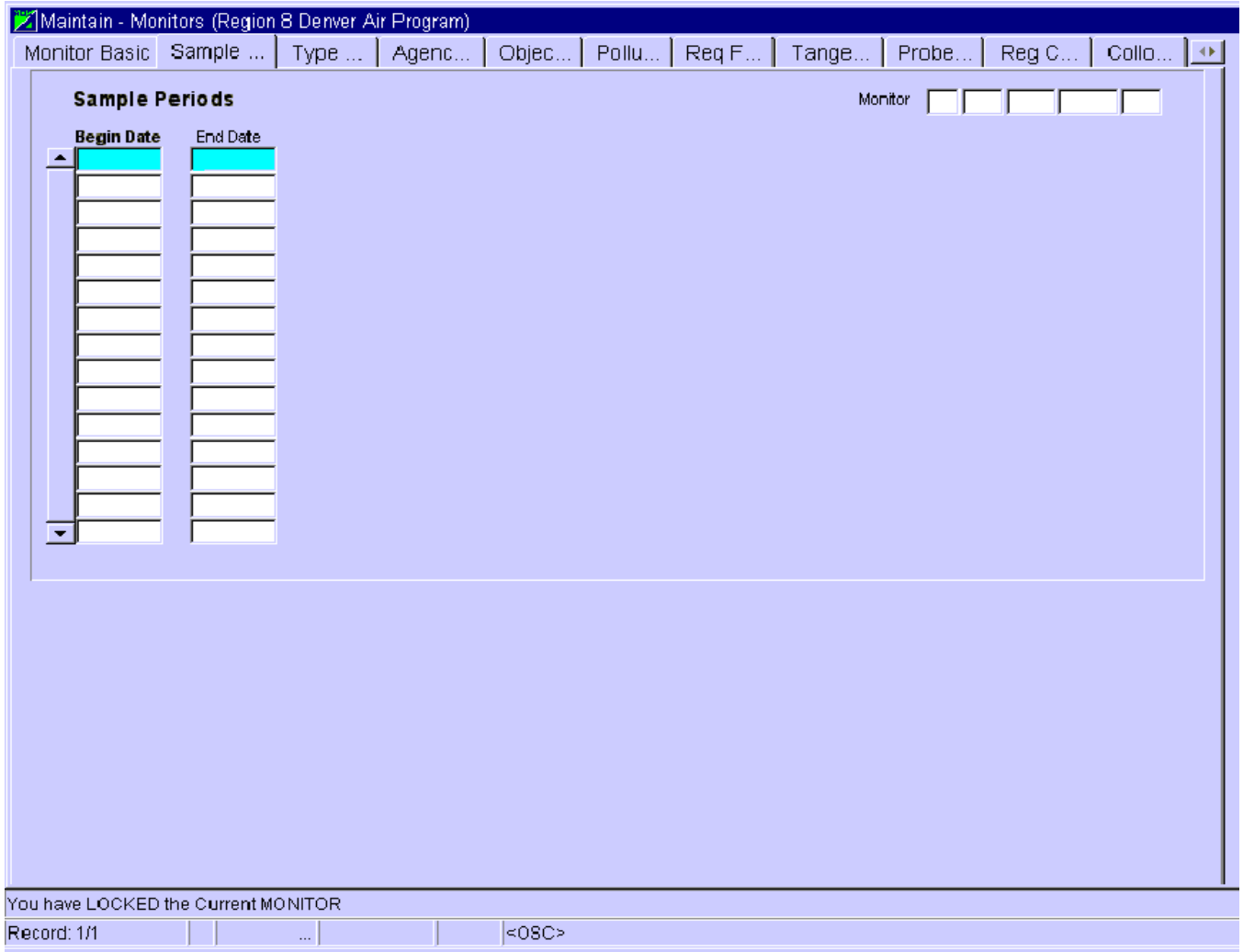
Enter a query, press F8 to execute, Ctrl+Q to cancel.

Record: 1/1 | Enter-Qu... | List of Valu... | <OSC>

Monitor Basic Information

Cell Description		Coding Manual Reference	
State Code	Required	5.1.3	
County Code	Required	5.1.4	
Site ID	Required	5.1.5	
Parameter Code	Required	5.1.6	
POC	Required	5.1.7	
Status Ind	<AQS automatically inserts value>		
Project Class	Optional	5.1.8	
Dominant Source	Optional	5.1.9	
Meas Scale	Optional	5.1.10	
Open Path Num	Optional	5.1.11	
Probe Location	Optional	5.1.12	
Probe Height	Optional	5.1.13	
Probe Hor Dist	Optional	5.1.14	
Probe Vert Dist	Optional	5.1.15	

Surrogate Ind	Optional	5.1.16	
Unrest Air Flow	Optional	5.1.17	
Samp Res Time	Optional	5.1.18	
Last Samp Date	<AQS automatically inserts value>		
Last Post Date	<AQS automatically inserts value>		



Monitor Sample Periods

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Begin Date	Required	5.2.8	
End Date	Required for shut-down or change	5.2.9	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type A... | Agenc... | Objec... | Pollu... | Req F... | Tange... | Probe... | Reg C... | Collo... | <>

Type Assign. Monitor

Monitor Type	Begin Date	End Date	Action Type	Action Date	Action Reason

A monitor administrative classification. - list of values available

Record: 1/1 | ... | <OSC>

Monitor-Type Assigned

Cell Description	Field Population	Coding Manual Reference	<i>Cell Entry</i>
Monitor	<AQS automatically inserts value>		
Monitor Type	Required	5.3.8	
Begin Date	Required	5.3.9	
End Date	Required for shut-down or change	5.3.10	
Action Type	Required	LOV pull-down value	
Action Date	Required	LOV pull-down value	
Action Reason	Required	LOV pull-down value	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agency... | Objec... | Pollu... | Req F... | Tange... | Probe... | Reg C... | Collo... | <>

Agency Roles Monitor

Agency Role	Agency Code	Begin Date	End Date

Enter a valid Agency Role to specify the service provided by the assigned agency.

Record: 1/1 | ... | List of Valu... | <OSC>

Monitoring Agency Roles

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Agency Role	Optional (req'd for criteria pollutants)	5.4.8	
Agency Code	Optional-Mandatory (req'd for criteria pollutants)	5.4.9	
Begin Date	Optional-Mandatory (req'd for criteria pollutants)	5.4.10	
End Date	Optional-Mandatory (req'd for criteria pollutants)	5.4.11	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agenc... | Objecti... | Pollu... | Req F... | Tange... | Probe... | Reg C... | Collo... | <>

Objectives

Monitor Objective Type

UA Represented MSA Represented CMSA Represented

Reason for measuring air quality at a monitor. - list of values available

Record: 1/1 ... <OSC>

Monitoring Objective Type

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Monitoring Objective Type	Optional (req'd for criteria pollutants)	5.5.8	
UA Represented	Optional-Mandatory (req'd for criteria pollutants)	5.5.9	
MSA Represented	Optional-Mandatory (req'd for criteria pollutants)	5.5.10	
CMSA Represented	Optional-Mandatory (req'd for criteria pollutants)	5.5.11	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agenc... | Objec... | Pollut... | Req F... | Tange... | Probe... | Reg C... | Collo... | <>

Pollutant Area Monitor

Pollutant Area Code	Worst Site Type	NAAQS Ind	Spatial Avg Ind	Schedule Exemption Ind	Monitor Zone
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼
▼	▼	▼	▼	▼	▼

Numeric code attributed to a specific geographic area in which a pollutant should be watched.

Record: 1/1 | ... | List of Valu... | <OSC>

Monitor Pollutant Area

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Pollutant Area Code	Optional (req'd for criteria pollutants)	5.1.24	
Worst Site Type	Optional-Mandatory (req'd for criteria pollutants)	5.1.19	
NAAQS Ind	Optional-Mandatory (req'd for criteria pollutants)	5.1.20	
Spatial Avg Ind	Optional-Mandatory (req'd for criteria pollutants)	5.1.21	
Schedule Exemption Ind	Optional-Mandatory (req'd for criteria pollutants)	5.1.22	
Monitor Zone	Optional-Mandatory (req'd for criteria pollutants)	5.1.23	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agenc... | Objec... | Pollu... | Req Fr... | Tange... | Probe... | Reg C... | Collo... | <>

Req Frequencies Monitor

Coll Freq Code	Begin Date	End Date
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Sample Schedule

Month

Collection Frequency

A code identifying a particular type of collection frequency. - LOV

Record: 1/1 | ... List of Valu... | <OSC>

Monitor Required Sampling Frequency

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Coll Freq Code	Optional (req'd for criteria pollutants)	5.6.8	
Begin Date	Optional-Mandatory (req'd for criteria pollutants)	5.6.9	
End Date	Optional-Mandatory (req'd for criteria pollutants)	5.6.10	
Month	Optional-Mandatory (req'd for criteria pollutants)	Self-explanatory (01 through 12)	
Collection Frequency	Optional-Mandatory (req'd for criteria pollutants)	5.6.11	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agenc... | Objec... | Pollu... | Req F... | Tangen... | Probe... | Reg C... | Collo... | <>

Tangent Road Monitor

Road No	Road Name	Dist To Road
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
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<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Enter the Tangent Road Number used to uniquely identify a tangent street within a site.

Record: 1/1 | ... List of Valu... | <OSC>

Monitor Tangent Road(s)

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Road Number	Optional (req'd for criteria pollutants)	5.7.8	
Road Name	Optional-Mandatory (req'd for criteria pollutants)	LOV pull-down value	
Dist to Road	Optional-Mandatory (req'd for criteria pollutants)	5.7.9	

Maintain - Monitors (Region 8 Denver Air Program)

Monitor Basic | Sample ... | Type ... | Agenc... | Objec... | Pollu... | Req F... | Tange... | Probe ... | Reg C... | Collo... | <>

Probe Obs. Monitor

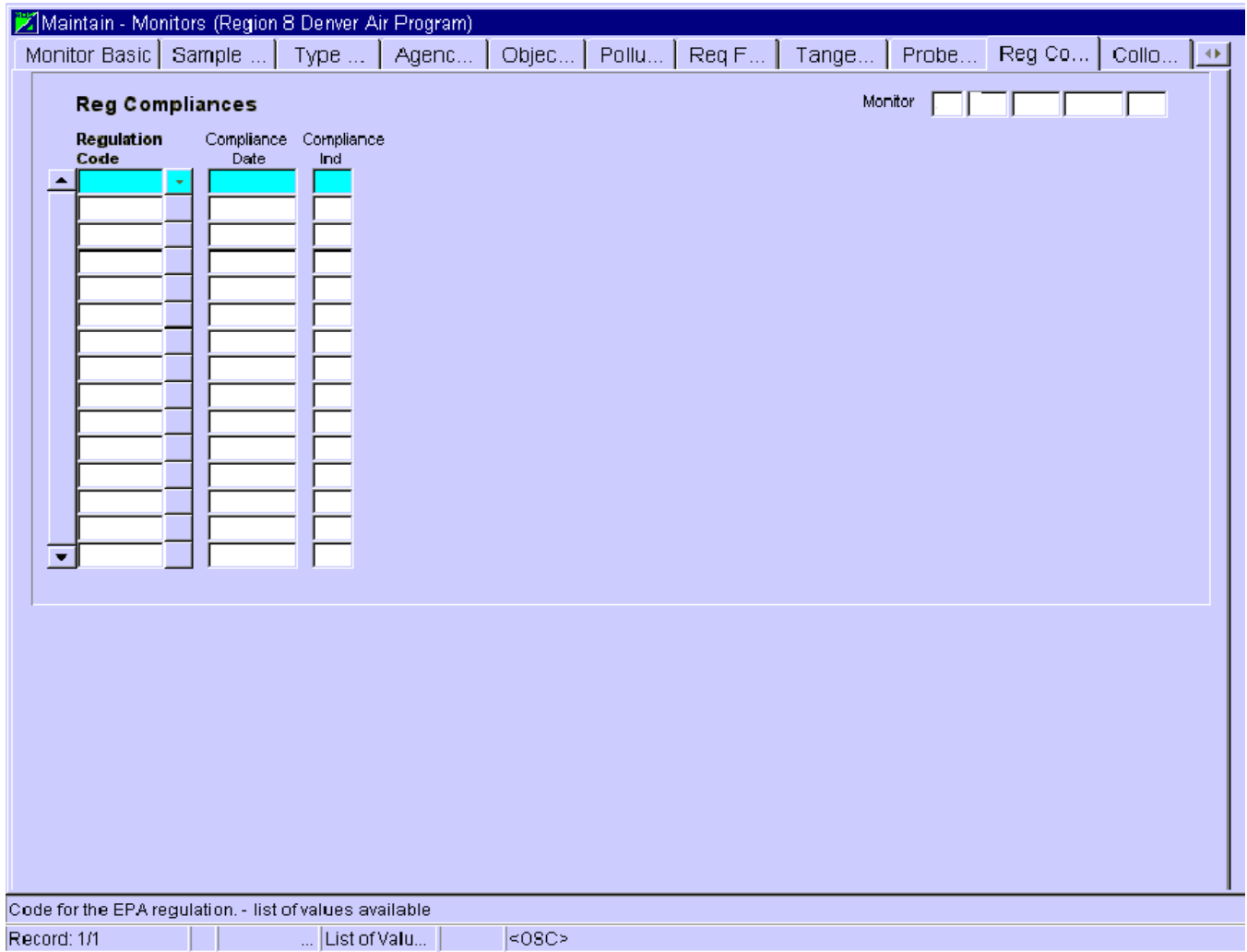
Obstr Type	Dir from Monitor	Obstr Dist	Obstr Height

A type of obstruction responsible for restricted air flow to a probe. - LOV

Record: 1/1 | ... | List of Valu... | <OSC>

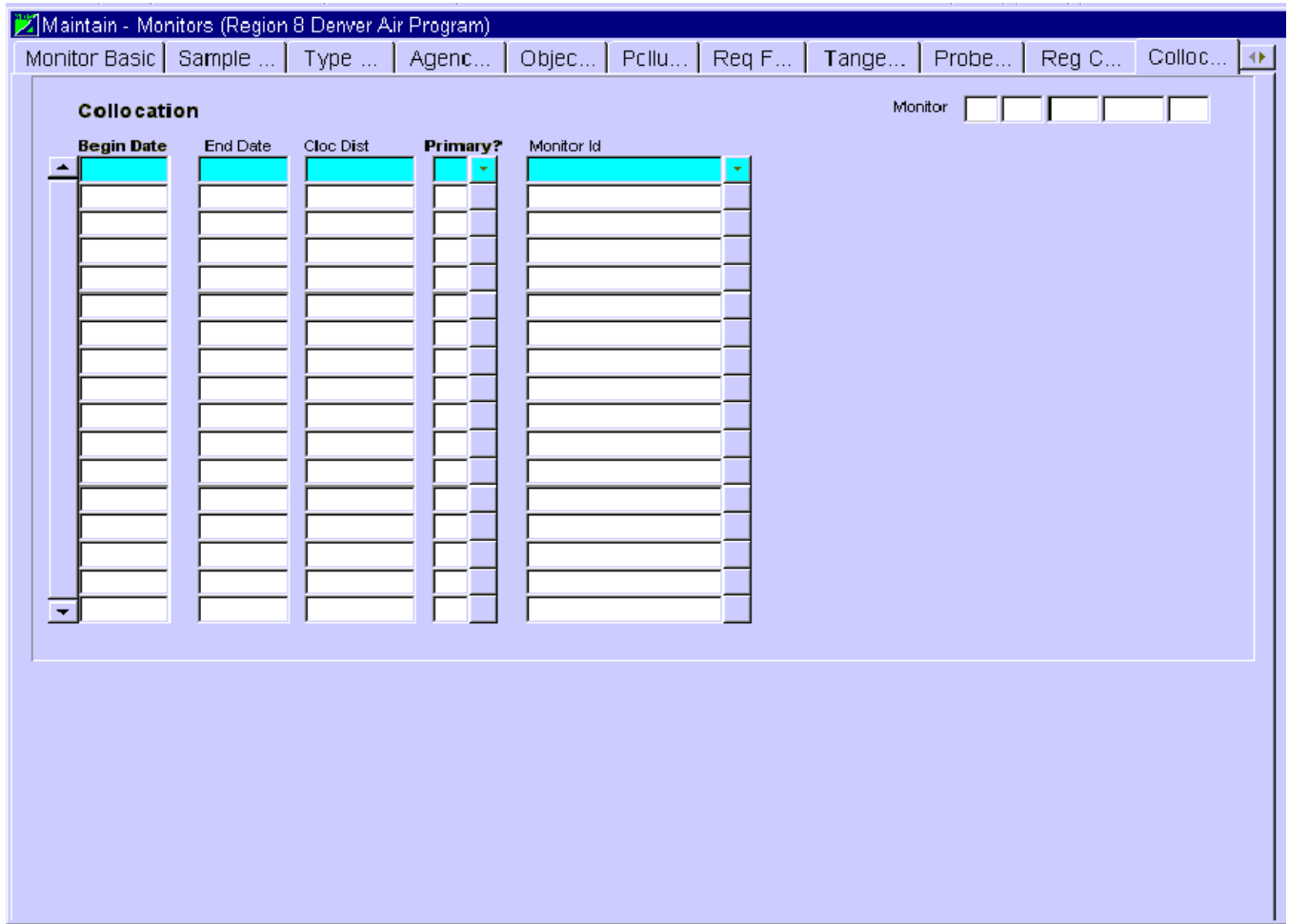
Monitor Probe Obstruction

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Obstr Type	Optional (req'd for criteria pollutants)	5.8.8	
Dir from Monitor	Optional-Mandatory (req'd for criteria pollutants)	5.8.9	
Obstr Dist	Optional-Mandatory (req'd for criteria pollutants)	5.8.10	
Obstr Height	Optional-Mandatory (req'd for criteria pollutants)	5.8.11	



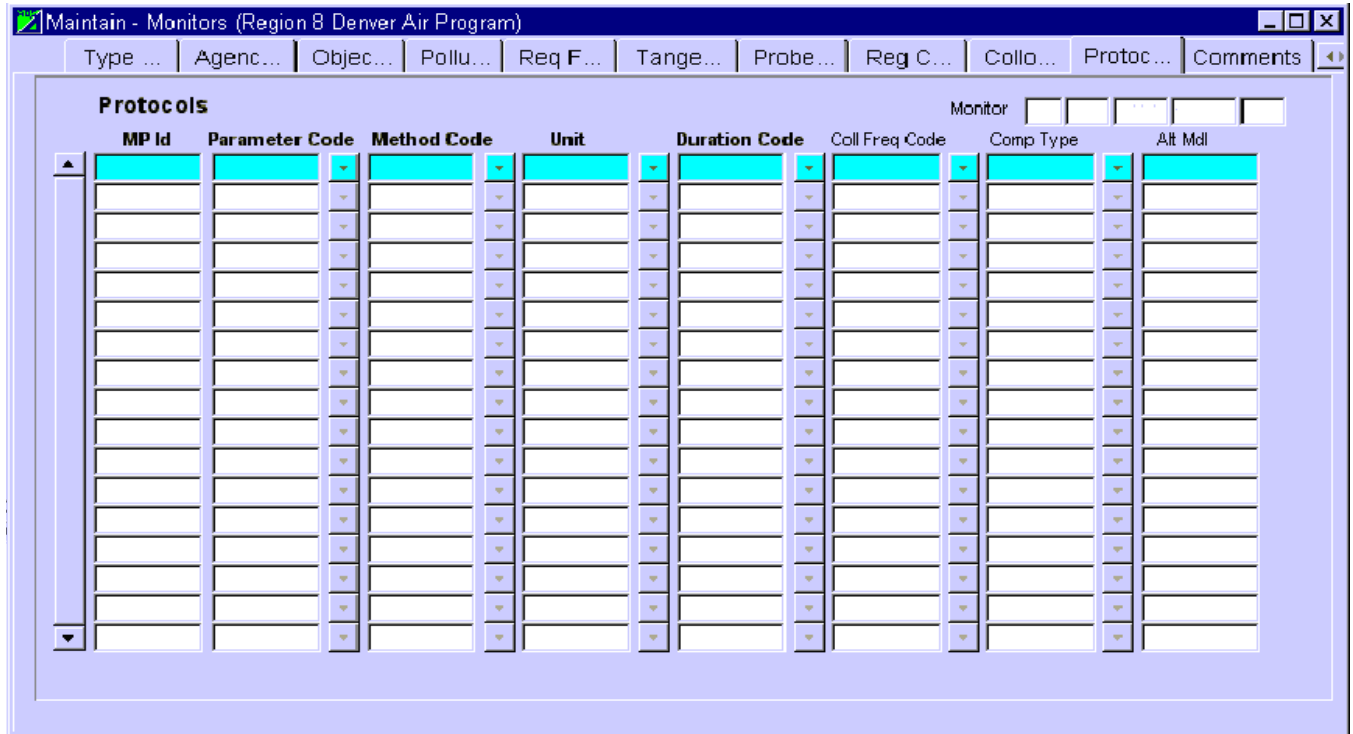
Regulatory-Compliance-Monitor Information

Cell Description	Field Population	Coding Manual Reference	<i>Cell Entry</i>
Monitor	<AQS automatically inserts value>		
Regulation Code	Optional (req'd for criteria pollutants)	5.9.8	
Compliance Date	Optional-Mandatory (req'd for criteria pollutants)	5.9.10	
Compliance Ind	Optional-Mandatory (req'd for criteria pollutants)	5.9.9	



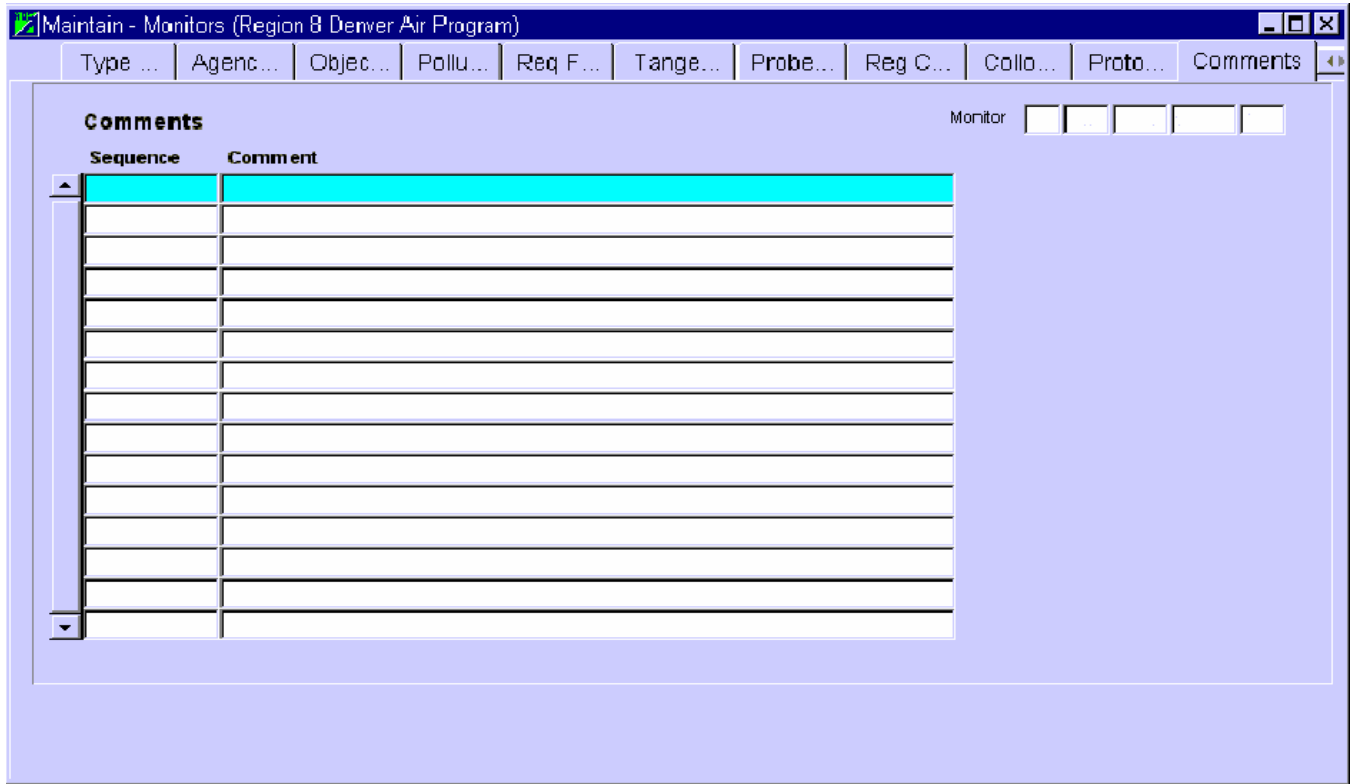
Monitor Collocation Information

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Begin Date	Optional (for collocated criteria pollutants)	5.10.8	
End Date	Optional-Mandatory (for collocated criteria pollutants)	5.10.9	
Cloc Dist	Optional-Mandatory (for collocated criteria pollutants)	5.10.10	
Primary?	Optional-Mandatory (for collocated criteria pollutants)	5.10.11	
Monitor ID	Optional-Mandatory (for collocated criteria pollutants)	5.10.5	



Monitor Protocol Information

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
MP ID	Optional (req'd for alternate MDL)	5.11.8	
Parameter Code	Optional-Mandatory (req'd for alternate MDL)	5.11.6	
Method Code	Optional-Mandatory (req'd for alternate MDL)	5.11.11	
Unit	Optional-Mandatory (req'd for alternate MDL)	5.11.10	
Duration Code	Optional-Mandatory (req'd for alternate MDL)	5.11.9	
Coll Freq Code	Optional-Mandatory (req'd for alternate MDL)	5.11.12	
Comp Type	Optional-Mandatory (req'd for alternate MDL)	5.11.13	
Alt MDL	Optional-Mandatory (req'd for alternate MDL)	5.11.14	



Monitor Comments

Cell Description	Field Population	Coding Manual Reference	Cell Entry
Monitor	<AQS automatically inserts value>		
Sequence	Optional	5.12	
Comment	Optional-Mandatory	5.12	

EPA Region 8 Oversight for State RCRA, NPDES, Air, and PWSS Enforcement Programs

Overview

The nature and scope of oversight activities and documentation of program assessments and reviews for state RCRA Subtitle C, NPDES, and CAA Stationary Source enforcement programs is dependent upon performance as documented during the previous year, therefore, may vary from year to year. This differential oversight will range from minimum or baseline oversight for strong programs to annual program assessments for those programs with ongoing significant problems. Each year, the results of activities and assessments/reviews that have occurred during the year will be documented by ECEJ in an end-of-year (EOY) report or program assessment report. States will have an opportunity to review and comment on EOY reports and program assessment reports.

Program Assessment Using the OECA/ECOS SRF and UEOS

At least once every three years, state RCRA Subtitle C, NPDES, and CAA Stationary Source enforcement program performance will be evaluated using the OECA/ECOS State Review Framework (SRF) and associated guidance. Likewise, Public Water System Supervision (PWSS) enforcement program performance will continue to be evaluated using the Uniform Enforcement Oversight System (UEOS), however, like the SRF reviews, the frequency of reviews may be up to once every three years.

The SRF is based on Region 8's UEOS and was developed jointly by the EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten EPA regions. The SRF was developed as a tool to assess state enforcement and compliance assurance program performance and to provide a mechanism for EPA regions, working collaboratively with their states, to ensure that states meet agreed upon performance levels. An SRF Overview is attached below.

Annual Program Assessment/Review

The frequency of program assessments using SRF or UEOS will be dependent upon program performance as determined by the most recent SRF or UEOS review. Oversight activities occurring during years in which SRF or UEOS reviews are not planned will range from a minimum or baseline level of oversight to a more enhanced level of oversight (including targeted oversight activities) as described in the table below. Should baseline or targeted oversight activities demonstrate that program performance has declined such that program standards are generally no longer met, or, there are significant deficiencies in key areas, then an SRF review (or UEOS for PWSS) may be conducted for the next performance period.

For PWSS, Region 8 also conducts annual on-site (audit) visits with each state to review the effectiveness of the state enforcement programs, as resources allow. These visits are conducted between November and February, and some of the information gathered is used for the UEOS evaluation. Region 8 staff review the files of specific public water systems and evaluate how the state has responded to violations and the accuracy of data contained in state and federal databases. A report documenting the findings of the visit is issued to the state. As a part of the review, Region 8 identifies corrective actions that the state should implement to improve its enforcement program, and such actions may be incorporated into the PPA along with UEOS findings.

Differential Oversight Levels

Program Status	Resultant Oversight
I. Program standards are met (may have small problems in some areas).	SRF every three years (UEOS for PWSS program). Minimum / baseline * oversight activities during “off” years.
II. Program standards are generally met, however, some areas for improvement have been identified.	SRF every three years (UEOS for PWSS program). Baseline plus targeted ** oversight activities during “off” years.
III. Program standards are generally not met, or, there are significant deficiencies in key areas.	SRF every year; escalating actions if progress is not made to correct problem areas.

* Minimum/baseline oversight activities to occur every year will include:

- Review and documentation (through ECEJ End of Year Report) of progress towards meeting grant commitments,
- Routine communications and information sharing with state (to discuss, for example, HPVs, SNC, QNCR, etc.).
- Watch List review and follow-up,
- Data Metrics review,
- Follow-up on open action items/recommendations from previous reviews.
- Other oversight activities required by national program guidance (e.g. oversight inspections, etc.).

** Targeted oversight activities may include (in addition to baseline activities):

- Targeted program improvement plans to be incorporated into PPAs.
- More frequent communications and information sharing with state.
- Increased number of oversight inspections.
- Targeted after-the-fact and real time review of state files.

Documentation of Oversight Activities

End of Year Reports will be completed annually for all programs. For those years in which SRF reports (or UEOS for PWSS) are completed, they will serve the purpose of the EOY report. EOY reviews and documentation through the EOY Reports may utilize applicable portions of the SRF or UEOS guidance (*e.g.* review metrics), as appropriate. At a minimum, End of Year reports will incorporate the results of the minimum/baseline activities described above and the scope will address the following review areas: 1) inspections, 2) enforcement activity, 3) annual agreements, and 4) data management.

Specific oversight activities planned and actions planned to address any areas for improvement will be described in the final SRF or UEOS report and/or the End of Year Report as well as in the next PPA.

Review Schedule

While oversight and program review and assessment activities occur throughout the year, formal documentation of results doesn't begin until after data are available for the year under review and state EOY reports have been received. This is generally the middle of January following the year under review.

Draft documentation of annual program assessments/review will be completed by the end of April of the year after fiscal year reviewed. This is to allow findings and any corrective actions to be incorporated into the PPA negotiation process for the following fiscal year. The SRF guidance includes a comprehensive process for developing the report which includes many opportunities for findings to be discussed with states and for states to review and comment on draft reports prior to finalization. Final SRF reports will be completed by the end of the fiscal year following the fiscal year reviewed.

EOY reports documenting oversight activities and review results (for years in which an SRF/UEOS assessment is not conducted) will be finalized by the end of April following the fiscal year under review.

Overview Enforcement and Compliance Assurance State Review Framework

Introduction

The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten regions have jointly developed a tool to assess state (or regional in the case of direct implementation responsibilities) performance in enforcement and compliance assurance programs. The purpose of the assessment is to provide a consistent level of environmental and public health protection across the country and provide a consistent mechanism by which EPA Regions, working collaboratively with their states, can ensure that states meet agreed upon performance levels. This Framework is meant to establish a dialogue on enforcement and compliance performance that will lead to improved program management and environmental results.

EPA's Enforcement and Compliance Assurance Program embraces the principle of "Smart Enforcement" in all aspects of its implementation. The Smart Enforcement approach is comprised of five components that, in combination, lead to a strategic and focused program. These components include: 1) addressing significant environmental problems; 2) using data to help make strategic decisions for better resource utilization; 3) using the most appropriate tool to achieve the best possible outcome; 4) assessing the effectiveness of program activities to ensure continuous improvement and desired program performance; and 5) effectively communicating the environmental, public health and compliance outcomes of our activities to enhance program effectiveness.

This Framework for state program review is a management tool to support the Smart Enforcement approach. It is intended to use data we have to assess the effectiveness of our programs and improve our performance. It is meant to maintain the fair and consistent enforcement of Federal environmental laws. EPA Regions and HQ are using this Framework to review the enforcement and compliance assurance components of federally-authorized state programs (or regional programs where they have direct implementation authorities) and ensure they achieve environmental and public health benefits by complying with applicable federal legal, policy and guidance requirements.

To reduce the burden of this review, the Framework uses required program data already reported to EPA as a starting point in order to identify strengths and potential problems where additional information may need to be gathered. This can help to strategically focus file review efforts where they are most needed. The Framework, in some cases, identifies information that can supplement the required national data, but, if it is not already reported to national data systems, it is optional for states to choose to provide this additional data in the course of the review. EPA and states all have limited resources and it is recognized that, while data from our national databases is only one source, it is a valuable source when trying to honor the states' request to not impose new reporting burdens. The experience of EPA and states in oversight tells us that

while quantitative data is useful, it needs to be viewed in the context of qualitative information that can only be gained by file reviews, examining negotiated commitments and objective dialogue between parties.

This review is an opportunity for states to voluntarily share data not in the federal data systems, including outcome information they have collected on the effectiveness of their programs. States are invited to share data, results and outcomes not just in the core program activities included in the Framework's twelve required elements, but also in compliance assistance and other approaches to achieving compliance the state may have adopted. While not required, these state data help to provide a more comprehensive picture of a state's program, though not substituting for core program activities under element 1 through 12.

This Framework embraces the principles of the National Environmental Performance Partnership System (NEPPS), which provide a mechanism for joint planning and program management between EPA and states that takes full advantage of the unique capabilities of each in addressing pressing environmental problems. On April 15, 2004, ECOS and EPA signaled a renewed support for the NEPPS partnership. In a joint letter, ECOS and EPA articulated a vision that "Performance plans and measurement systems that assure internal and external accountability for performance and that focus on environmental results need to be essential elements of the overall planning system. These systems need to be adaptive to support continuous improvement and need to be evaluated periodically to create joint learning opportunities for improvement." This vision is also the vision for this State Review Framework. It is built on collaboration and proposes to evaluate and improve management practices in the compliance and enforcement program.

It is expected that these reviews will become a regular topic in regional/state planning meetings and in the negotiation of work plan commitments. Initially, the region and state should negotiate the timing of the initial review and plan for how it will proceed. If there are local delegations that assist in the implementation of one of the three media programs being reviewed, then they should be brought into those planning discussions. Depending on the type and extent of local delegations, including local agencies could add to the time and resources it takes to conduct the review and needs to be proactively considered. Once the review has occurred, it is expected that major recommendations will get incorporated into the next round of PPA/PPG/categorical grant work plans, where they will be tracked and managed to a successful conclusion.

The State Review Framework is also intended to be responsive to issues raised in EPA Inspector General audits of state programs; concerns raised by states and the ECOS Compliance Committee; program withdrawal petitions; and other assessment efforts by EPA media program offices. It will help us to identify and understand existing areas where improvements are needed and highlight areas where strong performance may provide examples to other states and regions.

The Benefits of Implementing this Framework

Discussions between EPA and states have led to the identification of benefits for EPA, the states, the public and the environment of implementing this Framework. Some of these include:

- 1) Better communication and mutual understanding, leading to an improved federal/state relationship. It will help to further the implementation of the “no surprises” concept.
- 2) It provides a more strategic focus for resource utilization; reduction of duplicative work; more effective work sharing between regions and states. It also may provide workforce deployment opportunities.
- 3) It will offer opportunities for EPA to learn from states and share innovations and best practices.
- 4) It will provide a consistent and predictable baseline oversight approach across states and regions. It will serve to promote equity among states - through a consistent set of elements and metrics used to review performance; consistent thresholds for corrective action; consistent general guidelines for response to continuing problems; and the provision of a level playing field for states in competition for business.
- 5) It offers a mechanism through which the compliance and enforcement program can offer differential oversight based on EPA’s assessment of state performance. States demonstrating an adequate core program will qualify for benefits while state performance not meeting minimum standards will result in enhanced oversight. This process does not negate EPA’s responsibility for oversight, simply determines the level, intensity and focus of the oversight.
- 6) The review process will lead to continuous program improvements that, in turn, will produce improved overall environmental results.
- 7) This proactive approach to identifying problems and developing plans to fix them should result in reduced vulnerability to criticisms regarding EPA’s level of oversight, particularly from the Inspector General, GAO, and the public; it should provide protection to states from citizen suits. It will improve the public’s confidence in our programs.
- 8) The EPA/State relationship will benefit from agreed upon and clear up-front expectations for program management.
- 9) This process will result in the ability for states and EPA (HQ and regions) to pull management reports and see data that drives reviews at any time. It will allow close management of performance and early identification of problems.
- 10) This will provide the foundation for acknowledgment and recognition of good state performance in internal and external communications.

Structural Foundation of the Framework

The Framework is based upon compliance and enforcement policies and guidance that have been in place for many years. The foundation begins with the August 1986 guidance memorandum signed by the then Deputy Administrator, Jim Barnes, entitled “*Revised Policy Framework for State/EPA Enforcement Agreements.*” The evaluation areas posed by this Framework are consistent with evaluation areas delineated in that memo and consequent addenda. It utilizes existing program guidance, such as our EPA national enforcement response policies, compliance monitoring policies, and civil penalty policies and models or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide our definitions of a minimum level of performance. As previously mentioned, it is consistent with the NEPPS principles and is envisioned to be integrated into Performance Partnership

Agreements (PPAs) and Performance Partnership Grants (PPGs) that are negotiated using the NEPPS principles.

True to the NEPPS principles, the Framework builds into its metrics the consideration of negotiated commitments in PPAs, PPGs and/or categorical grant agreements that may differ from what guidance or policy dictates. It is recognized that application of the required elements may vary from state to state, based on those specific delegation or grant agreements. It is expected that in documenting findings of the reviews, regions will acknowledge where flexibility has been negotiated and consider performance in terms of commitments made. Reviews may include feedback to the regions and states when negotiated commitment levels fall short of program expectations, which can then be dealt with in prospective state negotiations.

The State Review Framework also integrates planning and accountability processes developed since the issuance of the existing guidance documents mentioned above. EPA's Strategic Plan includes the compliance and enforcement program under Goal 5: Compliance and Environmental Stewardship. EPA has worked with states to align all National Program Guidance to implement the Strategic Plan, and OECA's guidance includes a listing of national priorities, core program requirements and a description of the State Review Framework. Regional plans are developed to support Goal 5 and the National Program Guidance. These regional plans should reflect negotiations with their states on priorities, work sharing and program management. These priorities, core program requirements and negotiated commitments form the base of activities and results which the State Review Framework sets out to examine.

Elements of the Framework

There are several essential elements that apply to all enforcement and compliance assurance programs upon which this Framework is based. It is also necessary, however, to review performance on a program-specific basis because each of EPA's programs contains unique requirements. The State Review Framework currently assesses core program performance in three media programs: the Clean Air Act (CAA) Stationary Sources program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES), and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program. Broadening the scope of the Framework to include other programs (such as the Safe Drinking Water Act) may be contemplated in future reviews.

For each media program, the Framework defines the essential elements and then, in a companion Implementation Guide, more fully defines how each element is applied and measured. The scope of the twelve essential elements includes compliance monitoring, civil enforcement and data management. The State Review Framework does include flexibility for reviews beyond the essential elements by the inclusion of a thirteenth element which is optional. This element allows for the inclusion of areas such as compliance assistance, self-disclosure initiatives, innovative programs, and outcome-oriented measures and results that go beyond the core program. ECOS and EPA encourage regions and states to use the optional review element thirteen to include the full array of compliance and enforcement tools that relate to achieving compliance in any or all of the three core media programs included in the review, as well as to discuss program results

and environmental outcomes. It is recognized that areas covered in this element are voluntary and should be negotiated and agreed to by regions and states. Guidance for these submissions are also found in the Implementation Guide.

The State Review Framework is based upon a process and system that was developed by EPA Region 8 in Denver. The essential (required) elements for evaluating state performance include:

- 1) The degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities).
- 2) The degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations.
- 3) The degree to which inspection reports are completed in a timely manner, including timely identification of violations.
- 4) The degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner.
- 5) The degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.
- 6) The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.
- 7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model (where in use and consistent with national policy).
- 8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies.
- 9) The degree to which enforcement commitments in the PPA/PPG/ categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.
- 10) The degree to which the minimum data requirements are timely.
- 11) The degree to which the minimum data requirements are accurate.
- 12) The degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.
- 13) The thirteenth element is optional and open for negotiation between regions and states. EPA and ECOS encourage the use of the thirteenth element to ensure the review takes a measure of the full range of program activities and results. These components can add meaningful input into a state=s overall performance and program. Examples of topics could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1 – 12, etc.

Interpreting Information to Determine Performance

This review process recognizes that determining an accurate picture of state performance can be complex, thus it incorporates the use of different types of data in its analysis. \$ The national data

metrics provide a snapshot of state activity and a “ballpark” of national averages of state activity as a first barometer of performance.

- 1) States may provide other data that will shed light on particular issues, provide context, add to the depth and scope of the review, and/or provide a validation (or lead to the correction) of data in the national systems. Information such as resource constraints, outcome information (such as compliance rates), etc. can help to explain decisions the state has made that might otherwise detract from a determination of adequate core CWA, CAA, or RCRA performance. This information could be made available as the review of elements 1 - 12 is occurring, or could be presented as part of Element 13.
- 2) The review also requires file reviews to collect more in-depth information from inspection and enforcement files, and delineates specific metrics to consider while conducting those file reviews.
- 3) Negotiated commitments are also considered, as states and regions may have negotiated different targets for inspections/evaluations or other activities than national guidance may set out. In that case, states will be held accountable for what commitments they have negotiated, though the review may provide feedback that those commitments need to be increased to fully demonstrate an adequate core program.
- 4) Finally, management discussions can help to explain anomalies, discuss management issues, brainstorm solutions and develop joint plans to address areas where improvements are needed.

Minimal or adequate levels of performance are established in the State Review Framework based on the metrics developed under the 12 required performance elements. In general, the minimum standards are based (where possible) on national media program policy, with consideration given for negotiated commitments in PPAs, PPGs and/or categorical grant agreements. These metrics are included in the Implementation Guidance associated with the Framework.

To ensure there are “no surprises” regarding data, elements of the State Review Framework that can be quantified using existing state data flows are utilized. EPA is developing an internal EPA/State Web site that will reside within the OTIS Management Reports area that will provide monthly updates for key metrics. This site will allow states and regions to benchmark progress towards goals within the Framework.

In synthesizing a conclusion about performance from these various sources of information, the determination of adequate performance may not be black and white. While this determination is guided by the national standards and goals outlined in EPA’s (or a state’s equivalent) enforcement response policies, compliance monitoring strategies, penalty policies, delegation agreements and policies and rules around reporting and data entry that are in place during the specified time of review, and based on the information collected in the review, it is the regions’ judgment that ultimately synthesizes this information into a conclusion about performance. In making a determination about performance, the weights of each of these sources of data should be balanced. EPA recognizes that the review may reach different conclusions about the adequacy of each of the media enforcement programs, or that a state’s core CWA, CAA or RCRA enforcement programs may have minor areas of improvement identified in a review and still be

determined to have an adequate program.

The initial reviews will serve as a baseline from which performance over time can be compared. As additional review cycles are implemented, trend analysis will be incorporated into the review. This will entail comparing performance at the time of the review with performance during the initial or baseline review to see how a state's performance may have improved over time. This does not signal an escalating burden or changing standards or requirements, but will offer a more expansive view of performance over time.

Defining and Rewarding Performance

States that meet minimum standards of performance (an adequate core program) will qualify for benefits, while state performance that does not meet the minimum standards will result in enhanced oversight. In the associated Implementation Guidance document, menus of potential benefits and enhanced oversight are provided to offer examples of what these two concepts of oversight may involve, though these are not comprehensive or all inclusive. Rather, they provide guidelines as to how to consistently interpret and implement these terms. One example is that, among other things, states that meet the minimum performance levels would have the opportunity to lead national cases and settlements, where appropriate, in coordination with and within general bounds set by EPA, as long as the state had adequate resources to do so. States not meeting the minimum performance levels would be expected to focus on the program areas that need strengthening, and would not be given the opportunity to lead cases until their overall performance met the minimum standards. Nothing in this process negates EPA's responsibility for oversight; this simply serves as a tool for determining the level, intensity and focus of the oversight.

In cases where problems are encountered in state performance covered by this Framework, EPA will continue its practice of taking escalating actions over time. Generally, this escalation follows the following process:

- 1) The region and state work together to precisely define a state's attributes and deficiencies, then develop a schedule for implementing needed changes.
- 2) The region and state work on the joint development of a plan to address improved performance, using established mechanisms to codify the plans like PPAs, PPGs, or categorical grant agreements.
- 3) The state is accorded increased levels and frequency of oversight during implementation of the plan to ensure progress as planned and to identify and deal with issues as they arise.
- 4) Should the above approach not be effective, additional responses may include:
 - 1) the intervention on a real time basis in program areas with repeated and serious errors or deficiencies;
 - 2) the withholding of grant funds; or
 - 3) the withdrawal of an authorized program.

Ensuring Consistency

The establishment and implementation of this Framework and metrics is in itself a large step towards bringing consistency to regional oversight of state programs. The Framework establishes agreed upon oversight review elements, metrics, thresholds and responses. It sets standard protocols and procedures for conducting state oversight reviews, including an established methodology for selecting files for review, consistent file review discussion guides, a consistent level of management involvement, etc. The Framework establishes standard time lines for implementing the reviews and standard formats for reporting findings. OECA HQ will manage the overall review process, including reviewing reports to ensure consistency and tracking recommendations to ensure their successful conclusion. Compiling the information to a national level will require that national attention be paid to the consistency of findings across regions.

Further consistency across EPA's ten regions will be provided by periodically conducting post-review surveys and sending questionnaires to states and regions that have undergone a review to evaluate the national process, promote consistency and make improvements. The use of national guidance as a yardstick in determining minimum performance will also help to ensure consistency. Joint training of EPA and state staff and managers responsible for conducting reviews will help to ensure all parties get the same messages, information and guidance for conducting the reviews, interpreting results, and documenting and implementing findings and recommendations.

Documenting Findings and Recommendations

The purpose of this State Review Framework is **not** to develop a ranking or scorecard of state performance, but to be able to improve the effectiveness and results of the core CWA, CAA and RCRA enforcement programs and to communicate a national picture of compliance and enforcement programs across the country. However, because this information likely will be available to the public via the Freedom of Information Act, external entities may perform their own analyses and interpretation of this information. Generally, documenting the findings of these reviews via the following steps can help to report results in a way that does not encourage the ranking of performance:

- 1) Each region will prepare a report on the findings from each state review (or HQ for regional direct implementation programs) according to the documentation protocol included in the Implementation Guidance. The region and state will jointly review the findings and conclusions of each review before they are reported to HQ. Where local agencies are involved in the review, they should also be a part of the report review process.
- 2) Regions may develop a narrative report, supported with quantitative results where appropriate, about findings across states from a regional perspective. This would not report state-specific findings but would consolidate findings to the regional level.
- 3) Reports will be shared with EPA Headquarters who will assess the reviews nationally and create a national narrative, with quantitative results where appropriate, about the performance of the national program. This would not report regional or state specific

- findings but would consolidate findings at the national level.
- 4) Other than for internal regional or state oversight resource allocation purposes, no rankings or scorecards should be associated with review conclusions.
 - 5) EPA and states (and locals where appropriate) should jointly communicate the results on a local and national basis. This should provide an opportunity for EPA and states to speak with one voice and to mitigate against unintended comparisons.

Integration and Coordination with Existing Agreements and Evaluations

The Framework reviews will be integrated into the NEPPS and other planning mechanisms. In fact, the April 15, 2004 affirmation of support for the NEPPS partnership between EPA and ECOS states that “PPAs will be more valuable in defining the State -EPA relationship and the work to be accomplished by including these recommended essential elements: 1) A description of environmental conditions, priorities and strategies; 2) Performance measures for evaluating environmental progress; 3) A process to jointly evaluate how well the PPA is working; 4) A structure and process for mutual accountability; and 5) A description of how the priorities align with those in EPA’s Strategic Plan, EPA Regional Plan, and/or the State’s own strategic priorities and initiatives (optional).” This review is compatible with this vision of PPAs and can serve as a vehicle to measure and evaluate the compliance and enforcement components of these agreements.

The implementation of these state reviews and associated improvement plans should be synchronized with and integrated into existing and future PPAs, PPGs, and/or categorical grant work plans. These agreements should become the primary mechanism by which the Framework reviews are planned and scheduled, as well as where program improvements are documented and implemented. This review process has been built into EPA’s FY2005 to 2007 National Program Guidance, and progress in implementing the reviews is being tracked in the Annual Commitment System (ACS). The ACS also tracks the number of recommendations for program improvements arising from the reviews. In the future, some measure of the value of the program improvements may be appropriate to include instead of just a count.

The State Review Framework should continue to be reflected as **the** tool to evaluate adequate state performance in the CWA, CAA and RCRA compliance and enforcement program. Other compliance and enforcement reviews, if they cover the same information, may be utilized to gather or report this information. If existing reviews do not cover the information in this review, then this review framework will prevail. This is not intended to negate or change EPA’s responsibilities to oversee state grants in accordance with applicable regulations, orders and guidance. It is meant to ensure consistency in the information used to manage the compliance and enforcement program. Where grant reviews look at this information on a more frequent basis, this information should get integrated into the next Framework review to avoid duplication of effort. How grant reviews and Framework reviews fit together should be the subject of discussion between regions and states during the annual planning process.

Every effort will be made to align this Framework with other known national program reviews with enforcement metrics. OECA has met with the other National Media Program Managers to

discuss these reviews and learn about and coordinate any plans for other media reviews. The Framework will be designed to reduce burden to the regions and states to the extent possible. The Implementation Guidance will direct reviewers to evaluate what other assessments may have occurred in these areas within a 2-year window, and to determine whether the data from those other reviews can be utilized before collecting additional information. Information from other reviews may be utilized in this review, as long as it can be clearly identified in a manner compatible with that described in the Documentation Protocol.

Implementing the Framework

Beginning in July 2005, building upon the completion and assessment of the pilots, OECA will work with states and regions to complete assessments of all states by the end of fiscal year 2007. Training for the next round of states will be held at the end of June 2005. Training will be available periodically for states being reviewed for the first time to ensure that all who participate understand the tone, philosophy and materials of the review.

A tracking system will be developed to monitor the timing and frequency of each state review over time, as the timing and frequency of reviews will be determined by state performance. Regions may conduct the reviews as often as they deem necessary but states with adequate performance may negotiate a schedule up to three years. After all states have been reviewed, a second evaluation phase will be conducted to collect new lessons and foster continuous improvement.

As mentioned above, OECA HQ will review all review reports for consistency purposes and will track recommendations to ensure successful conclusion. Communication materials will be shared on a periodic basis in order for all participants to keep abreast of program progress and updates. As issues arise and get addressed, it may be necessary to modify Framework documents or metrics. ECOS and EPA will deal with these issues jointly to ensure that both remain committed to the implementation of the Framework reviews.

The key to the success of the State Review Framework process is communication. It is essential for regions and states to spend time early in the process to ensure everyone involved understands the philosophy and purpose of the review. Where regions have utilized other methods to review states, it is important to distinguish between the former systems of review and this Framework. Communications need to be explicit within regions and states, with management clearly articulating expectations around how it will be conducted and involved enough to ensure the review is done consistently across media and across states.

The initiation of the review for the remaining states in July will not mark the end of the development process. Ongoing work remains to be addressed which may lead to inclusion in the Framework of additional documents or the modification of existing guidance. Some of these areas include the development of OTIS management reports to support regional and state data pulls; exploration of how to value submissions under Element 13; summarizing best practices derived from the pilots and other reviews as they occur; and analyzing reviews for necessary policy or other HQ or regional follow-up. EPA, ECOS and the state media associations

(ASIWPCA, ASTSWMO and STAPPA/ALAPCO) will continue to collaborate as full partners on these and any other issues that may arise in the implementation of the State Review Framework.

**U.S. EPA-REGION 8 – SOLID AND HAZARDOUS WASTE
AND RCRA TECHNICAL ENFORCEMENT PROGRAMS
OVERSIGHT OF STATE HAZARDOUS WASTE PROGRAMS**

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U.S. EPA-REGION 8 – SOLID AND HAZARDOUS WASTE AND RCRA TECHNICAL ENFORCEMENT PROGRAMS OVERSIGHT OF STATE HAZARDOUS WASTE PROGRAMS

INTRODUCTION

This document and the accompanying table present Performance Standards for EPA Region 8 states in the administration of Hazardous Waste Programs under the Resource Conservation and Recovery Act (RCRA), and Oversight procedures generally used by EPA Region 8. In its oversight role, EPA is responsible for assuring that the administration of authorized programs meets the standards set forth in law, regulation and authorization documents, and verifying that the annual federal grants to the states are spent responsibly. This narrative and the attached table were developed by the Region 8 Solid and Hazardous Waste Program in consultation with the six Region 8 states (Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming), the Office of Regional Counsel, the RCRA Technical Enforcement Program, and the Legal Enforcement Program.

PURPOSE OF OVERSIGHT OF STATE HAZARDOUS WASTE PROGRAMS

EPA conducts oversight (OS) of state hazardous waste programs for two primary reasons:

1. to document to Congress or other oversight authorities that state administration of authorized programs meets the standards set forth in law, regulation and authorization documents; and
2. to verify that the annual Federal grants to the states are spent responsibly.

EPA's oversight responsibilities are documented in the law and regulations for the RCRA program.

DEFINITION AND SCOPE OF OVERSIGHT FOR THE RCRA PROGRAM

Region 8 oversight of state hazardous waste programs is defined narrowly as EPA's evaluation of state performance, i.e., how well the state is meeting its statutory responsibilities to develop and implement an authorized program under RCRA.

1. *What OS Includes:* Oversight includes a range of techniques, by or through which EPA evaluates state performance, such as review of state program plans and strategies, review of targets and accomplishments in data bases, review of facility files, and discussions or meetings with states on the results of those reviews. The

focus of these Oversight activities is on state performance and the results that the state achieves.

2. *What OS does not include:* Because of its emphasis on state performance, OS does not include the following EPA activities: Program Development, Direction, Planning and Management activities (e.g. annual joint planning, new initiatives that are not part of the authorized program); Program Implementation; or Program and Technical Assistance. A more comprehensive discussion of these activities and their relationship to OS is presented in the document titled “State-EPA Roles & Relationships.”

PRINCIPLES, ATTRIBUTES OF OVERSIGHT

EPA has established several principles or attributes to guide OS of state hazardous waste programs. Among these principles are:

1. *Oversight responsibility and authority.* While the states are the primary implementers of the RCRA program pursuant to the statute, both the states and EPA recognize that EPA has a statutory, regulatory and fiduciary responsibility to monitor state performance.
2. *Differential Oversight.* EPA believes the OS function should generally be based on differential principles, i.e., the level of OS is inversely proportionate to the level of performance. States that meet or exceed program performance standards should generally be subject to a minimal or base level of OS that is expected to be sufficient to detect significant problems in a state’s performance. Greater (elevated) levels of OS may then be reserved for situations where program standards are not being met or where performance levels are decreasing significantly. Allocating OS resources in this manner may allow EPA resources to be directed toward other functions such as program and technical assistance and may relieve states with good performance records of unnecessary oversight.
3. *Consistent Performance Standards.* Oversight is based on a consistently applied set of performance standards. Those standards are derived from statute, regulation and policy for the national RCRA program.
4. *Flexibility.* EPA expects to exercise flexibility in applying performance standards and OS levels when addressing unique issues or universes in the R8 states.
5. *Oversight for mature programs is generally representative, not comprehensive.* In Region 8, most state programs have many years of experience administering the RCRA program. EPA’s oversight of these programs is generally designed to determine the adequacy of state performance by sampling activities representatively in order to detect and correct patterns of performance problems.

EPA believes oversight generally should focus greater emphasis on the program as a whole and its results than on the individual activities and details that may or may not produce those results.

EPA's oversight is not designed to comprehensively review all or most state actions to correct all specific problems in all situations. EPA believes this would be a duplicative and inefficient use of limited resources.

6. *Efficiency, Workload.* EPA will generally conduct oversight of the states in a manner that designed to minimize the impact on resources and workload for the states. EPA generally will use the following order for reviewing state performance:
 - a. Review of data from RCRAInfo and other national data bases.
 - b. Review of documents contained within state files, particularly the administrative record for individual facilities.
 - c. Interviews or meetings with staff generally should be used only when the first two approaches are not sufficient or appropriate to obtain the needed information.
7. EPA's understanding of state performance levels is often supplemented by EPA's participation in non-OS activities, such as Program Development or PTAT. However, these activities are not part of Region 8's OS of state hazardous waste programs.

OVERSIGHT APPROACHES, TECHNIQUES

OS will usually consist of a variety of evaluation techniques including the following:

1. Review of state program plans and strategies;
2. Tracking targets and accomplishments in RCRAInfo, StATS or other data systems;
3. Review of facility files and documents (generally at the state office);
4. Facility oversight inspections and other "field" reviews;
5. Reviews of environmental and program data quality;
6. Discussions/meetings with states;
7. Review of state self-assessment; and
8. Conduct of Capability Assessment process defined in EPA policy guidance.

Most of these oversight techniques are exercised after-the-fact, while some can be exercised in real-time (while or shortly after the activity being monitored occurs):

1. After-the-fact approaches such as review of data bases or facility related documents are most applicable for review of discrete actions such as inspection reports, final permits, closure plans, and corrective action assessments. These reviews are also usually less obtrusive than real-time reviews.
2. Real-time oversight may be more appropriate in situations where long-term activities such as corrective action or issuance of permits may not have major milestones that can be reviewed after-the-fact during that year.

These oversight procedures and techniques are listed in the attached table (Program Standards and Oversight) with the criteria for which they will generally be used by EPA. More specifically, Column 2 of the table presents the measurement procedures and technique(s) that may be used for each of the program criteria being evaluated, while Column 3 present the frequency, timing, and/or sample size for the base and elevated levels of oversight discussed above.

STATE ROLE IN OVERSIGHT

The state participates in the oversight process primarily by the following:

1. Work with EPA to develop and review annual targets that are included in the Performance Partnership Agreements (PPA).
2. Maintaining all required data in the national data base (RCRAInfo), and providing other mandatory data (StATS, etc.).
3. Periodically reporting to EPA on progress achieving toward agreed upon activities and results, particularly in the annual EOY self-assessment.
4. Providing EPA with access to all files and any other documents needed to evaluate state performance.
5. If necessary, meeting with EPA to provide additional insight into state actions and decisions, and to develop follow up plans to address any identified deficiencies.
6. Reviewing and providing input on EPA's Annual Oversight Plan.

ANNUAL OVERSIGHT PLAN

Prior to the start of each state-federal planning year, and in concert with the development of the State-EPA Performance Partnership Agreement (PPA), EPA, in consultation with each state, will develop an Oversight Plan for each state. In that plan, EPA will identify the specific oversight approaches and techniques that it intends to use to conduct oversight in each state, and the schedule for those activities. When appropriate (particularly if real-time oversight is a selected technique), the plan may address the specific facilities that will be subject to oversight. This plan will be incorporated into the state's Performance Partnership Agreement with EPA.

The basic elements of EPA's oversight that will be incorporated into the annual oversight plan are listed above, and in columns 2 and 3 of the attached table (Program Standards and Oversight). The plan will incorporate oversight findings and any recommendations for oversight and corrective action that might be different from the previous year's EOY review and report.

When developing the plan, EPA and each state would discuss which procedures are most appropriate for the state, its facilities, and the various program areas. This could include both after-the-fact and real-time oversight procedures.

1. EPA generally should select both after-the-fact and real-time activities for OS in a manner that is representative and random.
2. The plan may address any needed interviews with state staff or management.
3. For certain measures in the attached standards and oversight table, the numbers of activities and facilities to be reviewed during a given year may be at either the base level (10%), or an elevated level if performance indicates. At the base level, EPA will generally review 10% of the completed activities for GPRA facilities for the year. The universe of activities subject to review will include both projected and unplanned accomplishments. EPA will select the activities for review and the scope of the review will include the entire course of work to achieve the activity.
4. If real-time oversight is selected for some activities or facilities:
 - EPA and the State would (with the exception of the review of enforcement actions) make every effort to agree upon the specific facilities and activities that would be subject to real-time OS for the year.
 - EPA and the State would make every effort to agree upon the EPA staff that would perform the OS.
 - Once the selections are made, EPA's real-time OS for that year would be limited to the designated facilities unless a significant short-term further need

for EPA staff to monitor activities at other facilities for the purpose of OS is identified during the course of that year and communicated to the state.

- While nothing may restrict EPA's OS authority, it is generally EPA's intention that EPA real-time oversight at other facilities would generally be subject to invitation by the states under PTAT, or for other programmatic reasons such as citizen request or environmental justice concerns.
- EPA may identify its real-time OS information needs in the annual plan for the facility and activity to be reviewed, including timing for the information, form and frequency of communication, and whether or not EPA needs to become involved in more routine activities during the course of the year (e.g., meetings, conference calls, site visits, etc...)

OVERSIGHT SCHEDULE, COORDINATION

EPA may conduct OS at any time of year, but most oversight occurs during the End-of-Year (EOY) program review at the end of the state/federal fiscal year. The end of year (EOY) review process is conducted by the Solid & Hazardous Waste Program in concert with the annual review conducted by Technical Enforcement Program. The EOY review is conducted both to assure that the administration of authorized programs meets the standards set forth in law, regulation and authorization documents, and to verify that the annual federal grants to the states are spent responsibly. In conducting OS of state hazardous waste programs, Region 8 OS will usually analyze whether the state has met the commitments in its PPA.

ANNUAL END OF YEAR OVERSIGHT REPORT

The key document in the EOY oversight process is the annual EOY report prepared by EPA. This report is prepared jointly by the Solid & Hazardous Waste Program and the Technical Enforcement Program. This report includes key findings, conclusions and recommendations from all elements of the RCRA program, and consolidates the results of oversight activities throughout the year. The report is organized around the key elements of the RCRA program: Waste Minimization-Pollution Prevention, Safe Waste Management, Corrective Action, Compliance Monitoring and Enforcement, and Program Management.

In most cases, the state either prepares its own self-assessment prior to the EPA EOY report or participates in the drafting of the EPA EOY report. All states have an opportunity to review a draft of the EPA or joint report. There is often a meeting between EPA and state to present and discuss the draft EOY report.

Once finalized by EPA staff (and state staff when appropriate), the EOY report will be elevated through the EPA management chain to be signed by the Directors of the Solid & Hazardous Waste Program and the Technical Enforcement Program. In the case of a report developed jointly with a state, the state program director will also sign the report.

In some cases, the Technical Enforcement Program may provide additional detail to the findings and conclusions in the EOY report through their Uniform Enforcement Oversight System (UEOS) process. The full UEOS report would likely be produced after completion of the annual EOY report described above. However, when possible, the UEOS report will be incorporated into the EOY report.

DISPUTE RESOLUTION

EPA and the states are developing a process to resolve differences of opinion that may arise on oversight findings and conclusions, particularly when the statute and regulations do not address a subject directly and there is a difference in professional judgment. EPA expects to focus OS analysis on outcomes more often than on approaches or processes taken to achieve the results.

KEY ELEMENTS OF OVERSIGHT

Pursuant to the EPA-Region 8 order on Oversight of State and Tribal Performance, these procedures address the following key elements:

- 1) Coordination of program assessment schedules and reviews between the various elements of a program: *see Oversight Schedule, Coordination.*
- 2) End-of-year grant reviews, including incorporation of assessment findings: *see Oversight Schedule, Coordination.*
- 3) Frequency of reviews and assessments: *see attached Table, Column 3.*
- 4) Notification of organization being reviewed: *see Annual Oversight Plan.*
- 5) Review of files and documents: *see attached Table, Column 3.*
- 6) When and how interviews of state and tribal staff and managers will occur: *see Annual Oversight Plan.*
- 7) Bases for determining whether an action is a required or recommended action: *see attached Table, Columns 2 and 3.*
- 8) Unified EPA presentation of findings, both verbal and written: *see Annual Oversight Report.*
- 9) Follow up with the organization reviewed: *see Annual Oversight Plan.*
- 10) Required chain-of-command concurrences for various reports, required actions, and oversight decisions: *see Annual Oversight Report.*
- 11) The method for incorporating long-term required actions into grant work plans or other Agreements: *see Annual Oversight Plan.*

REFERENCES

1. **National Criteria for a Quality Hazardous Waste Management Program under RCRA** (OSWER Policy Directive 9545.00-1), revised June 1986.
2. **RCRA Program Evaluation Guide** (OSWER Directive 9545.00-6), July 1988.
3. **RCRA State Authorization Capability Assessment Guidance**, October, 1991.

4. **Memorandum Of Agreement** - The MOA is the document that presents the respective roles and responsibilities of EPA and the authorized state in implementing and overseeing the HWP, and the procedures for coordination and information sharing. The MOA is developed as part of the authorization process, and is reviewed annually for potential revision.

5. **Policy, Guidance, and Standard Operating Procedure for Oversight of Region VIII State Hazardous Waste Compliance Monitoring and Enforcement Programs - 1993** - This document is a Standard Operating Procedure on how EPA and the six Region 8 states operate in the area of oversight of state authorized hazardous waste programs. The focus is on the compliance monitoring and enforcement components of the hazardous waste program. It includes policy statements, selects program criteria subject to oversight, defines performance levels for those criteria and designates corresponding oversight levels and procedures.

6. **RCRA Corrective Action Oversight Procedures - 2004** - This document provides an outline for a thorough review and evaluation of state regulatory and policy issues, programmatic issues, personnel issues, and technical and site specific issues. It also provides an outline and questionnaire for a facility by facility performance evaluation looking at all aspects of the program.

7. **EPA Region 8 Uniform Enforcement Oversight System (UEOS) Evaluation Criteria and Interpretive Legend for the Resource Conservation and Recovery Act (RCRA Compliance and Enforcement Program, March 16, 2004.**

Criteria	Performance Standards	Oversight
<i>Program Element 1: Pollution Prevention, Hazardous Waste Minimization</i>		
<p>1.1 Criterion: <i>Hazardous Waste Minimization and Pollution Prevention (P2) Activities</i> - Degree of participation in the Resource Conservation Challenge and other Waste Minimization or P2 activities as documented in the Performance Partnership Agreement (PPA).</p> <p>Source: EPA NPM Guidance</p>	<p>Program Standard: The state meets or exceeds HW Minimization targets in the PPA and demonstrates a commitment to waste minimization and P2 goals.</p> <p>Measured by: Review of state waste minimization/P2 activities; review of state self-assessment; meetings, discussions with state.</p>	<p>Current: EPA reviews TRI/BRS data, mostly to provide assistance to the states; discusses activity targets and accomplishments with state during Midyear (MY), End of year (EOY) meetings.</p> <p>Base Level: Review of PPA targets, accomplishments.</p> <p>Elevated: NA</p>
<i>Program Element 2A: Safe Waste Management – Closure</i>		
<p>2.1 Criterion: <i>Progress toward Closure Plan Approvals and Closure Verifications</i>. Degree to which the state achieves progress at closing hazardous waste management units, and the degree to which closing units have approved closure plans and closure has been verified by the state.</p> <p>Source: Regulatory cite for closure, reference to 271; National Quality Criteria for HW Programs.</p>	<p>Program Standard: The state has a multi-year closure strategy. The strategy accounts for all subject facilities and units, with a focus on work to be accomplished and a schedule for accomplishing major activities (plan approvals, closure verification). Actual closure activities are consistent with that strategy. The state takes all actions needed to assure continued progress. The state meets or exceeds closure targets in the PPA, and progresses toward closure completion at all units.</p> <p>Measured by: Review of RCRAInfo data; review of state closure strategy and program; review of state self-assessment; meetings, discussions with state; file reviews.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, discusses closure targets and accomplishments with state during MY, EOY meetings.</p> <p>Elevated: Same as base level (<i>sufficient to document accomplishment of targets</i>).</p>

Criteria	Performance Standards	Oversight
<p>2.2 Criterion: <i>Quality of Closure Plans and Verifications.</i> Degree to which approved closure plans address closure standards.</p> <p>Source: Regulatory cite for closure, reference to 271; National Quality Criteria for HW Programs.</p>	<p>Program Standard: Closure plans and verifications adequately address: clarity of owner/operator requirements to ensure enforceability and compliance schedules; detailed cleanup levels and mechanisms for measuring achievement of closure performance standards; soil and ground-water monitoring requirements; cost estimates and financial assurance instruments to assure they accurately reflect closure costs and are sufficient to cover cost estimates; public participation requirements; coordination with corrective action; oversight of the closure process. State demonstrates actions to enforce compliance.</p> <p>Measured by: Review of closure files, documents; review of state self-assessment; meetings and discussions with state.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, conducts file reviews and/or staff interviews for 10% (or one, whichever is greater) of closure plans approved and closures verified in the FY.</p> <p>Elevated: Base Level oversight plus increased focus on deficiencies identified in previous year, and follow-up with an emphasis on correcting noted deficiencies.</p>

Criteria	Performance Standards	Oversight
<i>Program Element 2B: Safe Waste Management – Post Closure</i>		
<p>2.3 Criterion: <i>Progress toward Controls for Post-Closure Facilities.</i> Measures the state’s success in achieving progress towards having approved controls in place for Post-Closure Units and Facilities.</p> <p>Source: Regulatory cite for post-closure, reference to 271; National Quality Criteria for HW Programs.</p>	<p>Program Standard: The state has a multi-year PC permits strategy. The strategy accounts for all subject facilities and units, with a focus on work to be accomplished and a schedule for accomplishing major activities (post-closure controls in place). Actual PC controls are consistent with that strategy. The state takes all actions needed and uses full range of regulatory powers to assure adequate PC care. The state routinely meets or exceeds post-closure targets in the PPA and demonstrates steady progress towards having controls in place for all units and facilities in Baseline Universe.</p> <p>Measured by: Review of state Post-Closure strategy; review of RCRAInfo data; review of state self-assessment; meetings, discussions with state and file reviews.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, discusses PC targets and accomplishments with state during MY, EOY meetings.</p> <p>Elevated: Same as base level. (<i>sufficient to document accomplishment of targets</i>)</p>

Criteria	Performance Standards	Oversight
<p>2.4 Criterion: <i>Quality of Post-Closure instruments.</i> Measures the degree to which the post-closure control instruments (e.g., permits, orders, etc.) achieve post-closure goals.</p> <p>Source: Regulatory cite for post-closure, reference to 271; National Quality Criteria for HW Programs.</p>	<p>Program Standard: Post-closure instruments (Permits, orders, etc.) achieve post-closure goals and address: clarity of owner/operator requirements to ensure enforceability and compliance schedules; cleanup levels in adequate detail and mechanisms for measuring achievement of post-closure performance standards; soil and ground-water monitoring requirements; review of cost estimates and financial assurance instruments to assure they accurately reflect post-closure costs and are sufficient to cover cost estimates; public participation requirements are met. State demonstrates actions to enforce compliance.</p> <p>Measured by: Review of post-closure files, documents. Review of state self-assessment; discussions with state.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, conducts file reviews and/or staff interviews for 10% (or one, whichever is greater) of post-closure instruments placed in the Fiscal Year (FY).</p> <p>Elevated: Base Level oversight plus increased focus on deficiencies identified in previous year, and follow-up with an emphasis on correcting noted deficiencies.</p>

Criteria	Performance Standards	Oversight
<i>Program Element 2C: Safe Waste Management – Operating Permits</i>		
<p>2.5 Criterion: <i>Progress toward Controls for Operating Facilities.</i> Measures the state’s success in achieving progress towards having approved operating permits in place for operating units and facilities.</p> <p>Source: Statutory, regulatory cites for operating permits, reference to 271; National Quality Criteria for HW Programs.</p>	<p>Program Standard: The state has a multi-year Operating Permits strategy. The strategy accounts for all subject facilities and units, with a focus on work to be accomplished and a schedule for accomplishing major activities (operating controls in place, permit renewals). Actual permits are issued consistent with that strategy. The state routinely meets or exceeds operating permit targets in the PPA and demonstrates steady progress towards having controls in place for all units and facilities in Baseline Universe. The state takes all actions needed and uses full range of regulatory powers to assure continued progress (60-day limit after NODs). Internal decision schedules are established and tracked for key steps (receipt of application; public notice of draft permit; and final decision on the permit). Permits expirations are tracked and permits are renewed in a timely manner.</p> <p>Measured by: Review of state Operating Permits strategy; review of RCRAInfo data; review of state self-assessment; meetings and discussions with state.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, discusses Operating Permit targets and accomplishments with state during MY, EOY meetings.</p> <p>Elevated: Same as base level (<i>sufficient to document accomplishment of targets</i>).</p>

Criteria	Performance Standards	Oversight
<p>2.6 Criterion: <i>Quality of Operating Permits</i>. Measures the degree to which the operating permits achieve program safe waste management goals.</p> <p>Source: Regulatory cite for post-closure, reference to 271; National Quality Criteria for HW Programs.</p>	<p>Program Standard: Permit conditions are consistent with the authorized state program and the intent of the regulations regarding level of control, containment, cleanup or protection. Permit conditions are clear, understandable and enforceable. Proper documentation and an administrative record are maintained. Clear and full requirements for facility monitoring, reporting, inspections and analyses after permit issuance. Public participation requirements are met.</p> <p>Measured by: Review of operating permits, files, documents; review of the state self-assessment; and discussions with the state.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, conducts file reviews and/or staff interviews for 10% (or one, whichever is greater) of operating permits issued in the fiscal year.</p> <p>Elevated: Base Level oversight plus increased focus on deficiencies identified in previous year, and follow-up with an emphasis on correcting noted deficiencies.</p>

Criteria	Performance Standards	Oversight
Program Element 3A: Corrective Action – RCRA Facility Assessments		
<p>3.1 Criterion: <i>Completion of RCRA Facility Assessments (RFAs).</i> Measures the state’s progress in approving RFAs.</p> <p>Source: Various policy documents including the May 1994 OSWER Directive 9902.3-2A (RCRA Corrective Action Plan)</p>	<p>Program Standard: The state meets or exceeds the targets established in current PPA work plan and has approved RFAs for all sites. RFAs for newly identified sites are completed in a timely manner. RFAs have been completed. Additional RFAs will only be needed under exceptional cases such as the discovery of an illegally operating facility.</p> <p>Measured by: Review of RCRAInfo data, and file reviews.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings. RFAs have been completed for all high-priority Corrective Action facilities.</p> <p>Base Level: Same as current</p> <p>Elevated: EPA provides more frequent review of accomplishments in RCRAInfo and provides more discussion with states.</p>
<p>3.2 Criterion: <i>Quality of Corrective Action Assessments (RFAs).</i> Measures the quality of the assessments approved by the state.</p> <p>Source: Various policy documents including the May 1994 OSWER Directive 9902.3-2A (RCRA Corrective Action Plan)</p>	<p>Program Standard: The state-approved RFAs examine all relevant information. RFAs identify and evaluate all SWMUs and all known/likely release areas. RFAs are conducted in accordance with relevant guidance.</p> <p>Measured by: Review of RCRAInfo data, file reviews, facility visits, interviews with state staff and management, lab audits, public meeting attendance, meetings with facility owners and stakeholders.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings. RFAs have been completed for all high-priority Corrective Action facilities.</p> <p>Base Level: EPA oversights 10% (or one, whichever is greater) of assessments completed in accordance with current year PPA work plan.</p> <p>Elevated: EPA works with states to address problems. EPA oversights an increased number of assessments underway or completed.</p>

Criteria	Performance Standards	Oversight
Program Element 3B: Corrective Action – Investigations		
<p>3.3 Criterion: <i>Completion of Investigations</i> – Measures the state’s progress in moving sites towards completion of investigation.</p> <p>Source: Various policy documents including the May 1994 OSWER Directive 9902.3-2A (RCRA Corrective Action Plan)</p>	<p>Program Standard: The state meets the targets established in current year PPA work plan. The state takes all actions needed to assure continued progress. The state completes timely reviews, and directs the regulated facilities to provide timely work on priority projects.</p> <p>Measured by: Review of RCRAInfo data; file reviews; meetings with state personnel; discussions with state project managers.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: Same as current</p> <p>Elevated: EPA provides more frequent review of accomplishments in RCRAInfo and provides more discussion with states.</p>

Criteria	Performance Standards	Oversight
<p>3.4 Criterion: <i>Quality of Investigations</i> – The degree to which the state reviews, comments on, and approves investigative work plans and reports, and gives direction to regulated facilities to ensure that investigations are adequate.</p> <p>Source: Various policy documents including the May 1994 OSWER Directive 9902.3-2A (RCRA Corrective Action Plan)</p>	<p>Program Standard: Investigations meet or exceed the following:</p> <ul style="list-style-type: none"> • Define the full nature and extent of contaminant migration • Utilize effective QA/QC elements for all environmental data • Adequately support any subsequent cleanup decisions • Support risk assessments which address all exposure pathways • Support EI determinations • Include relevant information from Interim Measures to guide future activities. <p>Measured by: Review of RCRAInfo data, file reviews, facility visits, interviews with state staff and management, lab audits, attendance at public meetings and meetings with facility owners and/or other stakeholders, most often as scheduled by the state, or as requested by the stakeholder(s).</p>	<p>Current: EPA reviews RCRAInfo data, facility documents, discusses facility investigation issues with state during periodic meetings, calls.</p> <p>Base Level: EPA oversights 10% (or one, whichever is greater) of investigations completed in accordance with current year PPA work plan</p> <p>Elevated: EPA works with states to address problems. EPA conducts more thorough and critical file review. EPA oversights an increased number of investigations underway or completed.</p>
<p>Program Element 3C: Corrective Action – Remediation/Cleanup</p>		
<p>3.5 Criterion: <i>Completion of Cleanup.</i> Measures the state’s progress in completing interim measures, remediation and cleanup activities.</p> <p>Source: May 1994 OSWER Directive 9902.3-2A (RCRA Corrective Action Plan)</p>	<p>Program Standard: The state meets or exceeds the targets identified in the current year PPA work plan. State achieves progress toward completion of remedy selection, design, and implementation of remedies, including interim measure. The state completes timely reviews, and directs regulated facilities to provide timely work on priority projects.</p> <p>Measured by: Review of RCRAInfo data, file reviews, interviews with state staff.</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings.</p> <p>Base Level: Same as current.</p> <p>Elevated: EPA provides more frequent review of accomplishments in RCRAInfo and provides more discussion with states.</p>

Criteria	Performance Standards	Oversight
<p>3.6 Criterion: <i>Quality of Cleanup and Remediation.</i> State reviews, comments on, and approves interim measures and cleanup activities, and gives direction to regulated facilities to ensure that cleanup is adequate.</p> <p>Source: May 1994 OSWER Directive 9902.3-2A (RCRA Corrective Action Plan)</p>	<p>Program Standard: The state completes technical reviews with specialized experience in all relevant areas. State gives direction to regulated facilities to ensure that the selected remedy is technically sound, and addresses all exposure pathways. State remedy decisions provide a realistic evaluation of all selection factors. The state applies innovative approaches where appropriate.</p> <p>Measured by: Review of RCRAInfo data, file reviews, facility visits, interviews with state staff and management, lab audits, attendance at public meetings and meetings with facility owners and/or other stakeholders, most often as scheduled by the state, or as requested by the stakeholder(s).</p>	<p>Current: Minimal. Site-by-site discussions between EPA and state project managers, limited discussion at mid-year and end-of-year meetings.</p> <p>Base Level: EPA overlooks 10% (or one, whichever is greater) of cleanup activities completed in accordance with current year PPA work plan.</p> <p>Elevated: EPA works with state to correct problems. EPA overlooks an increased number of cleanup activities underway or completed.</p>
<p>Program Element 3D: Corrective Action – Environmental Indicators/National Program Measures</p>		
<p>3.7 Criterion: <i>Progress in Achieving Environmental Indicators</i> - The degree to which the state has met or is on track to meet the national GPRA goals, including the current Environmental Indicator Goals and performance measures.</p> <p>Source: Interim Final Guidance on Environmental Indicators, EPA’s Strategic Plan</p>	<p>Program Standard: The state is on track to meet the national GPRA goals or has already met those goals. The state is keeping pace with the annual (incremental) targets for GPRA goals, including the current 2008 Environmental Indicator goals and performance measures. The state meets or exceeds the targets identified in annual work plans.</p> <p>Measured by: Review of RCRAInfo data, file reviews, review of the EI instruments, meetings with state personnel</p>	<p>Current: EPA reviews RCRAInfo data, discusses targets/accomplishments with state during MY, EOY meetings and periodic phone calls.</p> <p>Base Level: Same</p> <p>Elevated: Increased level of meetings and discussions with state regarding GPRA goals and performance measures</p>

Criteria	Performance Standards	Oversight
<i>Program Element 4A: Compliance Monitoring & Enforcement – Inspections</i>		
<p>4.1 Criterion: <i>Inspection Coverage.</i> The degree to which the universe of planned inspections (covering core requirements and federal, state, and regional priorities) is completed.</p> <p>Source: PPA, MOA, OECA National Program Guidance, 42 U.S.C. § 6927(c).</p>	<p>Program Standard: The state’s compliance monitoring is timely and effective. The universe of planned inspections is completed by September 30. The state submits an annual inspection plan by November 30. The state meets core program requirements, and completes other targeted/planned inspections (e.g., federal, state and/or regional priorities).</p> <p>Measured by: Review of RCRAInfo data; review of annual inspection plans and state end-of-year reports.</p>	<p>Current: See Base Level and Elevated Level.</p> <p>Base Level: May include: file reviews of 10%, or a minimum of 10, oversight inspections, review of accomplishments, meetings/phone calls with state staff and managers, feedback on work products.</p> <p>Elevated: Elevated/Targeted/Enhanced activities. May include: file reviews, 25% oversight inspections, review of accomplishments, meetings/phone calls with state staff and managers, feedback on work products</p>
<p>4.2 Criterion: <i>Quality of Inspection reports.</i> Reports document inspection findings, including accurate identification of violations.</p> <p>Source: OSWER</p>	<p>Program Standard: The state reports document inspection findings and describe apparent violations. Copies of reports are provided to EPA on a quarterly basis.</p> <p>Measured by: Review files (inspection reports and correspondence), review OSWER Directive 9938.</p>	<p>See Oversight description for Criterion 4.1</p>

Criteria	Performance Standards	Oversight
<p>4.3 Criterion: <i>Timely Inspection Reports.</i> Inspection reports are completed in a timely manner, including timely identification of violations.</p> <p>Source: MOA, EPA/State Enforcement Agreement, ERP.</p>	<p>Program Standard: State reports are completed within 45 days; violations are identified within 180 days.</p> <p>Measured by: Review inspection reports and enforcement actions; MOA is reviewed; EPA/State Enforcement Agreement is reviewed and revised; review ERP.</p>	<p>See Oversight description for Criterion 4.1</p>
<p>Program Element 4B: Compliance Monitoring & Enforcement - Enforcement Activity</p>		
<p>4.4 Criterion: <i>Timeliness of Enforcement Actions</i> – degree to which actions are taken in a timely manner.</p> <p>Source: PPA, MOA, ERP, State Penalty Policy, EPA/State Enforcement Agreement</p>	<p>Program Standard: State enforcement actions are completed within 180 days (Warning Letter, Notice of Violation, NOV/Compliance Order) and/or 300 days (final settlement of Stipulation and Consent Order) from the inspection date or record review.</p> <p>Measured by: Review enforcement actions; review of state/federal penalty policies; review of RCRAInfo. Data; review EPA/State Enforcement Agreement.</p>	<p>See Oversight description for Criterion 4.1</p>
<p>4.5 Criterion: <i>Appropriateness of Enforcement Actions</i> – the degree to which actions are appropriate to the violations.</p> <p>Source: ERP, PPA, MOA, State Penalty Policy, EPA/State Enforcement Agreement</p>	<p>Program Standard: State enforcement actions are appropriate and consistent with federal/state penalty policies and guidance(s).</p> <p>Measured by: Review state files (enforcement actions and follow-up correspondence); review federal/state penalty policies; review of RCRAInfo data; review EPA/State Enforcement Agreement.</p>	<p>See Oversight description for Criterion 4.1</p>

Criteria	Performance Standards	Oversight
<p>4.6 Criterion: <i>Appropriate Injunctive Relief</i> – The degree to which State enforcement actions include appropriate injunctive relief that will return facilities to compliance in a specific time frame.</p> <p>Source: ERP, MOA, OECA National Program Guidance, PPA</p>	<p>Program Standard: The state’s enforcement actions return facilities to compliance with State Hazardous Waste Management Rule requirements. Return-to-compliance tasks are completed within 240 days from the inspection date or record review. The state’s enforcement actions maintain a high level of compliance within the regulated community.</p> <p>Measured by: Review state enforcement actions; review federal/state penalty policies; review of RCRAInfo data.</p>	<p>See Oversight description for Criterion 4.1</p>
<p>4.7 Criterion: <i>Penalty Calculations</i> - The degree to which gravity and economic benefit calculations are included for all penalties, as appropriate.</p> <p>Source: State Penalty Policy, LPA</p>	<p>Program Standard: The state is appropriately classifying violations and calculating penalties (with appropriate gravity and economic benefit calculations).</p> <p>Measured by: Review inspection reports and penalty enforcement action calculations; review of federal/state penalty policies and PPA.</p>	<p>See Oversight description for Criterion 4.1</p>
<p>4.8 Criterion: <i>Appropriate Penalties Collected</i> – The degree to which final enforcement actions collect appropriate economic benefit and gravity portions of a penalty.</p> <p>Source: ERP</p>	<p>Program Standard: The state collects an appropriate gravity and economic benefit portion of a penalty.</p> <p>Measured by: Review penalty enforcement actions (gravity and economic benefit calculations); review federal /state penalty policies.</p>	<p>See Oversight description for Criterion 4.1</p>

Criteria	Performance Standards	Oversight
Program Element 4C: Compliance Monitoring & Enforcement – Annual Agreements		
<p>4.9 Criterion: <i>PPA Commitments</i> - Enforcement commitments in the PPA are met and any products or projects are timely and complete.</p> <p>Source: EPA/State Enforcement Agreement, OECA National Program Guidance, CFR Requirement, MOA, PPA</p>	<p>Program Standard: The state submits copies of information related to hazardous waste management (e.g., inspection reports, enforcement actions and consent agreements) for EPA review. State products or deliverables are timely (meet established time frames in PPA, MOA and ERP), complete and of high quality.</p> <p>Measured by: Review compliance/inspection commitments in MOA and PPA; review of RCRAInfo data; review of state end-of-year reports; review of state work products.</p>	<p>See Oversight description for Criterion 4.1</p>
Program Element 4D: Compliance Monitoring & Enforcement - Alternative Projects		
<p>This is an optional area for program evaluation. Each State program should discuss with EPA, at the beginning of the fiscal year, any state priority areas where they would like to invest enforcement resources. This may include special projects for innovative measures, new models for enforcement approaches, or other activities beyond the core program. This evaluation will focus on joint discussions regarding the effectiveness of such alternative projects and will publicize good models to EPA headquarters and other state programs.</p>		

Criteria	Performance Standards	Oversight
Program Element 5A: Program Management - Authorization		
<p>5.1 Criterion: <i>Adoption of federal rules by the state</i> – Measures the degree to which the state adopts all mandatory rules in a timely fashion and maintains an equivalent program.</p> <p>Source: 40 CFR 271.21(a); 40 CFR 271.21(e); 40 CFR 271.21(2)(3); 40 CFR 271.21(g).</p>	<p>Program Standard: By June 30 of each year, the state must adopt all mandatory federal rules promulgated by July 1 of the previous year. The Regional Administrator may grant an extension to January 1, if the state demonstrates a good faith effort to adopt, and requests an extension. An additional year may be granted if a state statutory change is required. The state shall keep EPA fully informed of proposed modifications to its basic statutory or regulatory authority, its forms, procedures and priorities for rulemaking.</p> <p>Measured by: Review of applications received, data (adoption effective date) in StATS, or documentation (e.g., emails, letters) with more current information. Meetings, discussions with state staff, management.</p> <p>Note: Most effort goes into assistance Program and Technical Assistance and Training (PTAT) to states in developing regulatory language that is consistent with and equivalent to the federal program. Such assistance is distributed throughout the year as the workload requires. Review of state rules before and/or during the state rule-making process is strongly encouraged to prevent unnecessary delays in approving authorization applications.</p>	<p>Current: Little oversight. Most effort goes into assistance to states in developing regulatory language that is consistent with the federal program.</p> <p>Base Level: Review of StATS data twice per year. Discussions with states at Mid-Year and EOY.</p> <p>Elevated: Increased frequency for review of StATS data, increased discussions with state staff and management on impact of lack of rule-making on program. Follow-up will focus on correcting noted deficiencies, and continued failure to meet the standard may result in putting a state on a schedule of compliance [per 40 CFR 271.21(g), or initiation of program withdrawal by the Regional Administrator.</p>

Criteria	Performance Standards	Oversight
<p>5.2 Criterion: <i>Authorization</i> – Measures state progress in maintaining a fully authorized program.</p> <p>Source: 40 CFR 271.21(e); 40 CFR 271.21(e)(3); 40 CFR 271.21(g); 40 CFR 271.22 and 23, SAM</p>	<p>Program Standard: The state submits a complete, approvable application for program revision within 60 days of the effective date of State rules, but no later than 60 days after June 30 each year. An approvable application includes: a modified program description, an AG statement (including a detailed explanation of how the state program is equivalent to the federal requirements), an MOA (revised as necessary), and any other documents EPA determines to be necessary.</p> <p>Measured by: Review of applications received or documentation (e.g., emails, letters) with more current information.</p> <p>Note: Most effort goes into assistance to states in developing approvable authorization packages. Such assistance is distributed throughout the year as the workload requires.</p>	<p>Current: Most effort goes into assistance to states in developing approvable package.</p> <p>Base Level: Review of StATS data twice per year.</p> <p>Elevated: Increased frequency for review of StATS data, increased discussions with state staff and management on the impact of the lack of an updated, authorized program. Follow-up will focus on correcting noted deficiencies.</p>
<p>5.3 Criterion: <i>Memorandum of Agreement</i>. State and EPA review and maintain complete and accurate Memorandum of Agreement (MOA).</p> <p>Source: 40 CFR 271.8; 40 CFR 271.21(e)</p>	<p>Program Standard: MOA is reviewed and revised (if necessary) in conjunction with yearly authorization application (dependent on EPA promulgation of new regulations).</p> <p>Measured by: Review of last signed/recertified MOA. EOY report should address how MOA was reviewed and note what changes needed to be made.</p>	<p>Current: EPA and state jointly review MOA as time allows.</p> <p>Base Level: EPA and state jointly review MOA yearly.</p> <p>Elevated: Increased level of discussions with state. Follow-up will focus on resolving issues, and further authorization may be withheld while issues are resolved.</p>

Criteria	Performance Standards	Oversight
Program Element 5B: Program Management - Program Resources		
<p>5.4 Criterion: <i>Resources and Skill Mix.</i> Measures the degrees to which state resources and technical skill mix are sufficient to effectively manage the authorized program.</p> <p>Source: 1991 RCRA State Authorization Capability Assessment Guidance.</p>	<p>Standard: The state has consistently devoted sufficient resources necessary to match the Federal Section 3011 grant funds and maintain the authorized program in a manner that meets program standards. The state has consistently maintained a staff that is large enough and has the technical skills and experience necessary to effectively manage the existing program and any additional program responsibilities that the state may be seeking.</p> <p>Measured by: Budget and resource file reviews, review of program description in the current authorization package, meetings with State personnel, Capability Assessment when necessary.</p>	<p>Current: Not being assessed unless performance or resource issues have been identified.</p> <p>Base Level: EPA verifies program resource data in program description through the yearly authorization process.</p> <p>Elevated: If performance problems indicate lack of resources, EPA reviews resources and skills mix more frequently and in greater detail through file reviews, meetings, and discussions with senior management regarding potential improvements; persistent problems may require Capability Assessment.</p>

Criteria	Performance Standards	Oversight
Program Element 5C: Program Management - Staff Capabilities, Training		
<p>5.5 Criterion: <i>State training program.</i></p> <p>Source: 1991 RCRA State Authorization Capability Assessment Guidance.</p>	<p>Standard: The State maintains an adequate training program for its staff. The state identifies training needs for staff and obtains necessary training to meet those needs.</p> <p>Measured by: Review of state training program; discussions, meetings with state.</p>	<p>Current: Not assessing this unless there are recognized performance or resource issues identified.</p> <p>Base Level: EPA reviews training program every 2 years during program performance evaluation.</p> <p>Elevated: If program performance indicates problems, EPA reviews state training program more frequently, with more detailed evaluation of needs, plans, budget through on site reviews, analysis and recommendations of EPA and other training resources available to the states.</p>
Program Element 5D: Program Management – Information Management		
<p>5.6 Criterion: <i>Timeliness, Accuracy and Completeness of Data</i> – Measures the degree to which the state enters required program data into the national RCRAInfo database in timely manner, and the degree to which entered data are accurate and complete.</p> <p>Source: State MOAs, NPM Guidance, RCRA Program Guidance for 2004-05 (FY2005 Version)</p>	<p>Program Standard: The state enters all required program data into the RCRAInfo national database by the 20th of the month following the actual event. RCRAInfo data are complete and accurately reflect the status of facilities, regulated units and corrective action areas.</p> <p>Measured by: Monthly review of RCRAInfo data to monitor for timeliness; staff review of files, comparisons with RCRAInfo data; review of state self-assessment; meetings, discussions with state, file reviews.</p>	<p>Current: EPA reviews RCRAInfo data, discusses data standards for timeliness with state during MY, EOY meetings.</p> <p>Base Level: EPA reviews RCRAInfo data, with focus on key program measures; discusses data standards for timeliness, accuracy and completeness with state during MY, EOY meetings.</p> <p>Elevated: EPA increases frequency and depth of reviews and discussions with state.</p>

Criteria	Performance Standards	Oversight
Program Element 5E: Program Management – Records Management		
<p>5.7 Criterion: <i>Records Management</i> – The degree to which the state’s records disposition program meets federal standards.</p> <p>Source: MOA</p>	<p>Program Standard: The state uses records retention policies and schedules that are consistent with federal standards (based on statute of limitations). Records for land disposal units are kept permanently.</p> <p>Measured by: Review of state records management documents; meetings, discussions with State; file reviews.</p>	<p>Current: Not assessing.</p> <p>Base Level: EPA reviews state records disposition program every 2 years during program performance evaluation.</p> <p>Elevated: If program performance indicates record-keeping problems, EPA reviews state records program more frequently, and with more detailed evaluation of needs, plans, budget and tracking.</p>

EPA Region 8 Oversight for State RCRA, NPDES, Air, and PWSS Enforcement Programs

Overview

The nature and scope of oversight activities and documentation of program assessments and reviews for state RCRA Subtitle C, NPDES, and CAA Stationary Source enforcement programs is dependent upon performance as documented during the previous year, therefore, may vary from year to year. This differential oversight will range from minimum or baseline oversight for strong programs to annual program assessments for those programs with ongoing significant problems. Each year, the results of activities and assessments/reviews that have occurred during the year will be documented by ECEJ in an end-of-year (EOY) report or program assessment report. States will have an opportunity to review and comment on EOY reports and program assessment reports.

Program Assessment Using the OECA/ECOS SRF and UEOS

At least once every three years, state RCRA Subtitle C, NPDES, and CAA Stationary Source enforcement program performance will be evaluated using the OECA/ECOS State Review Framework (SRF) and associated guidance. Likewise, Public Water System Supervision (PWSS) enforcement program performance will continue to be evaluated using the Uniform Enforcement Oversight System (UEOS), however, like the SRF reviews, the frequency of reviews may be up to once every three years.

The SRF is based on Region 8's UEOS and was developed jointly by the EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten EPA regions. The SRF was developed as a tool to assess state enforcement and compliance assurance program performance and to provide a mechanism for EPA regions, working collaboratively with their states, to ensure that states meet agreed upon performance levels. An SRF Overview is attached below.

Annual Program Assessment/Review

The frequency of program assessments using SRF or UEOS will be dependent upon program performance as determined by the most recent SRF or UEOS review. Oversight activities occurring during years in which SRF or UEOS reviews are not planned will range from a minimum or baseline level of oversight to a more enhanced level of oversight (including targeted oversight activities) as described in the table below. Should baseline or targeted oversight activities demonstrate that program performance has declined such that program standards are generally no longer met, or, there are significant deficiencies in key areas, then an SRF review

(or UEOS for PWSS) may be conducted for the next performance period.

For PWSS, Region 8 also conducts annual on-site (audit) visits with each state to review the effectiveness of the state enforcement programs, as resources allow. These visits are conducted between November and February, and some of the information gathered is used for the UEOS evaluation. Region 8 staff review the files of specific public water systems and evaluate how the state has responded to violations and the accuracy of data contained in state and federal databases. A report documenting the findings of the visit is issued to the state. As a part of the review, Region 8 identifies corrective actions that the state should implement to improve its enforcement program, and such actions may be incorporated into the PPA along with UEOS findings.

Differential Oversight Levels

Program Status	Resultant Oversight
I. Program standards are met (may have small problems in some areas).	SRF every three years (UEOS for PWSS program). Minimum / baseline * oversight activities during “off” years.
II. Program standards are generally met, however, some areas for improvement have been identified.	SRF every three years (UEOS for PWSS program). Baseline plus targeted ** oversight activities during “off” years.
III. Program standards are generally not met, or, there are significant deficiencies in key areas.	SRF every year; escalating actions if progress is not made to correct problem areas.

* Minimum/baseline oversight activities to occur every year will include:

- Review and documentation (through ECEJ End of Year Report) of progress towards meeting grant commitments,
- Routine communications and information sharing with state (to discuss, for example, HPVs, SNC, QNCR, etc.).
- Watch List review and follow-up,
- Data Metrics review,
- Follow-up on open action items/recommendations from previous reviews.
- Other oversight activities required by national program guidance (e.g. oversight inspections, etc.).

** Targeted oversight activities may include (in addition to baseline activities):

- Targeted program improvement plans to be incorporated into PPAs.
- More frequent communications and information sharing with state.
- Increased number of oversight inspections.
- Targeted after-the-fact and real time review of state files.

Documentation of Oversight Activities

End of Year Reports will be completed annually for all programs. For those years in which SRF reports (or UEOS for PWSS) are completed, they will serve the purpose of the EOY report. EOY reviews and documentation through the EOY Reports may utilize applicable portions of the SRF or UEOS guidance (*e.g.* review metrics), as appropriate. At a minimum, End of Year reports will incorporate the results of the minimum/baseline activities described above and the scope will address the following review areas: 1) inspections, 2) enforcement activity, 3) annual agreements, and 4) data management.

Specific oversight activities planned and actions planned to address any areas for improvement will be described in the final SRF or UEOS report and/or the End of Year Report as well as in the next PPA.

Review Schedule

While oversight and program review and assessment activities occur throughout the year, formal documentation of results doesn't begin until after data are available for the year under review and state EOY reports have been received. This is generally the middle of January following the year under review.

Draft documentation of annual program assessments/review will be completed by the end of April of the year after fiscal year reviewed. This is to allow findings and any corrective actions to be incorporated into the PPA negotiation process for the following fiscal year. The SRF guidance includes a comprehensive process for developing the report which includes many opportunities for findings to be discussed with states and for states to review and comment on draft reports prior to finalization. Final SRF reports will be completed by the end of the fiscal year following the fiscal year reviewed.

EOY reports documenting oversight activities and review results (for years in which an SRF/UEOS assessment is not conducted) will be finalized by the end of April following the fiscal year under review.

Overview Enforcement and Compliance Assurance State Review Framework

Introduction

The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten regions have jointly developed a tool to assess state (or regional in the case of direct implementation responsibilities) performance in enforcement and compliance assurance programs. The purpose of the assessment is to provide a consistent level of environmental and public health protection across the country and provide a consistent mechanism by which EPA Regions, working collaboratively with their states, can ensure that states meet agreed upon performance levels. This Framework is meant to establish a dialogue on enforcement and compliance performance that will lead to improved program management and environmental results.

EPA's Enforcement and Compliance Assurance Program embraces the principle of "Smart Enforcement" in all aspects of its implementation. The Smart Enforcement approach is comprised of five components that, in combination, lead to a strategic and focused program. These components include: 1) addressing significant environmental problems; 2) using data to help make strategic decisions for better resource utilization; 3) using the most appropriate tool to achieve the best possible outcome; 4) assessing the effectiveness of program activities to ensure continuous improvement and desired program performance; and 5) effectively communicating the environmental, public health and compliance outcomes of our activities to enhance program effectiveness.

This Framework for state program review is a management tool to support the Smart Enforcement approach. It is intended to use data we have to assess the effectiveness of our programs and improve our performance. It is meant to maintain the fair and consistent enforcement of Federal environmental laws. EPA Regions and HQ are using this Framework to review the enforcement and compliance assurance components of federally-authorized state programs (or regional programs where they have direct implementation authorities) and ensure they achieve environmental and public health benefits by complying with applicable federal legal, policy and guidance requirements.

To reduce the burden of this review, the Framework uses required program data already reported to EPA as a starting point in order to identify strengths and potential problems where additional information may need to be gathered. This can help to strategically focus file review efforts where they are most needed. The Framework, in some cases, identifies information that can supplement the required national data, but, if it is not already reported to national data systems, it is optional for states to choose to provide this additional data in the course of the review. EPA and states all have limited resources and it is recognized that, while data from our national databases is only one source, it is a valuable source when trying to honor the states' request to not impose new reporting burdens. The experience of EPA and states in oversight tells us that

while quantitative data is useful, it needs to be viewed in the context of qualitative information that can only be gained by file reviews, examining negotiated commitments and objective dialogue between parties.

This review is an opportunity for states to voluntarily share data not in the federal data systems, including outcome information they have collected on the effectiveness of their programs. States are invited to share data, results and outcomes not just in the core program activities included in the Framework's twelve required elements, but also in compliance assistance and other approaches to achieving compliance the state may have adopted. While not required, these state data help to provide a more comprehensive picture of a state's program, though not substituting for core program activities under element 1 through 12.

This Framework embraces the principles of the National Environmental Performance Partnership System (NEPPS), which provide a mechanism for joint planning and program management between EPA and states that takes full advantage of the unique capabilities of each in addressing pressing environmental problems. On April 15, 2004, ECOS and EPA signaled a renewed support for the NEPPS partnership. In a joint letter, ECOS and EPA articulated a vision that "Performance plans and measurement systems that assure internal and external accountability for performance and that focus on environmental results need to be essential elements of the overall planning system. These systems need to be adaptive to support continuous improvement and need to be evaluated periodically to create joint learning opportunities for improvement." This vision is also the vision for this State Review Framework. It is built on collaboration and proposes to evaluate and improve management practices in the compliance and enforcement program.

It is expected that these reviews will become a regular topic in regional/state planning meetings and in the negotiation of work plan commitments. Initially, the region and state should negotiate the timing of the initial review and plan for how it will proceed. If there are local delegations that assist in the implementation of one of the three media programs being reviewed, then they should be brought into those planning discussions. Depending on the type and extent of local delegations, including local agencies could add to the time and resources it takes to conduct the review and needs to be proactively considered. Once the review has occurred, it is expected that major recommendations will get incorporated into the next round of PPA/PPG/categorical grant work plans, where they will be tracked and managed to a successful conclusion.

The State Review Framework is also intended to be responsive to issues raised in EPA Inspector General audits of state programs; concerns raised by states and the ECOS Compliance Committee; program withdrawal petitions; and other assessment efforts by EPA media program offices. It will help us to identify and understand existing areas where improvements are needed and highlight areas where strong performance may provide examples to other states and regions.

The Benefits of Implementing this Framework

Discussions between EPA and states have led to the identification of benefits for EPA, the states, the public and the environment of implementing this Framework. Some of these include:

- 1) Better communication and mutual understanding, leading to an improved federal/state relationship. It will help to further the implementation of the “no surprises” concept.
- 2) It provides a more strategic focus for resource utilization; reduction of duplicative work; more effective work sharing between regions and states. It also may provide workforce deployment opportunities.
- 3) It will offer opportunities for EPA to learn from states and share innovations and best practices.
- 4) It will provide a consistent and predictable baseline oversight approach across states and regions. It will serve to promote equity among states - through a consistent set of elements and metrics used to review performance; consistent thresholds for corrective action; consistent general guidelines for response to continuing problems; and the provision of a level playing field for states in competition for business.
- 5) It offers a mechanism through which the compliance and enforcement program can offer differential oversight based on EPA’s assessment of state performance. States demonstrating an adequate core program will qualify for benefits while state performance not meeting minimum standards will result in enhanced oversight. This process does not negate EPA’s responsibility for oversight, simply determines the level, intensity and focus of the oversight.
- 6) The review process will lead to continuous program improvements that, in turn, will produce improved overall environmental results.
- 7) This proactive approach to identifying problems and developing plans to fix them should result in reduced vulnerability to criticisms regarding EPA’s level of oversight, particularly from the Inspector General, GAO, and the public; it should provide protection to states from citizen suits. It will improve the public’s confidence in our programs.
- 8) The EPA/State relationship will benefit from agreed upon and clear up-front expectations for program management.
- 9) This process will result in the ability for states and EPA (HQ and regions) to pull management reports and see data that drives reviews at any time. It will allow close management of performance and early identification of problems.
- 10) This will provide the foundation for acknowledgment and recognition of good state performance in internal and external communications.

Structural Foundation of the Framework

The Framework is based upon compliance and enforcement policies and guidance that have been in place for many years. The foundation begins with the August 1986 guidance memorandum signed by the then Deputy Administrator, Jim Barnes, entitled “*Revised Policy Framework for State/EPA Enforcement Agreements.*” The evaluation areas posed by this Framework are consistent with evaluation areas delineated in that memo and consequent addenda. It utilizes existing program guidance, such as our EPA national enforcement response policies, compliance

monitoring policies, and civil penalty policies and models or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide our definitions of a minimum level of performance. As previously mentioned, it is consistent with the NEPPS principles and is envisioned to be integrated into Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs) that are negotiated using the NEPPS principles.

True to the NEPPS principles, the Framework builds into its metrics the consideration of negotiated commitments in PPAs, PPGs and/or categorical grant agreements that may differ from what guidance or policy dictates. It is recognized that application of the required elements may vary from state to state, based on those specific delegation or grant agreements. It is expected that in documenting findings of the reviews, regions will acknowledge where flexibility has been negotiated and consider performance in terms of commitments made. Reviews may include feedback to the regions and states when negotiated commitment levels fall short of program expectations, which can then be dealt with in prospective state negotiations.

The State Review Framework also integrates planning and accountability processes developed since the issuance of the existing guidance documents mentioned above. EPA's Strategic Plan includes the compliance and enforcement program under Goal 5: Compliance and Environmental Stewardship. EPA has worked with states to align all National Program Guidance to implement the Strategic Plan, and OECA's guidance includes a listing of national priorities, core program requirements and a description of the State Review Framework. Regional plans are developed to support Goal 5 and the National Program Guidance. These regional plans should reflect negotiations with their states on priorities, work sharing and program management. These priorities, core program requirements and negotiated commitments form the base of activities and results which the State Review Framework sets out to examine.

Elements of the Framework

There are several essential elements that apply to all enforcement and compliance assurance programs upon which this Framework is based. It is also necessary, however, to review performance on a program-specific basis because each of EPA's programs contains unique requirements. The State Review Framework currently assesses core program performance in three media programs: the Clean Air Act (CAA) Stationary Sources program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES), and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program. Broadening the scope of the Framework to include other programs (such as the Safe Drinking Water Act) may be contemplated in future reviews.

For each media program, the Framework defines the essential elements and then, in a companion Implementation Guide, more fully defines how each element is applied and measured. The scope of the twelve essential elements includes compliance monitoring, civil enforcement and data management. The State Review Framework does include flexibility for reviews beyond the essential elements by the inclusion of a thirteenth element which is optional. This element allows for the inclusion of areas such as compliance assistance, self-disclosure initiatives, innovative

programs, and outcome-oriented measures and results that go beyond the core program. ECOS and EPA encourage regions and states to use the optional review element thirteen to include the full array of compliance and enforcement tools that relate to achieving compliance in any or all of the three core media programs included in the review, as well as to discuss program results and environmental outcomes. It is recognized that areas covered in this element are voluntary and should be negotiated and agreed to by regions and states. Guidance for these submissions are also found in the Implementation Guide.

The State Review Framework is based upon a process and system that was developed by EPA Region 8 in Denver. The essential (required) elements for evaluating state performance include:

- 1) The degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities).
- 2) The degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations.
- 3) The degree to which inspection reports are completed in a timely manner, including timely identification of violations.
- 4) The degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner.
- 5) The degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.
- 6) The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.
- 7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model (where in use and consistent with national policy).
- 8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies.
- 9) The degree to which enforcement commitments in the PPA/PPG/ categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.
- 10) The degree to which the minimum data requirements are timely.
- 11) The degree to which the minimum data requirements are accurate.
- 12) The degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.
- 13) The thirteenth element is optional and open for negotiation between regions and states. EPA and ECOS encourage the use of the thirteenth element to ensure the review takes a measure of the full range of program activities and results. These components can add meaningful input into a state's overall performance and program. Examples of topics could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1 – 12, etc.

Interpreting Information to Determine Performance

This review process recognizes that determining an accurate picture of state performance can be complex, thus it incorporates the use of different types of data in its analysis. The national data metrics provide a snapshot of state activity and a “ballpark” of national averages of state activity as a first barometer of performance.

- 1) States may provide other data that will shed light on particular issues, provide context, add to the depth and scope of the review, and/or provide a validation (or lead to the correction) of data in the national systems. Information such as resource constraints, outcome information (such as compliance rates), etc. can help to explain decisions the state has made that might otherwise detract from a determination of adequate core CWA, CAA, or RCRA performance. This information could be made available as the review of elements 1 - 12 is occurring, or could be presented as part of Element 13.
- 2) The review also requires file reviews to collect more in-depth information from inspection and enforcement files, and delineates specific metrics to consider while conducting those file reviews.
- 3) Negotiated commitments are also considered, as states and regions may have negotiated different targets for inspections/evaluations or other activities than national guidance may set out. In that case, states will be held accountable for what commitments they have negotiated, though the review may provide feedback that those commitments need to be increased to fully demonstrate an adequate core program.
- 4) Finally, management discussions can help to explain anomalies, discuss management issues, brainstorm solutions and develop joint plans to address areas where improvements are needed.

Minimal or adequate levels of performance are established in the State Review Framework based on the metrics developed under the 12 required performance elements. In general, the minimum standards are based (where possible) on national media program policy, with consideration given for negotiated commitments in PPAs, PPGs and/or categorical grant agreements. These metrics are included in the Implementation Guidance associated with the Framework.

To ensure there are “no surprises” regarding data, elements of the State Review Framework that can be quantified using existing state data flows are utilized. EPA is developing an internal EPA/State Web site that will reside within the OTIS Management Reports area that will provide monthly updates for key metrics. This site will allow states and regions to benchmark progress towards goals within the Framework.

In synthesizing a conclusion about performance from these various sources of information, the determination of adequate performance may not be black and white. While this determination is guided by the national standards and goals outlined in EPA’s (or a state’s equivalent) enforcement response policies, compliance monitoring strategies, penalty policies, delegation agreements and policies and rules around reporting and data entry that are in place during the specified time of review, and based on the information collected in the review, it is the regions’ judgment that ultimately synthesizes this information into a conclusion about performance. In

making a determination about performance, the weights of each of these sources of data should be balanced. EPA recognizes that the review may reach different conclusions about the adequacy of each of the media enforcement programs, or that a state's core CWA, CAA or RCRA enforcement programs may have minor areas of improvement identified in a review and still be determined to have an adequate program.

The initial reviews will serve as a baseline from which performance over time can be compared. As additional review cycles are implemented, trend analysis will be incorporated into the review. This will entail comparing performance at the time of the review with performance during the initial or baseline review to see how a state's performance may have improved over time. This does not signal an escalating burden or changing standards or requirements, but will offer a more expansive view of performance over time.

Defining and Rewarding Performance

States that meet minimum standards of performance (an adequate core program) will qualify for benefits, while state performance that does not meet the minimum standards will result in enhanced oversight. In the associated Implementation Guidance document, menus of potential benefits and enhanced oversight are provided to offer examples of what these two concepts of oversight may involve, though these are not comprehensive or all inclusive. Rather, they provide guidelines as to how to consistently interpret and implement these terms. One example is that, among other things, states that meet the minimum performance levels would have the opportunity to lead national cases and settlements, where appropriate, in coordination with and within general bounds set by EPA, as long as the state had adequate resources to do so. States not meeting the minimum performance levels would be expected to focus on the program areas that need strengthening, and would not be given the opportunity to lead cases until their overall performance met the minimum standards. Nothing in this process negates EPA's responsibility for oversight; this simply serves as a tool for determining the level, intensity and focus of the oversight.

In cases where problems are encountered in state performance covered by this Framework, EPA will continue its practice of taking escalating actions over time. Generally, this escalation follows the following process:

- 1) The region and state work together to precisely define a state's attributes and deficiencies, then develop a schedule for implementing needed changes.
- 2) The region and state work on the joint development of a plan to address improved performance, using established mechanisms to codify the plans like PPAs, PPGs, or categorical grant agreements.
- 3) The state is accorded increased levels and frequency of oversight during implementation of the plan to ensure progress as planned and to identify and deal with issues as they arise.
- 4) Should the above approach not be effective, additional responses may include:

- 1) the intervention on a real time basis in program areas with repeated and serious errors or deficiencies;

- 2) the withholding of grant funds; or
- 3) the withdrawal of an authorized program.

Ensuring Consistency

The establishment and implementation of this Framework and metrics is in itself a large step towards bringing consistency to regional oversight of state programs. The Framework establishes agreed upon oversight review elements, metrics, thresholds and responses. It sets standard protocols and procedures for conducting state oversight reviews, including an established methodology for selecting files for review, consistent file review discussion guides, a consistent level of management involvement, etc. The Framework establishes standard time lines for implementing the reviews and standard formats for reporting findings. OECA HQ will manage the overall review process, including reviewing reports to ensure consistency and tracking recommendations to ensure their successful conclusion. Compiling the information to a national level will require that national attention be paid to the consistency of findings across regions.

Further consistency across EPA's ten regions will be provided by periodically conducting post-review surveys and sending questionnaires to states and regions that have undergone a review to evaluate the national process, promote consistency and make improvements. The use of national guidance as a yardstick in determining minimum performance will also help to ensure consistency. Joint training of EPA and state staff and managers responsible for conducting reviews will help to ensure all parties get the same messages, information and guidance for conducting the reviews, interpreting results, and documenting and implementing findings and recommendations.

Documenting Findings and Recommendations

The purpose of this State Review Framework is **not** to develop a ranking or scorecard of state performance, but to be able to improve the effectiveness and results of the core CWA, CAA and RCRA enforcement programs and to communicate a national picture of compliance and enforcement programs across the country. However, because this information likely will be available to the public via the Freedom of Information Act, external entities may perform their own analyses and interpretation of this information. Generally, documenting the findings of these reviews via the following steps can help to report results in a way that does not encourage the ranking of performance:

- 1) Each region will prepare a report on the findings from each state review (or HQ for regional direct implementation programs) according to the documentation protocol included in the Implementation Guidance. The region and state will jointly review the findings and conclusions of each review before they are reported to HQ. Where local agencies are involved in the review, they should also be a part of the report review process.
- 2) Regions may develop a narrative report, supported with quantitative results where appropriate, about findings across states from a regional perspective. This would not report state-specific findings but would consolidate findings to the regional level.

- 3) Reports will be shared with EPA Headquarters who will assess the reviews nationally and create a national narrative, with quantitative results where appropriate, about the performance of the national program. This would not report regional or state specific findings but would consolidate findings at the national level.
- 4) Other than for internal regional or state oversight resource allocation purposes, no rankings or scorecards should be associated with review conclusions.
- 5) EPA and states (and locals where appropriate) should jointly communicate the results on a local and national basis. This should provide an opportunity for EPA and states to speak with one voice and to mitigate against unintended comparisons.

Integration and Coordination with Existing Agreements and Evaluations

The Framework reviews will be integrated into the NEPPS and other planning mechanisms. In fact, the April 15, 2004 affirmation of support for the NEPPS partnership between EPA and ECOS states that “PPAs will be more valuable in defining the State -EPA relationship and the work to be accomplished by including these recommended essential elements: 1) A description of environmental conditions, priorities and strategies; 2) Performance measures for evaluating environmental progress; 3) A process to jointly evaluate how well the PPA is working; 4) A structure and process for mutual accountability; and 5) A description of how the priorities align with those in EPA’s Strategic Plan, EPA Regional Plan, and/or the State’s own strategic priorities and initiatives (optional).” This review is compatible with this vision of PPAs and can serve as a vehicle to measure and evaluate the compliance and enforcement components of these agreements.

The implementation of these state reviews and associated improvement plans should be synchronized with and integrated into existing and future PPAs, PPGs, and/or categorical grant work plans. These agreements should become the primary mechanism by which the Framework reviews are planned and scheduled, as well as where program improvements are documented and implemented. This review process has been built into EPA’s FY2005 to 2007 National Program Guidance, and progress in implementing the reviews is being tracked in the Annual Commitment System (ACS). The ACS also tracks the number of recommendations for program improvements arising from the reviews. In the future, some measure of the value of the program improvements may be appropriate to include instead of just a count.

The State Review Framework should continue to be reflected as **the** tool to evaluate adequate state performance in the CWA, CAA and RCRA compliance and enforcement program. Other compliance and enforcement reviews, if they cover the same information, may be utilized to gather or report this information. If existing reviews do not cover the information in this review, then this review framework will prevail. This is not intended to negate or change EPA’s responsibilities to oversee state grants in accordance with applicable regulations, orders and guidance. It is meant to ensure consistency in the information used to manage the compliance and enforcement program. Where grant reviews look at this information on a more frequent basis, this information should get integrated into the next Framework review to avoid duplication of effort. How grant reviews and Framework reviews fit together should be the subject of discussion between regions and states during the annual planning process.

Every effort will be made to align this Framework with other known national program reviews with enforcement metrics. OECA has met with the other National Media Program Managers to discuss these reviews and learn about and coordinate any plans for other media reviews. The Framework will be designed to reduce burden to the regions and states to the extent possible. The Implementation Guidance will direct reviewers to evaluate what other assessments may have occurred in these areas within a 2-year window, and to determine whether the data from those other reviews can be utilized before collecting additional information. Information from other reviews may be utilized in this review, as long as it can be clearly identified in a manner compatible with that described in the Documentation Protocol.

Implementing the Framework

Beginning in July 2005, building upon the completion and assessment of the pilots, OECA will work with states and regions to complete assessments of all states by the end of fiscal year 2007. Training for the next round of states will be held at the end of June 2005. Training will be available periodically for states being reviewed for the first time to ensure that all who participate understand the tone, philosophy and materials of the review.

A tracking system will be developed to monitor the timing and frequency of each state review over time, as the timing and frequency of reviews will be determined by state performance. Regions may conduct the reviews as often as they deem necessary but states with adequate performance may negotiate a schedule up to three years. After all states have been reviewed, a second evaluation phase will be conducted to collect new lessons and foster continuous improvement.

As mentioned above, OECA HQ will review all review reports for consistency purposes and will track recommendations to ensure successful conclusion. Communication materials will be shared on a periodic basis in order for all participants to keep abreast of program progress and updates. As issues arise and get addressed, it may be necessary to modify Framework documents or metrics. ECOS and EPA will deal with these issues jointly to ensure that both remain committed to the implementation of the Framework reviews.

The key to the success of the State Review Framework process is communication. It is essential for regions and states to spend time early in the process to ensure everyone involved understands the philosophy and purpose of the review. Where regions have utilized other methods to review states, it is important to distinguish between the former systems of review and this Framework. Communications need to be explicit within regions and states, with management clearly articulating expectations around how it will be conducted and involved enough to ensure the review is done consistently across media and across states.

The initiation of the review for the remaining states in July will not mark the end of the development process. Ongoing work remains to be addressed which may lead to inclusion in the Framework of additional documents or the modification of existing guidance. Some of these areas include the development of OTIS management reports to support regional and state data

pulls; exploration of how to value submissions under Element 13; summarizing best practices derived from the pilots and other reviews as they occur; and analyzing reviews for necessary policy or other HQ or regional follow-up. EPA, ECOS and the state media associations (ASIWPCA, ASTSWMO and STAPPA/ALAPCO) will continue to collaborate as full partners on these and any other issues that may arise in the implementation of the State Review Framework.

Water Programs

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DRAFT OVERSIGHT MANUAL
Covering the Ecosystems Protection Program's
State Water Responsibilities
February 2005

Water Quality Standards Total Maximum Daily Load Water Quality Monitoring Nonpoint Source Pollution Control Source Water Protection

INTRODUCTION

Overview of Ecosystems Protection Program Oversight Responsibilities

Several state programs operated under the Clean Water Act (CWA) are subject to significantly different oversight than “traditionally authorized” state programs, including some overseen by the Ecosystems Protection (EP) program. Under most environmental laws the federal government and the state share responsibility for governance. While the same is true under the CWA, authority and oversight are established differently for some responsibilities. Many portions of the Clean Water Act directly authorize states to implement programs without authorization reviews or “delegation approval” by EPA. Another feature of oversight under CWA is the aspect of oversight to which both EPA and states are subject; there are provisions in the Act which allow for third party lawsuits when statutory requirements are not met.

For example, the CWA gives states primary authority for establishing or revising water quality standards. The water quality standards program requirements of the CWA, therefore, are not “delegated” to the states. Rather, they are inherent responsibilities given to the states by Congress. As such, there is no state request for authorization of the water quality standards program, and EPA cannot “take back” the water quality standards program from a state. EPA can only step in and fulfill the responsibilities, through federal promulgation, where a state fails to do so.

For several CWA programs, such distinctions alter the traditional oversight role of EPA. Again using water quality standards as an example, EPA does not evaluate the quality of a state water quality *program* but rather fulfills a specific product approval/disapproval role designated by the CWA. EPA must either approve or disapprove each water quality standard adopted by a state. The standard is not considered to have CWA status until EPA grants its final approval. In this way, EPA oversight is predicated primarily on the quality of the product issued by the state rather than the program which develops the product. EPA’s responsibilities for review and approval/disapproval of state-adopted water quality standards are inherent and cannot be delegated to other entities.

Within the constraints established by the CWA, states have the flexibility to design,

develop and operate a water quality standards program of their choice. EPA is not involved in the evaluation or approval of the methods by which a state develops water quality standards. Nor has EPA's oversight of state water quality programs focused on the process of water quality standards development.

As illustrated above, many of the EP activities may not fit neatly into the recommended outline for the EPA Region 8 Oversight Manual. When EPA is directed by the CWA to approve or disapprove a state product, our oversight is nested within that approval process. In essence, such programs provide "real-time" oversight rather than "after-the-fact" evaluations of performance. For other EP activities, oversight is more akin to traditional grants or programmatic oversight.

How Ecosystems Protection Program Water Activities fit into Region 8

In order to illustrate the differences in oversight of water programs, it may be helpful to correlate CWA responsibilities as they are spread out across three major offices in Region 8. Similar pathways can be delineated for the Safe Drinking Water Act (SDWA).

The Office of Ecosystems Protection and Remediation (EPR) is home to many of the programs that EPA headquarters describes as non-regulatory foundation programs. The water quality standards program defines the goals for how waters are designated for use as well as criteria for protecting those uses. The collection of environmental information through water quality monitoring can lead to development of an inventory of impaired waterbodies, where standards are not met. If not meeting standards, there may be ways to improve water quality using best management practices implemented through the nonpoint source program. As a foundation for regulatory programs, water quality standards serve as the building block for developing the requirements that go into permits for facilities. As such, many of the EPR programs can be thought of as the scientific and technical pre-cursors to the regulatory programs. The oversight of these scientific and technical aspects is therefore somewhat different in nature, requiring EPA approval of 100% of the products developed by states.

How We Have Described Our Current Oversight and Possible Additional Oversight

Recognizing the traditional role of EPA in evaluating state programs, we have indicated in *italics* any additional oversight activities that could be developed in order to fit within that typical role. Please note that these activities are not currently implemented and are provided only as an option for state programs to consider as we enter this dialog on appropriate oversight roles. Additionally, there may be no policy, regulation or statutory basis for conducting such oversight. **Where *italics* indicate possible changes that could be considered for oversight of our programs, we are especially seeking state input and dialog on these draft materials.**

Oversight Needs Not Clearly Addressed

During the course of this exercise on collecting, combining and refining existing oversight activities, the Ecosystems Protection Program has identified a regional area where

additional development is needed. In the course of the reorganization of Region VIII (the Region) in 1995, the responsibilities for implementing the CWA §106 grant program were moved out of the Water Management Division and into the new State and Tribal Assistance Programs. Section 106 of the CWA is an authorization for appropriation for grants to states and tribes to “assist them in administering programs for the prevention, reduction and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.” It is currently unclear what the financial oversight roles of the State and Tribal Assistance Programs are, versus the programmatic oversight roles in the Ecosystems Protection Program, the Water Program (within the Office of Partnerships and Regulatory Assistance) and the Technical Enforcement Program (within the Office of Enforcement, Compliance and Environmental Justice. For example, the CWA states under §106(e) that:

“...the Administrator shall not make any grant under this section to any State which has not provided or is not carrying out as a part of its program (1) the establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under section 1315 of this title;...” (*the 305(b) Report*).

Using the reference to “biological monitoring” as an example, EP is working with states to establish biological monitoring programs, but has not requested that §106 dollars be withheld from any states not currently implementing a biological monitoring program. All §106 dollars are incorporated as part of the Performance Partnership Grants (PPGs) overseen by the State and Tribal Assistance Programs. There are not currently systems in place to tie performance of state monitoring programs directly to the Section 106 regional allocation process.

While the Ecosystems Protection program reviews water quality monitoring commitments in the Performance Partnership Agreements (PPAs), there is no defined set of comprehensive oversight activities which include all activities being implemented under the grant, including pollution reduction and elimination, as well as enforcement.

WATER QUALITY STANDARDS PROGRAM

Background

Water quality standards (WQS) are provisions of state law which consist of designated uses, water quality criteria to protect those uses, an antidegradation policy and other general policies which affect the implementation of the standards (e.g., mixing zone and variance policies). Water quality standards serve the dual function of establishing water quality goals for specific waterbodies and serving as the regulatory basis for water quality-based treatment controls and strategies.

The Clean Water Act (CWA) gives states primary authority for establishing and revising water quality standards. The water quality standards program requirements of CWA §303(c), therefore are not delegated to states. Rather, they are inherent responsibilities given to the states. Likewise, EPA's responsibilities under §303(c) are inherent and cannot be delegated to other entities. As such, EPA cannot "take back" the WQS program from a state. EPA can only step in and fulfill the responsibilities when a state fails to do so.

1. STANDARD OPERATING PROCEDURES FOR OVERSIGHT

a. Coordination of All Program Elements: Technical, Regulatory, Permitting, Compliance and Enforcement, Performance Assessments Will be Coordinated and Onsite Reviews Conducted Jointly

EPA's oversight role in water quality standards (WQS) is to review and approve/disapprove state water quality standards. Therefore, programmatic reviews are not conducted for state water quality standards programs. Water quality standards are the foundation upon which permitting, and compliance and enforcement activities are formulated. Regular on-site reviews are not conducted by the regional WQS program.

The regional WQS program coordinates with a number of other CWA programs that are relevant to WQS development, including the TMDL program, NPDES permitting, 319 nonpoint source, and monitoring and assessment. Little regular coordination is done in terms of audit schedules, except in certain situations (e.g., national NPDES program reviews, state monitoring audits).

b. End-of-Year Grant Reviews Which Incorporate Program Assessment Findings

While the state WQS programs do not specifically receive grant dollars from EPA to produce water quality standards, program commitments made through the PPA process are evaluated by regional staff and managers at the end of each fiscal year.

c. Frequency of Program Reviews and Assessments

The Region reviews new or revised state water quality standards as they are submitted by the state. The Region reviews every WQS submittal and has 60 days to approve or 90 days to disapprove the new or revised WQSs. Where EPA disapproves a water quality standard and is unable to reach resolution with the state, EPA is to promptly propose and promulgate a federal standard.

Each state is required to hold public hearings, at least once each three year period, for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. However, the current schedule under which states submit WQS is highly variable. States often submit WQS revisions on a much more frequent basis and some states are in more or less continuous WQS review to address basin or site-specific matters.

EPR, OPRA and ECEJ managers also meet annually with state water program managers to discuss program performance, progress and upcoming strategic direction at midyear meetings.

EPA currently tracks state timeliness in meeting triennial review requirements, but has not been aggressive in implementing actions to address issues of timeliness. Currently, state commitments to develop or revise water quality standards are in the Performance Partnership Agreement. When not met, the commitments are typically rolled over into the next year's agreement.

Region 8 could work together with state programs to develop protocols to evaluate the root-cause of any lack of timeliness in standards submissions.

STATE COMMENTS:

d. How the Organization Being Reviewed is Notified

The Region notifies the state each time it completes a review, through a written approval/disapproval action. The Region maintains an administrative record on each approval/disapproval action.

e. How Files and Documents are Reviewed

Because the Region reviews specific WQS packages submitted by state programs, only materials provided for purposes of the review are evaluated. States produce a product for EPA approval, rather than a process to be evaluated.

f. How and When Organization Managers and Staff are Involved and Interviewed

In Region 8, state staff share early drafts of proposed new and revised WQS with regional staff in an effort to resolve, in the early proposal stage, any potential conflicts with federal requirements.

EPA staff review state submitted new and revised WQS and make recommendations to senior management regarding approval/disapproval of those WQS. EPA staff are also responsible for developing regional WQS guidance and priorities and/or transmitting and explaining Agency guidance and priorities to states and interested stakeholders.

EPA is also responsible under the Endangered Species Act, Section 7, to consult where appropriate with the U.S. Fish and Wildlife Service on each WQS approval action.

g. Basis for Determining What Follow-Up Actions Will be Recommended or Required

Where EPA approves a WQS, the state follows up by implementing a federally approved water quality standard.

Where EPA disapproves a WQS, the Region works with the state to resolve the disapproval. In doing so, the Region provides specific guidance on revisions that would resolve the matter.

Where EPA disapproves a water quality standard and is unable to reach resolution with the state, EPA is to promulgate a federal standard. EPA's Administrator also has the authority to make a finding, without first taking a disapproval action, that a federal standard is needed to meet the requirements of the CWA and to promulgate that standard.

h. How Findings will be Presented

All findings related to review of state WQSs are documented in written correspondence to the state, with an attached rationale for the decision.

i. How Follow-Up Will Occur

See description in Section g. above.

j. Concurrence Process

The WQS program relies on Agency delegation manuals to determine the level of management needed to make decisions regarding WQS approvals/disapprovals. Chain of concurrence is simply the chain of management starting with the employee up to the Regional Administrator, who, for WQS actions is the deciding official.

k. How Long-Term Follow-Up Will be Incorporated in Grant or Other Agreements

WQS staff review and negotiate provisions of the Performance Partnership Agreement on an annual basis to ensure minimum WQS program provisions are addressed. Through this process, the WQS staff and managers provide states with a list of Agency priorities for the current WQS triennium.

2. DEFINITIONS of STANDARDS for ALL PROGRAM ELEMENTS

a. What Constitutes Success in Each Program Area

For state water quality standards programs, success is defined as timely submission of new and revised water quality standards which can be federally approved.

b. Statute, Regulation and Policy Citations

- i. Section 303(c) of the Clean Water Act (CWA)
- ii. EPA's water quality standards regulation at 40 CFR Part 131 set out the requirements for the water quality standards program.
- iii. Water Quality Standards Handbook, Second Edition, August 1994 contains, as appendices, numerous key Agency WQS guidance documents
- iv. National Recommended Water Quality Criteria: 2002 (November 2002)
- v. Advanced Notice of Proposed Rulemaking, July 7, 1998
- vi. Interim Economic Guidance for Water Quality Standards: Workbook, March 1995
- vii. Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and the Endangered Species Act, February 22, 2001
- viii. EPA Region VIII Guidance; Antidegradation Implementation, August 1993

ix. EPA Region VIII Mixing Zones and Dilution Policy, September 1995

3. DISCUSSION of INCREASED and REDUCED OVERSIGHT LEVELS

EPA's responsibilities under §303(c) are inherent and cannot be delegated to other entities. Additionally, the Administrator is directed by the CWA to review and approve/disapprove all WQSs submitted by states.

a. How Oversight Will be Increased if Problems are Found

Oversight could be increased in regard to the timeliness of triennial reviews required of state programs. This timeliness could be tracked by the regional WQS staff and where states are not meeting the three year minimum for review & revision, issues could be addressed in the Performance Partnership Agreement commitments.

STATE COMMENTS:

See additional oversight comments under Section 4 on Accreditation.

b. Description of Reduced Oversight Levels

Not currently applicable to this program.

4. ACCREDITATION

a. Making the Accreditation Determination

To design an accreditation process, the regional program would work with states to create an on-site audit system.

STATE COMMENTS:

b. Minimal Levels of Oversight in Response to Accreditation

The Administrator is directed by the CWA to review and approve/disapprove all WQSs submitted by states, therefore the minimal level of oversight must include 100% of state water quality standards.

c. The Roles of Data and Self-Evaluation

TOTAL MAXIMUM DAILY LOAD PROGRAM

Background

The responsibilities of states and EPA regarding the total maximum daily load (TMDL) program are based on provisions found in the Clean Water Act (CWA) §303(d). The requirements of §303(d) are not delegated to states, but are inherent responsibilities given to the states. Likewise, EPA's responsibilities under §303(d) are inherent and cannot be delegated to other entities. As such, EPA cannot "take back" the 303(d) program from a state; it can only step in and fulfill the responsibilities when a state fails to do so.

Simply stated, the responsibilities of each state under §303(d) include (1) identification of impaired and threatened waters that need TMDLs and (2) develop TMDLs for these waters as well as, time permitting, develop TMDLs for all other waters within the state. The list of impaired and threatened waters is known as a state's "section 303(d) list." The responsibilities of EPA include the review and either approval or disapproval of such list and such TMDLs developed by each state. If EPA disapproves either a state's list or a TMDL, it must establish a replacement list or TMDL within 30 days of disapproval.

Although EPA attempted in the mid-1980s to reduce its review responsibilities by acting on only a sample-set of TMDLs, subsequent legal decisions and Agency interpretation of the CWA concluded that EPA must review each TMDL submitted to it by a state. Without EPA approval and the attending administrative record backing up each TMDL approval, both the state and EPA were found not in compliance with the CWA.

States are to develop updated §303(d) lists every two years and are to develop TMDLs according to a schedule agreed upon between EPA and the State. Generally, states have up to 13 years to finish a TMDL for a waterbody once the waterbody is placed on the §303(d) list.

1. STANDARD OPERATING PROCEDURES FOR OVERSIGHT

a. Coordination of All Program Elements: Technical, Regulatory, Permitting, Compliance and Enforcement, Performance Assessments Will be Coordinated and Onsite Reviews Conducted Jointly

EPA's oversight role in TMDLs is to review and approve/disapprove 303(d) lists and TMDLs. Therefore, programmatic reviews are not conducted for state TMDL programs. TMDLs and 303(d) lists are part of the foundation upon which permitting, and compliance and enforcement activities are formulated. Regular on-site reviews are not conducted by the regional TMDL program.

The regional TMDL program coordinates with a number of other CWA programs that are relevant to TMDL and 303(d) list development, including the water

quality standards program, NPDES permitting, §319 nonpoint source controls, and monitoring and assessment. Little regular coordination is done in terms of audit schedules, except in certain situations (e.g., national NPDES program reviews, state monitoring audits).

b. End-of-Year Grant Reviews Which Incorporate Program Assessment Findings

Review of grants associated with the TMDL program follow the Agency's standard operating procedures (SOPs) for grants, as there are no separate provisions found in the TMDL SOPs. Activities committed to under a state PPA to produce TMDLs or the 303(d) list are evaluated by regional staff and managers at the end of each fiscal year.

c. Frequency of Program Reviews and Assessments

State 303(d) lists are submitted to EPA every other year. They are due to EPA for action on April 1 of every even year. The Region has 30 days to either approve or disapprove the lists. If disapproved, the Region has 30 days to establish its own list for the state.

There have been occasional reviews of overall state programs. For example, EPA sponsored a national review of each state TMDL program in 1998. The criteria used to evaluate the programs as well as the final format of the review were described in "Development of Regional TMDL Strategies"; Robert H. Wayland III, Office of Wetlands, Oceans and Watersheds.

EPR, OPRA and ECEJ managers also meet annually with state water program managers to discuss program performance, progress and upcoming strategic direction at midyear meetings.

Region 8 could create an oversight element based on the national review conducted in 1998, as an annual requirement of evaluating state TMDL program performance.

STATE COMMENTS:

d. How the Organization Being Reviewed is Notified

The Region notifies the state every time it performs a review through a written record. The Region maintains an administrative record on each approval/disapproval action.

e. How Files and Documents are Reviewed

There are no formal provisions in the TMDL program for file and document review. Office of General Counsel has published recommended components of a Region's TMDL administrative record. Region 8 follows those recommendations in its filing.

f. How and When Organization Managers and Staff are Involved and Interviewed

State staff are involved in assuring lists and TMDLs are completed according to the schedule established by the state (or per any relevant court order, consent decree or settlement agreement). State staff are also responsible for developing assessment procedures to be used in evaluating water quality data and information to identify impaired and threatened waters in need of TMDLs.

EPA staff are involved in reviewing and recommending approval/disapproval of state 303(d)lists and TMDLs. EPA staff also serve as grant project officers and work assignment managers for projects related to the TMDL program. Further, EPA staff also participate in litigation matters relative to state and EPA TMDL programs.

EPA is responsible under the Endangered Species Act, Section 7, to consult where appropriate with the U.S. Fish and Wildlife Service on each action it takes on 303(d) lists and TMDLs.

g. Basis for Determining What Follow-Up Actions Will be Recommended or Required

Although the Region works with each state to improve its procedures and progress in the TMDL program, there are no separate follow-up procedures beyond the written correspondence from the Region taking action on each list and TMDL. The Region works with state TMDL programs by communicating early about proposed waters on the 303(d) list and draft TMDL documents.

h. How Findings will be Presented

All findings related to review of state 303(d) lists and TMDLs are documented in written correspondence to the state with attached records of decision.

i. How Follow-Up Will Occur

See element b. above.

j. Concurrence Process

The TMDL program relies on Agency delegation manuals to determine the level of management needed to make decisions regarding TMDL approvals/disapprovals. Chain of concurrence is simply the chain of management starting with the employee up to the deciding official. The APR Assistant Regional Administrator is the deciding official for both the 303(d) list and all TMDLs.

k. How Long-Term Follow-Up Will be Incorporated in Grant or Other Agreements

TMDL staff review and negotiate provisions of the Performance Partnership Agreements on an annual basis to ensure minimum TMDL program provisions are addressed

2. DEFINITIONS of STANDARDS for ALL PROGRAM ELEMENTS

a. What Constitutes Success in Each Program Area

For state TMDL programs, success is defined as timely submission of the bi-annual 303(d) list and TMDLs which can be federally approved.

b. Statute, Regulation and Policy Citations

- i.** Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act; TMDL-01-01, Diane Regas, July 21, 2003
- ii.** Guidance: Use of Fish and Shellfish Advisories and Classifications in 303(d) and 305(b) Listing Decisions; Geoffrey H. Grubbs and Robert H. Wayland III, October 24, 2000
- iii.** Establishing Total Maximum Daily Load Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Thos WLAs; Robert H. Wayland III and James A. Hanlon, November 22, 2002
- iv.** Guidelines for Reviewing TMDLs under Existing Regulations; 1992
- v.** Guidance for Water-Quality-Based Decisions: The TMDL Process, USEPA, 1991, EPA440-4-91-001

- vi. December 28, 1978 Federal Register Notice, *Total Maximum Daily Loads Under Clean Water Act*, finalizing EPA's identification of pollutants suitable for TMDL calculations, 43 FR 60662
- vii. January 11, 1985 Federal Register Notice, *40 CFR Parts 35 and 130, Water Quality Planning and Management: Final Rule*, 50 FR 1774
- viii. July 24, 1992 Federal Register Notice, *40 CFR Parts 122, 123, 130*, revision of regulation 57 FR 33040
- ix. 40 CFR Part 130 Water Quality Planning and Management

3. DISCUSSION of INCREASED and REDUCED OVERSIGHT LEVELS

a. How Oversight Will be Increased if Problems are Found

The first area where oversight could be increased is by designing a new regional approach to assessing TMDL program performance rather than solely the products developed for EPA review and approval. Methods could be adopted from the 1998 national review effort to evaluate state programs on an annual basis.

Another area where oversight could be increased is by designing a new regional approach to workload planning with state TMDL programs. Each state has a target number of TMDLs to develop for the period of 2005-2008 as reflected in the Performance Activity Measures for the Office of Water (specifically measure 52).

STATE COMMENTS:

b. Description of Reduced Oversight Levels

Not currently applicable to this program.

4. ACCREDITATION

a. Making the Accreditation Determination

To design an accreditation process, the regional program would work with States to create an audit system significantly different from the current oversight process. Such an approach would be likely to evaluate the state processes and procedures for developing and implementing an exceptionally effective TMDL program.

STATE COMMENTS:

b. Minimal Levels of Oversight in Response to Accreditation

Although EPA attempted in the mid-1980s to reduce its review responsibilities by acting on only a sample-set of TMDLs, subsequent legal decisions and Agency interpretation of the CWA concluded that EPA must review each TMDL submitted to it by a state.

c. The Roles of Data and Self-Evaluation

WATER QUALITY MONITORING

Background

EPA and states need comprehensive water quality monitoring and assessment information on environmental conditions and changes over time. This information is used to develop water quality standards, water body impairment lists, aquatic resources needing restoration and to identify problem areas that are emerging or that may need additional regulatory and non-regulatory actions. It also supports water quality management decisions such as NPDES permit limits and enforcement actions.

The Clean Water Act (CWA) gives states and territories the primary responsibility for implementing programs to protect and restore water quality, including monitoring and assessing the nation's waters and reporting on their quality. CWA Section 106(e)(1) requires the Environmental Protection Agency (EPA) to determine that a state is monitoring the quality of navigable waters, compiling, and analyzing data on water quality and including it in the state's Section 305(b) report prior to the award of Section 106 grant funds.

1. STANDARD OPERATING PROCEDURES FOR OVERSIGHT

a. Coordination of All Program Elements: Technical, Regulatory, Permitting, Compliance and Enforcement, Performance Assessments Will be Coordinated and Onsite Reviews Conducted Jointly

EPA's oversight role in monitoring is to determine whether the state is monitoring the quality of navigable waters, compiling and analyzing data on the water quality, and including those data in the state's section 305(b) report, prior to awarding a Section 106 grant to a state. States are also directed to enter the data into the national database, STORET.

Historically, EPA has relied solely on submission of the 305(b) report to determine that states have satisfied the Section 106(e) eligibility requirement for the award of Section 106 grant funds. EPA does not have the authority to approve or disapprove these reports.

b. End-of-Year Grant Reviews Which Incorporate Program Assessment Findings

The Region, in conjunction with the state, reviews the state's monitoring program to determine whether progress has been adequate and reflects commitments negotiated in work plans for Section 106 grants or PPAs that include Section 106 funds in their PPGs. This evaluation takes into consideration the effects of funding impacts on a state's implementation of its monitoring program.

c. Frequency of Program Reviews and Assessments

On an annual basis the Region reviews state reports submitted under Section 305(b) and annual data updates; current and future resource needs; and work plans for Section 106 grants and PPAs that include Section 106 funds in their PPGs, consistent with the regulations governing the negotiation of work plans at 40 CFR 35.107.

In 2003, EPA headquarters distributed guidance on developing state monitoring strategies to regions and states. This guidance addresses a new national priority to address gaps in the national picture on the assessment of water of the U.S. This effort also included a request that the Regions perform a program review of all state monitoring programs. The guidance included ten elements that are expected to comprise a monitoring program. It is unknown at this time whether this effort is intended to become an annual activity conducted by the regions.

EPR, OPRA and ECEJ managers also meet annually with state water program managers to discuss program performance, progress and upcoming strategic direction at midyear meetings.

d. How the Organization Being Reviewed is Notified

The Region notifies and involves the state each time it conducts periodic reviews of each aspect of the state monitoring program. The Region maintains an administrative record of its reviews. For the 2004 reviews of state monitoring programs, follow up letters summarizing the EPA findings will be sent to each state.

e. How Files and Documents are Reviewed

Files and documents are reviewed when discussing relevant areas of the program with the state.

Program reviews were conducted in FY04 for each state in Region 8, on the basis of the HQ request and guidance. State documents pertaining to these elements were reviewed jointly with the state managers. States are also working on developing a multi-year strategy as described in the national guidance, to describe missing and incomplete elements in the state monitoring program. Also described are the timeframe for developing the necessary elements and any other areas of concern.

f. How and When Organization Managers and Staff are Involved and Interviewed

In Region 8, state staff share early drafts of proposed new and revised monitoring strategies with regional staff to resolve, in the early proposal

stage, any potential conflicts or differences of opinion on the program direction and priorities.

EPA staff review state submitted new and revised monitoring strategies and make recommendations to senior management. EPA staff are also responsible for developing regional monitoring guidance and priorities and/or transmitting and explaining Agency guidance and priorities to states and interested stakeholders.

g. Basis for Determining What Follow-Up Actions Will be Recommended or Required

Where EPA determines a monitoring program meets the requirements of CWA Section 106(e)(1) the state continues to implement a monitoring program which includes incremental improvement in monitoring programs, such as updating monitoring protocols and techniques or developing new areas of monitoring (e.g., wetlands monitoring).

Where EPA identifies a monitoring program does not meet the requirements of CWA Section 106(e)(1) the Region works with the state to determine approaches to strengthening the program. In doing so, the Region provides specific guidance on revisions that would resolve the matter.

Where EPA determines a monitoring program does not meet the requirements of CWA Section 106(e)(1) and is unable to reach resolution with the state, EPA may withhold a state's section 106 grant funds.

h. How Findings will be Presented

All findings related to review of state water quality monitoring programs are documented in written correspondence to the state, with an attached rationale for the analyses and decisions.

i. How Follow-Up Will Occur

See description in Section g. above

j. Concurrence Process

Because the EPA has no approval or disapproval authority regarding the 305(b) report, there is no concurrence process established for this product. Other water program products that rely on the data from monitoring have their own concurrence process. Monitoring strategies are being developed in 2004 and 2005, by the states, at EPA's request and are a part of the 2005 PPAs. Whether those strategies are adequate and meet the PPA commitment will be

determined by the Chief of the Water Quality Unit.

k. How Long-Term Follow-Up Will be Incorporated in Grant or Other Agreements

Monitoring staff review and negotiate provisions of the Performance Partnership Agreement on an annual basis to ensure minimum monitoring program provisions are addressed.

2. DEFINITIONS of STANDARDS for ALL PROGRAM ELEMENTS

a. What Constitutes Success in Each Program Area

For state monitoring programs, success is defined as having developed and implemented a comprehensive monitoring program as described in the “Elements of a State Water Monitoring Program.”

The first of these elements is a long-term state monitoring strategy. This strategy will be state specific, be designed from the monitoring capabilities each state already has, and should include a timeline not to exceed ten years to complete implementation.

PPA negotiations for the monitoring program will be based, in part, on yearly implementation of the state strategy.

b. Statute, Regulation and Policy Citations

- i.** Section 106(e)(1) of the Clean water Act (CWA)
- ii.** Section 305(b) of the Clean water Act
- iii.** EPA’s Elements of a State Water Monitoring and Assessment program

3. DISCUSSION of INCREASED and REDUCED OVERSIGHT LEVELS

a. How Oversight Will be Increased if Problems are Found

See description in Section g. above

b. Description of Reduced Oversight Levels

See description in Section g. above

4. ACCREDITATION

a. Making the Accreditation Determination

To design an accreditation process, the regional program would work with States to create an audit system significantly different from the current oversight process. Such an approach would be likely to evaluate the state processes and procedures for developing and implementing an exceptionally effective water quality monitoring program.

STATE COMMENTS:

b. Minimal Levels of Oversight in Response to Accreditation

See section g. above.

c. The Roles of Data and Self-Evaluation

NONPOINT SOURCE POLLUTION CONTROL

Background

Section 319 was added to the Clean Water Act (CWA) in 1987 to establish a national program to address nonpoint sources of water pollution. The leading cause of water quality degradation in the United States, nonpoint source pollution originates from diffuse or scattered sources rather than a defined point like a pipe outlet. Section 319(h) specifically authorizes EPA to award grants to states with approved Nonpoint Source Assessment Reports (part of the 305(b) Report/Consolidated Listing Process required for each state & approved by the EPA Project Officer.) and Nonpoint Source Management Programs. The program also requires a five year update and approval by EPA in 2005.

The funds are to be used to implement programs and projects designed to reduce nonpoint source pollution. As required by section 319(h), the state's Nonpoint Source Management Program describes the state program for nonpoint source management and serves as the basis for how funds are spent. In addition, a variety of other funding sources are available under the CWA (e.g., sections 106 and 604(b) and the State Revolving Fund) or through other federal agencies (e.g., Environmental Quality Incentive Program funds from U.S. Department of Agriculture) for pollution reduction and elimination. When applicable, these other funding sources can be used to fund nonpoint source projects.

1. STANDARD OPERATING PROCEDURES FOR OVERSIGHT

a. **Coordination of All Program Elements: Technical, Regulatory, Permitting, Compliance and Enforcement, Performance Assessments Will be Coordinated and Onsite Reviews Conducted Jointly**

EPA's oversight approach emphasizes cooperative partnerships based upon EPA's and the states' mutual goal of implementing dynamic and effective national nonpoint source programs designed to achieve and maintain beneficial uses of water.

Before receiving a section 319(h) grant, a state must meet the federal requirements which are included in the CWA, Title 40 of the Code of Federal Regulations (CFR), Office of Management and Budget (OMB) circulars, and EPA guidelines.

b. **End-of-Year Grant Reviews Which Incorporate Program Assessment Findings**

Annually, EPA headquarters provides funds to the EPA regions, which are then awarded to the states based on Project Implementation Plans (PIPs) and work plans that have been approved by EPA. EPA discusses with state ways in which EPA can better assist the state during the forthcoming year in implementing the

state's program. Types of assistance considered include: support for state efforts to assess water quality problems; support for state design and implementation of watershed-based plans; technical assistance to help the state monitor the progress and results of watershed projects; and assistance in the development of outreach tools.

The region reviews the state's midyear and annual reports and its data in the Grants Reporting and Tracking System (GRTS) regarding the progress in meeting the schedule of milestones contained in their nonpoint source management programs, and, to the extent that appropriate information is available, report reductions in nonpoint source pollutant loadings and improvements in water quality resulting from program implementation as required in Section 319(h)(11).

The Region requires an annual declaration that the states have made sufficient progress in the previous year, before grants can be issued the following year.

c. Frequency of Program Reviews and Assessments

The region reviews midyear reports, annual reports, site visit reports, grantee performance reports, financial status reports and GRTS. The Region meets at least annually to discuss the state's progress in implementing its program.

The Region participates with the state in a joint performance evaluation process to promote continuous monitoring throughout the life of projects to help ensure the mutual understanding of expectations and outputs of particular grants (see 40 CFR 35.115 and EPA Order 5700.6).

EPR, OPRA and ECEJ managers also meet annually with state water program managers to discuss program performance, progress and upcoming strategic direction at midyear meetings.

d. How the Organization Being Reviewed is Notified

The Region notifies the state each time it completes a review, works with the state lead agency to resolve any problems with approvals of PIPs, work plans, and GRTS. The Region maintains an administrative record on each approval/disapproval action.

Section 319(h)(10) authorizes EPA to request information, data and reports as necessary to determine a states continuing eligibility to receive Section 319 grants.

e. How Files and Documents are Reviewed

In conducting its oversight activities, EPA relies to a significant extent on information and reports provided by the state as well as data entered by the state into STORET and GRTS. EPA reviews this information and then contacts the state if EPA needs additional information

f. How and When Organization Managers and Staff are Involved and Interviewed

The Region and states work together to assure that appropriate reporting requirements are incorporated into each grant, either through specific grant conditions, or within the work program document. The Region reviews and approves all PIPs before the grant can be issued and assures GRTS conformance.

g. Basis for Determining What Follow-Up Actions Will be Recommended or Required

The Region must determine, based on an examination of state activities, project reports, reviews, and other documents and discussions with the state in the previous year, whether the state's progress for the previous fiscal year in meeting GRTS requirements has been satisfactory.

When evaluation results show that grant and state contract provisions have not been substantially achieved, the state and Region work cooperatively to take corrective action. If performance or the results achieved by the state are poor, the Region may be required to determine that the state has not made "satisfactory progress" under Section 319(h)(8) and to deny the state's grant application the following year. As discussed above, one particular area of importance for regional determination is whether states have made satisfactory progress in addressing their impaired waters through the development and implementation of watershed-based plans. Other forms of corrective action are described at 40 CFR 31.43 and in the GRTS section of grants requirements.

h. How Findings will be Presented

Regions must include in each Section 319 grant (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the state has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones and GRTS requirements specified by the state in its nonpoint source management program. The Region must include a brief explanation that supports the determination.

i. How Follow-Up Will Occur

The Region requests information, data and reports as necessary to determine a

state's continuing eligibility to receive Section 319 grants.

See section g. above.

j. Concurrence Process

The concurrence includes concurrence by project office; Chief, Wetlands and Watershed Unit; Assistant Regional Administrator, Ecosystem Protection and Remediation; and Director, Grants Management.

k. How Long-Term Follow-Up Will be Incorporated in Grant or Other Agreements

Nonpoint source staff review and negotiate provisions of the Performance Partnership Agreement on an annual basis to ensure NPS program provisions, including GRTS, are addressed.

2. DEFINITIONS of STANDARDS for ALL PROGRAM ELEMENTS

a. What Constitutes Success in Each Program Area

Success is defined as adherence to grantee performance report; annual reports, financial status report; PIP review and approval; linkage to strategic plan; NPS performance measures; grants conditions; and, national guidance, including GRTS guidance.

Section 319(h)(8) of the Clean Water Act provides that no Section 319 grant may be made to a state in any fiscal year unless the Administrator “determines that such state made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such state under subsection (b)(2).” Section 319(b)(2) in turn provides that states’ approved Section 319 management programs shall include:

“A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.”

b. Statute, Regulation and Policy Citations

A reference document produced by the State-EPA Nonpoint Source Partnership Grants Management Workgroup in March 2003

Section 319 of the Clean Water Act;

Because EPA must award 319 funds to state nonpoint source agencies, states should focus on CFR part 31 and part 35, subpart A, and OMB Circulars A-87, A-102, A-133 and GRTS.

3. DISCUSSION of INCREASED and REDUCED OVERSIGHT LEVELS

a. How Oversight Will be Increased if Problems are Found

See section g. above.

b. Description of Reduced Oversight Levels

See section g. above.

4. ACCREDITATION

a. Making the Accreditation Determination

To design an accreditation process, the regional program would work with States to create an audit system significantly different from the current oversight process. Such an approach would be likely to evaluate the state processes and procedures for developing and implementing an exceptionally effective nonpoint source management program.

STATE COMMENTS:

b. Minimal Levels of Oversight in Response to Accreditation

To be determined.

c. The Roles of Data and Self-Evaluation

SOURCE WATER PROTECTION

Background

“Source Water Protection” is an umbrella term encompassing three programs established under the Safe Drinking Water Act (SDWA): the Sole Source Aquifer Program, the Wellhead Protection Program and the Source Water Assessment Program. A fourth program, the Source Water Protection Petition Program, exists in Statute, but has never been implemented, as states see its provisions as redundant with existing programs. All focus on preventing contamination of sources of public drinking water through voluntary implementation of protection measures by Public Water Systems or local communities. The Sole Source Aquifer Program is an EPA program implemented by the Region according to 40 CFR Part 149.

The Wellhead Protection Program (WHP) required states to develop a state program according to SDWA (Section 1428) and national guidance (1987). The state WHP Program Plan defined what technical requirements local WHP plans must meet, as well as describing how the state would foster and assist in the development of local WHP plans (including anything from outreach and education efforts to regulatory requirements for local development of WHP plans). EPA then reviewed the state program plans, on a one-time basis, and approved all of the Region 8 states’ WHP programs. These program approvals were completed by 1997. The SDWA does not require the development of local WHP plans, and only Utah has made this a mandatory requirement for PWSs in Region 8. Development of WHP plans is voluntary in the remaining Region 8 states. The states must continue to report to EPA every two years on the progress of their WHP program. Funding sources come from CWA Section 106 ground water funds, the Drinking Water State Revolving Fund (DWSRF) set asides and state funding sources.

SDWA also required all states with primary enforcement responsibility for the Public Water Supply Supervision (PWSS) program to implement a Source Water Assessment Program (SWAP); this was also submitted on a one-time basis to EPA for review and approval. States were also required to provide source water assessments on a one-time basis to all PWSs within 42 months of EPA approval of the state SWAP program. Use of the source water assessments by PWSs and local communities to develop and implement source water protection plans is encouraged but not required under SDWA. States were allowed to use set-aside funds under the DWSRF on a one-time basis to develop and implement their SWAP program. Set aside funds are available for SWP and WHP, subject to matching requirements, should a state so choose.

1. STANDARD OPERATING PROCEDURES FOR OVERSIGHT

- a. **Coordination of All Program Elements: Technical, Regulatory, Permitting, Compliance and Enforcement, Performance Assessments Will be Coordinated and Onsite Reviews Conducted Jointly**

Under the Source Water Assessments, states are asked to report annually on overall progress of both the Source Water Assessment Program and protection for all types of sources, including Wellhead Protection. This new process meets the requirement for biennial reporting under Section 1428 SDWA. The Region intends to request annual reporting on a permanent basis through the PPA process. The final reporting process and measures for FY2005 - 2008 are under development by an EPA-State workgroup following an initial pilot effort in FY2003. Reporting issues should be finalized in time for the FY2005 annual report.

State Source Water Assessment Programs were funded by most states at least in part by use of Drinking Water State Revolving Fund set-asides. Some states also use set-aside funding for the Wellhead Protection Program. A separate report is required annually by the DWSRF program to account for use of funds. See DWSRF program oversight procedures for details.

In some states, Clean Water Act 106 funding for ground water is used for personnel for the Wellhead Protection Program. This use is included under the PPA/PPG process.

b. End-of-Year Grant Reviews Which Incorporate Program Assessment Findings

States do not receive grants to specifically designated to support source water protection; therefore, no end-of-year grant reviews are performed.

c. Frequency of Program Reviews and Assessments

There is no requirement under SDWA for review of state WHP or SWAP programs beyond the initial one-time review and approval process. States report progress annually using a standard format, and participate in quarterly conference calls and an annual meeting.

EPR, OPRA and ECEJ managers also meet annually with state water program managers to discuss program performance, progress and upcoming strategic direction at midyear meetings.

d. How the Organization Being Reviewed is Notified

Not applicable.

e. How Files and Documents are Reviewed

Files with each state's approved WHP and/or SWAP program are maintained by EPA. States provide sample source water assessments to EPA upon their completion. Individual WHP plans or source water protection plans are not normally submitted to or reviewed by EPA. Beyond the one-time program approvals, further state file reviews are not required or performed.

f. How and When Organization Managers and Staff are Involved and Interviewed

State staff and some first-line supervisors participate in quarterly conference calls and an annual meeting.

g. Basis for Determining What Follow-Up Actions Will be Recommended or Required

None required

h. How Findings will be Presented

Not applicable.

i. How Follow-Up Will Occur

Not applicable.

j. Concurrence Process

Not applicable.

k. How Long-Term Follow-Up Will be Incorporated in Grant or Other Agreements

States are asked to follow EPA headquarters and Region 8 guidance through the PPA process. Source Water Protection is voluntary once programs are approved and the requirements of the Source Water Assessment Program are met.

2. DEFINITIONS of STANDARDS for ALL PROGRAM ELEMENTS

a. What Constitutes Success in Each Program Area

Success is measured by the number of community water systems and the population they serve that are implementing local Source Water Protection Plans, including Wellhead Protection Plans.

b. Statute, Regulation and Policy Citations

- i. Section 1453 (Source Water Assessment Program) and 1428 (Wellhead Protection Program) SDWA

3. DISCUSSION of INCREASED and REDUCED OVERSIGHT LEVELS

a. How Oversight Will be Increased if Problems are Found

Not applicable.

b. Description of Reduced Oversight Levels

Not applicable.

4. ACCREDITATION

a. Making the Accreditation Determination

To design an accreditation process, the regional program would work with States to create an audit system significantly different from the current oversight process. Such an approach would be likely to evaluate the state processes and procedures for developing and implementing an exceptionally effective source water protection program.

STATE COMMENTS:

b. Minimal Le Levels of Oversight in Response to Accreditation

DRAFT

**WATER PROGRAM – Public Water Supply Supervision (PWSS) Unit
STANDARD OPERATING PROCEDURES (SOP)
FOR STATE OVERSIGHT
October 5, 2006**

DRAFT

WATER PROGRAM – DRINKING WATER UNIT (DWU) STANDARD OPERATING PROCEDURES (SOP) FOR OVERSIGHT OF STATE PUBLIC WATER SUPPLY SUPERVISION (PWSS) PROGRAMS

October 5, 2006

I. Introduction

The Regional Drinking Water Unit (DWU) is responsible for delegation and oversight of the state Public Water System Supervision (PWSS) Programs under the Safe Drinking Water Act (SDWA). The Office of Ground Water and Drinking Water (OGWDW) is the national program manager. With the exception of Wyoming, all Region 8 states have been delegated the primary responsibility for the PWSS Program. Region 8's DWU is responsible for conducting the delegated PWSS Program primacy reviews required by SDWA 1413, 1415 and 1416 and 40 CFR 142.17. The DWU also provides the guidance for negotiating, implementing, and monitoring program work plans for the PWSS grant funds (which are awarded under the National Environmental Performance Partnership System (NEPPS)). The DWU reviews Rule Packages submitted by the states for delegation of new drinking water rules. The DWU provides technical assistance to the states on new and existing National Primary Drinking Water Rules. See Regional Order R.8.1100, Organization and Functions of the Drinking Water Program for additional information.

II. Oversight Process

The oversight process is divided into two major functions. The first under NEPPS is the use of Performance Partnership Agreements. The second is required statutory and regulatory oversight reviews to evaluate a State PWSS Program ability to conduct its delegated responsibilities in accordance with 40 CFR 142 Subpart B, Subpart C and Subpart K.

The DWU negotiates annual program activities and commitments with each state that lead to the achievement of regional and national goals and objectives. The DWU is the primary office that evaluates the states' performance toward the achievement of agreed-upon PWSS activities and commitments. The mechanism that the DWU uses for this oversight activity is the Performance Partnership Agreements.

Performance Partnership Agreements

PPAs are negotiated on an annual basis with each state to establish clear expectations regarding implementation of the PWSS program. The process begins with EPA staff and managers becoming familiar with *The National Program Guidance for the Office of Water* (National Guidance) which includes the national priorities and measures for the PWSS program. The National Guidance and regional priorities are used to establish

Region 8 PWSS Program Guidance to facilitate negotiations with the states. The agreed upon commitments in the Performance Partnership Agreement are reviewed at midyear and end of year to assess the state's performance and to ensure that required information is transmitted to EPA for purposes of reporting on national accountability measures.

Required Regulatory Reviews

Periodic Program reviews are required by SDWA 1413, 1415, 1416 and 40 CFR 142.17 to assess State Program conformance with SDWA, 40 CFR 142 and the approved State primacy program.

III. Program Oversight Standard Operating Procedures

1. Coordination of all program elements:

Technical – Five of the six regional states have existing programs that have experience in implementing the various provisions of SDWA. However continued imposition of new and more complex rules and other requirements on these programs as well as personnel turnover and limited resources endemic within the various programs, require a continued but often different oversight than the period immediately following program authorization. The object of current regulatory oversight is not simply to evaluate the existing State program, but to both maintain and enhance State PWSS Program capacity. The DWU, through experience gained with the Direct Implementation Program in Wyoming, maintains a technical competence that allows a degree of support and assistance to state programs that may not be available in other Regions. Therefore Region 8 will focus its regulatory reviews where feasible on program areas identified by either the Region or the State that may need assistance. The required regulatory reviews will emphasize not just identifying specific program weaknesses, but also working with the State to help address identified weaknesses. Region 8 will also be looking for State program strengths which can be shared with other States and/or the Region 8 Direct Implementation Program.

The periodic regulatory reviews will be conducted by the DWU and site visits coordinated with each States Drinking Water Administrator. Areas of emphasis will be identified from information contained in SDWIS/FED, other reports required by 40 CFR 142.15, areas identified by Region 8 during interaction with the State, or as may be requested by the State.

Regulatory – Legal authority is outlined in the Safe Drinking Water Act, Sections 1413,1415, 1416, 1417, 1418, 1443, 1445, and 40 CFR 142.

Permitting – Not applicable.

Compliance and Enforcement – The Compliance and Enforcement review is conducted by the Technical Enforcement Program (TEP) at EPA.

2. **Process used for end-of-year grant reviews which incorporate program assessment findings**

The DWU follows the Region's framework for the annual planning, development and evaluation process for Performance Partnership Agreements. Each year the program and states will negotiate specific objectives, priorities, and performance measures which are documented in the PPA. The program will gather data on state performance and discuss this with the state. The state and program will work in partnership to develop a draft end-of-year assessment report that the state and EPA can agree to file for the year's performance. If there are issues needing to be elevated, meetings will be scheduled to attempt to resolve the disagreements by the appropriate level of management. Issues can either be resolved or negotiated for the next fiscal year. The Region will finalize and report on the overall results for the year based on the states' performance.

3. **Frequency of program reviews and assessments**

The DWU will follow the framework of the Region's annual planning, development and evaluation process for PPA assessments. The Regional process includes midyear and end of year reviews. At midyear, the EPA and the state will discuss performance activities to date, and any obstacles that the state or EPA has encountered to date that may impact meeting negotiated commitments. The second review is at end of year and is similar to the midyear process with the exception that a report is developed by the state and is concurred by both EPA and the state. Required periodic reviews will be coordinated by the DWU with the State Drinking Water Administrators.

4. **Notification of organization being reviewed**

The DWU will follow the Regional framework of the annual planning, development and evaluation process for PPAs. The State Assistance Program will issue a PPA timeline for the fiscal year that is shared with the states. Required periodic reviews will be coordinated by the DWU with the State Drinking Water Administrators.

5. **Instructions for file and document review**

The state oversight process includes a state file review component to ensure quality documentation exists on the state's systems and that data management reports are validated. The DWU uses Guidance from OGWDW that outlines the elements to examine for adequacy as part of the file review process as well as elements from specific statutory and/or regulatory requirements. A File Review Checklist is developed from the Guidance, Statute and Regulations which is used to address the elements of proper documentation of State and public water system activities and may be focused on particular areas of interest or concern for any specific review.

6. **Instructions for interviews of managers and staff**

At mid-year or end-of-year assessments, appropriate program staff will conduct the joint assessments either by phone or in-person interviews with state counterparts to determine mutual reviews of accomplishments and shortfalls of the state in meeting PPA requirements. During the regulatory reviews, staff will interview various state staff and supervisors to place file review results in context.

7. **Basis for determining fully adequate program performance and determining required and recommended actions**

The DWU will consult with state counterparts to review the status of the state's activities in meeting the requirements of the PPA. DWU will also conduct the required oversight reviews to assess whether the state has met the criteria for adequate program performance. Periodic file reviews will be conducted to assess State compliance with State primacy requirements particularly 40 CFR 142.14 (Required Records), 142.15 (Required Reports) and 142.16 (Special Primacy Requirements). Overall state primacy requirements are set forth throughout 40 CFR 142. Based upon the findings from these reviews, EPA may require or recommend that the state undertake future action to ensure they meet the minimum federal requirements for PWSS program delegation.

8. **Procedures for presenting findings (both verbal and written)**

During the midyear and end-of-year reviews, the DWU staff will work directly with state counterparts to discuss the status of the state's performance on the PPA. The majority of these discussions will take place over the phone unless adequate travel funds are available for in-person reviews. The DWU staff will review and concur on end-of-year reports prepared by the states.

Where EPA disagrees with the conclusions of the state's assessment, it should provide written comments outlining its perspective within 30 working days of receipt of the draft, as directed by the State Assistance Program's process schedule. These comments may be incorporated into the final end-of-year report.

The DWU regulatory oversight will follow procedures set forth in 40 CFR 142 where required. Regulatory reviews will be conducted on site with preliminary findings presented verbally and written reports and notice as may be required by statute and regulation and as may be necessary to achieve oversight objectives. As the annual programmatic review may be tailored to specific areas, the written report will be coordinated with the State Drinking Water Administrator so as to best achieve the desired results.

9. **Procedures for follow-up with the organization reviewed**

The results of the PPA review will be incorporated into EPA's end-of-year review for the

state PPA. If either the midyear or end-of-year reviews find the need for state changes or attention to certain program elements, the EPA and the state will jointly develop a strategy to improve the performance and that strategy may or may not be incorporated into the PPA. EPA will follow-up with the state at the next review to determine the progress that the state has made in addressing the deficiency. The results of that follow-up will be noted in the next review cycle.

10. **Chain-of-command concurrence required for PPA reports, decisions and required actions**

If there are issues that cannot be resolved by the staff, the Unit Chief will work with the State Drinking Water Administrator. After that level if no resolution is reached, the issue would move to the Water Director's level who works with the state water director. If the issue cannot be resolved at that level, the issue is elevated to the Assistant Regional Administrator (ARA). If the issue is still unresolved, the Regional Administrator (RA) will make the final decision or direct the action to be taken. The chain-of-command is the same for concurrence on reports, decisions, and required actions: 1) staff concurs, 2) Unit Chief concurs, 4) Water Program Director concurs, 5) ARA concurs, 6) RA signs, decides, or initiates action.

11. **Incorporating long-term required actions into grant work plans or other agreements**

The findings from the midyear and end-of-year program reviews will determine actions for inclusion in future grant work plans, PPAs or other identified vehicles. If EPA identifies areas for improvement, the EPA and the state will develop future plans or agreements which will identify time frames to improve the performance and agree to which of these vehicles should be used.

IV. Definitions of Standards for all Program Elements

PROGRAM AREA: Program Administration

Citation – 40 CFR 142, Regional Order R.8.1100, SDWA 1413,1415, 1416, 1417, 1418, 1443, 1445

Activity – Program Description

Authority

Memorandum of Agreement

SDWIS Database

National Performance Measures

Two Tier Performance Goals (Specific criteria are under development):

1) Meets or exceeds expectations as provided in EPA rules, regulations, guidance, and policies.

2) Needs improvement.

Accreditation Method of Evaluation:

DRAFT

**WATER PROGRAM – NPDES Permits Unit
STANDARD OPERATING PROCEDURES (SOP)
FOR STATE OVERSIGHT
February 20, 2005**

DRAFT

WATER PROGRAM – NPDES PROGRAM STANDARD OPERATING PROCEDURES (SOP) FOR STATE OVERSIGHT February 20, 2005

I. Introduction

The Clean Water Act established the National Pollutant Discharge Elimination System (NPDES) program to control the discharge of pollutants through implementation of water quality standards and federal technology-based standards and requirements in a permitting system. Under the NPDES Program, permits are issued to protect receiving waters from the discharge of toxic material in toxic amounts. For Publicly-Owned Treatment Works, or POTWs, these NPDES permits may establish pretreatment program requirements to protect the POTW and may also specify acceptable practices for the disposal of municipal sewage sludge or biosolids.

Table 1 summarizes the portions of the NPDES program that states have been authorized to implement and enforce. The EPA Region 8 Water Permits Unit (Unit) is responsible for implementation of all aspects of the NPDES program in Indian country and portions of the NPDES program for which the states have not been authorized. The Unit is also responsible for oversight of all NPDES programs that the States have been authorized to implement.

Table 1. Summary of State NPDES Program Authorizations.

STATE	Authorized Permit Program	Authorized Fed. Facilities Program	Authorized Pretreatment Program	Authorized General Prmt Program	Authorized Sludge Mgmt Program
Colorado	3/27/75	Not authorized	Not authorized	03/04/82	Not authorized
Montana	06/10/74	06/23/81	Not authorized	04/29/83	Not authorized
North Dakota	06/13/75	01/22/90	Pending authorization	01/22/90	Not authorized
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93	10/22/01
Utah	07/07/87	07/07/87	07/07/87	07/07/87	06/14/96
Wyoming	01/30/75	05/18/81	Not authorized	09/24/91	Not authorized

II. Oversight Process

The Unit negotiates annual program activities and commitments with each state that lead to the achievement of regional and national goals and objectives. The Unit is the primary office that evaluates the states' performance toward the achievement of agreed-upon NPDES activities

and commitments. The Unit conducts oversight of state NPDES permitting programs through four major mechanisms:

1) **Performance Partnership Agreements**

Performance Partnership Agreements (PPAs) are negotiated on an annual basis with each state to establish clear expectations regarding implementation of the NPDES program. The process begins with EPA staff and managers becoming familiar with the *The National Program Guidance for the Office of Water* (National Guidance) which includes the national priorities and measures for the NPDES permitting program. The National Guidance and regional priorities are used to establish *Region 8 NPDES Permitting Program Guidance* to facilitate negotiations with the states. The agreed upon commitments in the Performance Partnership Agreement are reviewed at midyear and end of year to assess the state's performance and to ensure that required information is transmitted to EPA for purposes of reporting on national accountability measures. For further details on PPA's, including end-of-year review procedures, see section 5 of this manual.

2) **Permitting for Environmental Results (PER)**

PER is a national effort to assess the NPDES program on a region-by-region and state-by-state basis to identify needs and priorities for the future. PER is comprised of three components: results, efficiency, and integrity.

The results component is focused on permit prioritization and data quality. The Water Permits Unit is responsible for negotiating priority permit lists, if needed, with each state that focus limited state and regional resources on environmentally significant permits (i.e. priority permits) that are contributing to long standing permit backlog. The priority permits are negotiated through the PPA process discussed above. The ability to measure results with high quality data in national databases is a priority that is being addressed through a national database clean-up effort. The clean-up effort will not only assist with the national assessment of the NPDES program but will also facilitate our evaluation of PPA commitments.

The purpose of the efficiency component is to identify opportunities to streamline the NPDES program through more efficient and effective implementation. Web-based access to permits, electronic permitting tools, watershed-based permitting, and trading are some of the opportunities currently being emphasized. States are encouraged to explore opportunities for streamlining through the PPA.

The integrity component is most closely tied to state oversight. This component includes four key tools to assess the integrity of state and EPA NPDES programs. The tools are state and regional self-assessments, a NPDES management report, legal authority reviews and NPDES program profiles.

3) **NPDES Program Audits**

Comprehensive NPDES program audits are conducted, at each state, once every five years to ensure that the state is meeting the obligations of its EPA authorized NPDES program. Audits include a review of resources, data management, program implementation, public participation, and permit quality. The audits are conducted in coordination with the EPA NPDES enforcement program. Elements of the integrity component of PER, discussed above, overlap with aspects of the audits. The Water Permits Unit is evaluating how the new PER program can be effectively integrated in to the audit process. The Regions goal is to eliminate all duplication of effort between the PER process and other oversight activities such as audits.

4) **Real-Time Oversight/Technical Assistance**

The Water Permits Unit is frequently called upon to assist the states with technical aspects of permit issuance. This is often done through real-time oversight of state issued permits. States submit copies of all draft permits for EPA review during the public comment period. Traditionally the Water Permits Unit has reviewed all majors and a subset of minors depending on expected public interest, the interest of EPA's TMDL/WQS program, and the interest of other federal agencies such the the U.S. Fish and Wildlife Service. Currently real-time review of majors is not a priority.

III. **Program Oversight Standard Operating Procedures**

1. ***Coordination of all program elements:***

Technical – Most of the regional states have mature programs that require less oversight than the period immediately following program authorization. The regional program will maintain a technical competence that ensures fully adequate support and assistance to state programs. This will be coordinated and provided to the states through initiatives and agreements that help state program staff to address specific issues or activities. Monthly all-state conference calls will be conducted between EPA program staff and state program staff to facilitate the exchange of innovative approaches to issues and problems and finding solutions. The three EPA Regional Program Directors administering the NPDES, water quality standards/monitoring, and compliance/enforcement programs meet on a regular basis to share information and discuss issues. Annual meetings are hosted by State Directors to discuss issues and upcoming priorities with EPA. The host state will coordinate and develop the agenda for the meeting.

Regulatory – NPDES legal authority reviews, through the national PER effort, will be conducted for all states. The NPDES program audit, discussed above, provides a comprehensive review of the minimum federal regulatory requirements that must be satisfied to maintain NPDES program authorization

Permitting –Permit file reviews are a component of the NPDES Program Audit that is conducted once every five years for each state. A quality review checklist is used in these activities.

Compliance and Enforcement – The Permits Program and the NPDES Technical Enforcement Program coordinate the state’s five-year NPDES program audit

2. **Process used for end-of-year grant reviews which incorporate program assessment findings**

The Water Permits Unit follows the Region’s framework for the annual planning, development and evaluation process for Performance Partnership Agreements. Each year the program and states will negotiate specific objectives, priorities, and performance measures which are documented in the PPA. The program will gather data on the state’s performance and discuss this with the state. The state and program will work in partnership to develop a draft end-of-year assessment report that the state and EPA can agree to file for the year’s performance. If there are issues that need to be elevated, meetings will be scheduled to attempt to resolve the disagreements by the appropriate level of management. Issues can either be resolved or negotiated for the next fiscal year. The Region will finalize and report on the overall results for the year based on the states’ performance. During this process, the Region will also seek feedback from states on technical assistance provided by EPA.

3. **Frequency of program reviews and assessments**

The frequency of program reviews and assessments under the three major mechanisms for state oversight, discussed above, are as follows:

1) **Performance Partnership Agreements** The Water Permits Unit will follow the framework of the Region’s annual planning, development and evaluation process. The Regional process includes midyear and end of year reviews. At midyear, the EPA and the state will discuss performance activities to date, and any obstacles that the state or EPA have encountered to date that may impact meeting negotiated commitments. The second review is at end of year and is similar to the midyear process with the exception that a report is developed that is concurred by both EPA and the state.

2) **Permitting for Environmental Results (PER)** PER is a national effort that was initiated in FY04 and is still evolving. The frequency for updating the tools (e.g. legal authority reviews, self-assessments and profiles) currently being used under PER has not been decided.

3) **NPDES Program Audits** are conducted at each state once every five years to ensure that the state is meeting the minimal federal requirements for maintaining NPDES program authorization.

4) **Real-Time Oversight/Technical Assistance** Real-time review of NPDES permits during the public comment period is not a priority.

4. **Notification of organization being reviewed**

The Water Permits Unit will follow the Regional framework of the annual planning, development and evaluation process for PPAs. The State Assistance Program will issue a PPA timeline for the fiscal year that is shared with the states.

State-Specific Reviews: When a specific state is scheduled for an audit, this action will be included in the affected state's PPA with an approximate timeframe. Approximately six weeks prior to the audit, the Region will contact the state to confirm the audit. During this contact, the Region will also arrange a schedule for meetings with key personnel during the audit. At the same time, a schedule will be set for the exit interview used to debrief the state's management on the findings.

5. Instructions for file and document review

The Water Permits Unit has Permit Quality Review Checklists that are used to review individual permit files during five-year NPDES program audits. Currently, real-time review of permits is not a priority. The Water Permits Unit may develop a prioritization protocol to determine which state issued permits should be a priority for review during the public comment period.

6. Instructions for interviews of managers and staff

In addition to file reviews, the NPDES Program audits include interviews with program managers and staff.

7. Basis for determining fully adequate program performance and determining required and recommended actions

Water Permits Unit will consult with state counterparts to review the status of the state's activities in meeting the requirements of the PPA. EPA will also focus on whether the state has met the criteria for adequate program performance through formal audits and the PER efforts. 40 CFR Part 123 outlines what constitutes a successful NPDES program. Based upon the findings from these reviews, EPA may require or recommend that the state undertake future action to ensure they meet the minimum federal requirements for NPDES program authorization.

8. Procedures for presenting findings (both verbal and written)

Written reports of findings and corrective actions are prepared for each NPDES Program Audit Findings associated with PER will be presented through state profiles after review and negotiation by the states.

During the midyear and end-of-year reviews, Water Permits Unit staff will work directly with state counterparts to discuss the status of state performance. The majority of these discussions will take place over the phone unless adequate travel funds are available for in-person reviews. The Water Permits Unit staff will review and concur on end-of-year

reports prepared by the states.

Where EPA disagrees with the conclusions of the state's assessment, it should provide written comments outlining its perspective within 30 working days of receipt of the draft, as directed by the State Assistance Program's process schedule. These comments may be incorporated into the final end-of-year report.

9. **Procedures for follow-up with the organization reviewed**

The results of the PPA review will be incorporated into EPA's end-of-year review for the state PPA. If either the midyear or end-of-year reviews find the need for state changes or attention to certain program elements, the EPA and the state will jointly develop a strategy to improve the performance and that strategy may or may not be incorporated into the PPA. EPA will follow-up with the state at the next review to determine the progress that the State has made in addressing the deficiency. The results of that follow-up will be noted in the next review cycle.

Findings from a NPDES Program Audit will be discussed with the state program, the final findings will be compiled into an overall report and be presented to EPA Program Directors. EPA Program Director(s) will then call or visit the appropriate State Director to discuss the findings. If areas for improvement are identified, the EPA and State Directors will negotiate any appropriate changes and include the activities in a response report.

Findings from the national PER effort will be discussed with the state verbally prior to formalizing written reports.

10. **Chain-of-command concurrence required for reports, decisions and required actions**

If there are issues that cannot be resolved by the staff, the Unit Chief will work with the state program chief. After that level if no resolution is reached, the issue would move to the Director level. If the issue cannot be resolved at that level, the issue is elevated to the Assistant Regional Administrator (ARA). If the issue is still unresolved, the Regional Administrator (RA) will make the final decision or direct the action to be taken. The chain-of-command is the same for concurrence on reports, decisions, and required actions: 1) staff concurs, 2) Unit Chief concurs, 4) Program Director concurs, 5) ARA concurs, 6) RA signs, decides, or initiates action.

11. **Incorporating long-term required actions into grant work plans or other agreements**

The findings from the midyear, end-of-year, formal audits, and PER program reviews will determine actions for inclusion in future grant work plans, PPAs or other identified vehicles. If EPA identifies areas for improvement, the EPA and the state will develop

future plans or agreements which will identify time frames to improve the performance and agree to which of these vehicles should be used.

IV. Definitions of Standards for all Program Elements

PROGRAM AREA: Program Administration

Citation – Title 40 CFR parts 122-125

Activity – Program Description
Authority
Memorandum of Agreement
Permit Compliance System (PCS)
National Program Measures

Two Tier Performance Goals (Specific criteria are under development):

- 1) Meets or exceeds expectations as provided in EPA rules, regulations, guidance, and policies.
- 2) Needs improvement.

Accreditation Method of Evaluation:

DRAFT

**WATER PROGRAM – Underground Injection Control (UIC) Unit
STANDARD OPERATING PROCEDURES (SOP)
FOR STATE OVERSIGHT
August 25, 2004**

DRAFT

WATER PROGRAM – Underground Injection Control (UIC) Unit STANDARD OPERATING PROCEDURES (SOP) FOR STATE OVERSIGHT August 25, 2004

I. Introduction

The Safe Drinking Water Act (SDWA) established the Underground Injection Control (UIC) Program in Part C in 1974 to ensure that certain injection wells do not endanger underground sources of drinking water. In 1996, additional provisions were added to the SDWA to further promote a multiple-barrier approach to safeguarding our water supply. Risk prevention is one of the key elements of the multiple barrier approach to eliminate, contain, or reduce loadings of contaminants to source waters.

EPA considers state UIC program performance adequate when regulation of underground injection activities consistently prevent any contamination of underground sources of drinking water resulting from injection well operations. The SDWA requires that a state provide the EPA with reports on its UIC program. The minimum requirements for an effective state UIC program are contained in section 1421 of the Act. Section 1421(b)(1)(C) requires that a state program maintain a strong field presence through inspections, conduct timely and appropriate action against violations, and maintain an inventory of known shallow injection wells. EPA monitors these program activities to assure this environmental goal is achieved. Measures and other information at the state, regional and national levels provide guideposts for judging the success of the strategic actions to reduce risks.

In Region 8 three of the six states are authorized to implement and enforce the non-oil and gas-related UIC Program. These delegated programs (Section 1422 of SDWA) consist of Class I, deep injection wells; Class III, in-situ mining wells; Class IV, radioactive and hazardous waste disposal wells and Class V, shallow wells. All six states are authorized to implement and enforce the Class II oil production and disposal wells (Section 1425 of SDWA). This responsibility resides in the state oil and gas agencies.

North Dakota, Utah and Wyoming are the states with authorization to implement the federal 1422 Program. Region 8 oversees these three state programs as well as manages the direct implementation (DI) responsibilities in Colorado, South Dakota, Montana for Section 1422 and Indian Country for all classes of UIC wells.

II. Oversight Process

The Regional UIC Program and state oil and gas agencies and state environmental quality departments negotiate annual program activities and commitments with each state that lead to the achievement of regional and national goals and objectives. The Program is the primary office that evaluates state performance toward the achievement of agreed-upon UIC activities and commitments.

1) Performance Partnership Agreements

Performance Partnership Agreements (PPAs) are negotiated on an annual basis with each state to establish clear expectations regarding implementation of the UIC program. The process begins with EPA staff and managers becoming familiar with the *The National Program Guidance for the Office of Water* (National Guidance) which includes the national priorities and measures for the UIC program. The National Guidance and regional priorities are used to establish *Region 8 UIC Program Guidance* to facilitate negotiations with the states. The agreed upon commitments in the Performance Partnership Agreement are reviewed at midyear and end of year to assess state performance and to ensure that required information is transmitted to EPA for purposes of reporting on national accountability measures.

2) Permit Oversight

The UIC program reviews permit files during aquifer exemption reviews, on-site visits, resources permitting, and Quality Assurance Project Plans (QAPPs) to ensure adequate procedures are in place for sampling and analytical activities performed using federal funds. The enforcement and compliance audit activities are addressed by EPA's Enforcement and Compliance Program.

III. Program Oversight Standard Operating Procedures

1. *Coordination of all program elements:*

Technical – Most of the regional states have mature and delegated programs that require less oversight than may be required in the period immediately following program authorization. The regional program will maintain a technical competence that ensures fully adequate support and assistance to state programs. This is to be coordinated and provided to the states through initiatives and agreements that help state program staff address specific issues or activities. The Regional UIC Program will assist each state program in developing a Quality Assurance Project Plan (QAPP) that addresses all types of data gathering using federal dollars and meeting regional quality assurance requirements based on the regional Quality Management Plan.

Regulatory – UIC legal authority is outlined in Ground Water Program Branch Guidance #34 and provides guidelines for oversight of authorized programs.

Permitting – Permit file reviews are a component of the Ground Water Program Branch Guidance #34. The state program will assure, through its permitting process, that there is no unauthorized injection into, or endangerment of, underground sources of drinking water.

Compliance and Enforcement – The UIC Program and the UIC Technical Enforcement Program coordinate joint inspections, when feasible.

2. **Process used for end-of-year grant reviews which incorporate program assessment findings**

The UIC Program follows the Region's framework for the annual planning, development and evaluation process for Performance Partnership Agreements. Each year the program and states will negotiate specific objectives, priorities, and performance measures which are documented in the PPA. The program will gather data on the state's performance and discuss this with the state. The state and the UIC Program will work in partnership to develop a draft end-of-year assessment report that the state and EPA can agree to file for the year's performance. If there are issues that need to be elevated, meetings will be scheduled to attempt to resolve the disagreements by the appropriate level of management. Issues can either be resolved or negotiated for the next fiscal year. The Region will finalize and report on the overall results for the year based on state performance. During this process, the Region will also seek feedback from states on technical assistance provided by EPA.

3. **Frequency of program reviews and assessments**

1) **State Program oversight** follows the framework of the Region's annual planning, development and evaluation process which is twice per year: midyear and end of fiscal year. At midyear, the EPA and the state will discuss performance activities to date, and any obstacles that the state or EPA has encountered to date that may impact meeting negotiated commitments. The second review is at end of fiscal year and is similar to the midyear process with the exception that a report required by statute is developed that is concurred on by both EPA and the state.

2) **Conducting state UIC program reviews** that include file reviews, interviews on workplan activities, feedback, initiatives, and accomplishments at each regional state to ensure that the state is meeting its primacy obligations. (See Ground Water Guidance #34, UIC Delegated Program Review SOP dated 9/27/94).

4. **Notification of organization being reviewed**

The UIC Program follows the Regional framework of the annual planning, development and evaluation process for PPAs. The State Assistance Program will issue a PPA timeline for the fiscal year that is shared with the states.

State-Specific Permit File Reviews: When a specific state is scheduled for a review, this action will be included in the affected state's PPA/workplan with a specific timeframe of approximately six weeks prior to the audit. The Region will contact the state to confirm the review. Entrance and exit interviews will be conducted with state managers and program personnel during the course of the review process. These reviews are performed pending availability of regional travel resources and staff time. (See Ground Water Guidance #34, UIC Delegated Program Review SOP dated 9/27/94).

5. **Instructions for file and document review**

The UIC Program conducts a state file review to ensure quality permits are developed and are protective of underground sources of drinking water. The UIC Unit uses the “Ground Water Program Branch Guidance #34 and SOP dated 9/27/94 to outline the elements to examine for adequacy as part of the file review process. A Permit File Review checklist is used to address the elements of the permit.

6. **Instructions for interviews of managers and staff**

The state program review consists of an on-site or telephone review of administrative records and files as well as interviews with program managers and staff. At mid-year or end-of-year assessments, program staff conducts the joint assessments either by phone or in-person with state counterparts. These assessments are intended to evaluate overall program performance for the year including state accomplishments and deficiencies in meeting PPA, grant, and database management requirements. (Ground Water Program Branch Guidance #34).

7. **Basis for determining fully adequate program performance and determining required and recommended actions**

EPA staff consults with state counterparts to review progress in meeting the requirements of the PPA or grant workplan and, where appropriate, grant requirements. EPA staff will focus on whether the state has met the criteria for adequate program performance through program reviews. Ground Water Program Guidance #30 and #34 outlines what constitutes a adequate UIC program. Based upon the findings from these reviews, EPA may require or recommend that the state undertake future action to ensure they meet the minimum federal requirements for UIC program authorization.

8. **Procedures for presenting findings (both verbal and written)**

The Ground Water Program Guidance #34 is followed for formal reviews to prepare written reports of findings and corrective actions to state agencies that have been reviewed.

During the midyear and end-of-year reviews, the UIC staff will work directly with state counterparts to discuss the status of the state’s performance. The majority of these discussions will take place over the phone unless adequate travel funds are available for in-person reviews. The UIC staff will review and concur on end-of-year reports prepared by the states.

Where EPA disagrees with the conclusions of the state assessment, it should provide written comments outlining its perspective within 30 working days of receipt of the draft, as directed by the State Assistance Program’s process schedule. These comments may be incorporated into the final end-of-year report.

9. **Procedures for follow-up with the organization reviewed**

The results of the PPA review will be incorporated into EPA's end-of-year review for the state's PPA. If either the midyear or end-of-year reviews find the need for state changes or attention to certain program elements, the EPA and the state will jointly develop a strategy to improve the performance and that strategy may or may not be incorporated into the PPA. EPA will follow-up with the state at the next review to determine the progress that the state has made in addressing the deficiency. The results of that follow-up will be noted in the next review cycle.

10. **Chain-of-command concurrence required for reports, decisions and required actions**

If there are issues that cannot be resolved by the staff, the Ground Water Program Director will work with the state program director. After that level if no resolution is reached, the issue would move to the Water Director level who works with the state water director. If the issue cannot be resolved at that level, the issue is elevated to the Assistant Regional Administrator (ARA). If the issue is still unresolved, the Regional Administrator (RA) will make the final decision or direct the action to be taken. The chain-of-command is the same for concurrence on reports, decisions, and required actions: 1) staff concurs, 2) Ground Water Program Director concurs, 4) Water Program Director concurs, 5) ARA concurs, 6) RA signs, decides, or initiates action.

11. **Incorporating long-term required actions into grant work plans or other agreements**

The findings from the midyear, end-of-year and permit reviews will determine actions for inclusion in future grant work plans, PPAs or other identified vehicles. If EPA identifies areas for improvement, the EPA and the state will develop future plans or agreements which will identify time frames to improve the performance and agree to which of these vehicles should be used.

IV. Definitions of Standards for all Program Elements

PROGRAM AREA: Program Administration

Citation – Title 40 CFR part 35, Ground Water Program Guidance #30 (06/17/83), Ground Water Program Guidance #34

Activity – Program Description

- Authority
- Memorandum of Agreement
- UIC Inventory Database
- National Program Measures

Two Tier Performance Goals (Specific criteria are under development):

- 1) Meets or exceeds expectations as provided in EPA rules, regulations, guidance, and policies.
- 2) Needs improvement.

Accreditation Method of Evaluation:

DRAFT

**WATER PROGRAM – Underground Storage Tanks (UST) Unit
STANDARD OPERATING PROCEDURES (SOP)
FOR STATE OVERSIGHT
August 25, 2004**

DRAFT

WATER PROGRAM – Underground Storage Tanks (UST) Unit STANDARD OPERATING PROCEDURES (SOP) FOR STATE OVERSIGHT August 25, 2004

I. Introduction

The Resource Conservation and Recovery Act, Subtitle I established the Underground Storage Tank (UST) program. The mission of the UST program is to protect human health and environmental quality by creating conditions under which good management of UST systems is common business practice. Good tank management includes prevention, detection, and timely, cost-effective cleanup of releases from leaking underground storage tanks (LUSTs).

State governments have the primary responsibility for UST program implementation and enforcement. EPA's principal role is to oversee and assist the states in implementing the program and to continuously improving their UST programs. In addition, EPA has primary responsibility for implementing the UST program in Indian Country. The Office of Solid Waste and Emergency Response (OSWER) develops consolidated program guidance. Performance measures and other information at the state, regional and national levels provide guideposts for judging the success of the strategic actions to reduce risks. The Office of Enforcement and Compliance Assistance (OECA) collects data from the regions on the number of inspections and enforcement actions taken. Currently in Region 8, four states have received primacy: Montana, North Dakota, South Dakota, Utah, and the two remaining regional states are working towards primacy: Colorado and Wyoming.

II. Oversight Process

The UST Program uses the Regional Strategic Overview (RSO) process, a strategic approach that allows the program to decide which investments of EPA's resources will be most effective in helping the states strengthen their UST/LUST program activities. This process involves the regional staff conducting an overview of state program implementation. An action plan is developed that reflects program needs and issues at the state, regional and national levels.

In addition, the UST Program, since 2003, has conducted program audits/file reviews of state LUST corrective action files in the four approved states to evaluate the timeliness and appropriateness of their corrective action decisions at cleanup sites. It is anticipated that all states in the region will be reviewed by FY06. This activity could be repeated in the future if there are significant changes in state business processes and/or legislation that might affect the state's LUST corrective action program, but is not considered a part of routine oversight.

The UST Program negotiates annual program activities and commitments with each state that lead to the achievement of regional and national goals and objectives. The UST Program is the primary office that evaluates the states' performance toward the achievement of agreed-upon UST/LUST activities and commitments.

Performance Partnership Agreements

Performance Partnership Agreements (PPAs) are negotiated on an annual basis with each state to establish clear expectations regarding implementation of the UST program. The process begins with EPA staff and managers becoming familiar with the *The Office of Solid Waste and Emergency Response* (National Guidance) which includes the national priorities and measures for the UST/LUST program. The National Guidance and regional priorities are used to establish *Region 8 UST/LUST Program Guidance* to facilitate negotiations with the states. The agreed upon commitments in the Performance Partnership Agreement are reviewed at midyear and end of year to assess the state's performance and to ensure that required information is transmitted to EPA for purposes of reporting on national accountability measures.

III. Program Oversight Standard Operating Procedures

1. *Coordination of all program elements:*

Technical – Most of the regional states have mature programs that require less oversight than the period immediately following program authorization. The regional program will maintain a technical competence that ensures fully adequate support and assistance to state programs. As an example, the Region is currently negotiating remedial clean-up goals to accelerate the pace of cleanups, where possible, and prevention and compliance measures with the regional states.

The Region anticipates that these goal-setting negotiations will result in more accurate and standardized reporting processes and enhanced performance. All-States Meetings will be conducted between EPA and state program managers and staff to facilitate the exchange of innovative approaches and solutions to issues and problems. The states will manage their UST/LUST data using the UST-ACCESS database program which was developed for the states by EPA, or a state supported database capable of generating required semi-annual reports. This information will be submitted to the Region by the states semi-annually in a reporting document called Strategic Targeting and Reporting System (STARS). The EPA program will assist each state program in developing a Quality Assurance Project Plan (QAPP) that addresses all types of data gathering using federal dollars and meets regional quality assurance requirements based on the regional Quality Management Plan.

Regulatory – Legal authority is outlined in 40 CFR Part 280. Underground Storage Tanks; Technical Requirements.

Corrective Action File Reviews – File reviews will be conducted by the region on an as-needed basis. File reviews have been done in four states since 2003. The other two states are expected to have reviews completed by the end of 2006. (Note: this activity is not specifically required in national guidance but has been performed to better evaluate state program performance in this area as state procedures change.)

Compliance and Enforcement – The Compliance and Enforcement review conducted by the UST Program will evaluate the state’s enforcement process, including enforcement actions taken to date; compliance rates and specific compliance problems, if any. This review is not specifically required in national guidance and has not been performed on an annual basis, but rather when state processes have changed significantly.

2. **Process used for end-of-year grant reviews which incorporate program assessment findings**

The UST Program follows the Region’s framework for the annual planning, development and evaluation process for Performance Partnership Agreements. Each year the program and states will negotiate specific objectives, priorities, and performance measures which are documented in the PPA. The program will gather data on state performance and discuss this with the state. The state and program will work in partnership to develop a draft end-of-year assessment report that the state and EPA can agree to file for the year’s performance. If there are issues that need to be elevated, meetings will be scheduled to attempt to resolve the disagreements by the appropriate level of management. Issues can either be resolved or negotiated for the next fiscal year. The Region will finalize and report on the overall results for the year based on the states’ performance. During this process, the Region will also seek feedback from states on technical assistance provided by EPA.

3. **Frequency of program reviews and assessments**

The UST Program follows the framework of the Region’s annual planning, development and evaluation process. The Regional process includes midyear and end of year reviews. At midyear, the EPA and the state will discuss performance activities to date, and any obstacles that the state or EPA has encountered to date that may impact meeting negotiated commitments. The second review is at end of year and is similar to the midyear process with the exception that a report is developed that is concurred by both EPA and the state.

4. **Notification of organization being reviewed**

The UST Program follows the Regional framework of the annual planning, development and evaluation process for PPAs. The State Assistance Program will issue a PPA timeline for the fiscal year that is shared with the states.

5. **Instructions for file and document review**

The UST Program will perform periodic file reviews of state enforcement and corrective action procedures for timely and appropriate actions. This review will be performed when there are major legislative or organizational changes or when there are major changes to state program processes or policies.

6. Instructions for interviews of managers and staff

At mid-year or end-of-year assessments, appropriate program staff will conduct the joint assessments either by phone or in-person interviews with state counterparts to determine mutual reviews of accomplishments and shortfalls of the state in meeting PPA, grant, and database management requirements. An entrance and exit interview is conducted with each program manager and staff participant on the workplan progress for the current year.

7. Basis for determining fully adequate program performance and determining required and recommended actions

EPA staff will consult with state counterparts to review progress in meeting the requirements of the PPA/grant workplan. EPA will also focus on whether the state has met the criteria for adequate program performance through program reviews. 40 CFR Part 280 are the technical requirements that states need to meet in order to maintain primacy. Based upon the findings from these reviews, EPA may require or recommend that the state undertake future action to ensure they retain status as a fully adequate program. The key implementation areas are:

- Cleanup Backlog - backlog percentage is within national levels deemed adequate.
- On-Site Inspections - on-site inspections so that every facility is inspected on a timely basis.
- Adequate authorities are in place and deemed to be no less stringent than Federal authorities.
- Funding is available to support cleanup workload.
- Procedures for inspections, enforcement, and sampling and procedures to allow the public to report violations need to be established and provided to EPA for review.

Based upon the findings from these reviews, EPA may require or recommend that the state undertake future action to ensure they meet the minimum federal requirements for UST program authorization.

8. Procedures for presenting findings (both verbal and written)

During the midyear and end-of-year reviews, the UST staff will work directly with state counterparts to discuss the status of state performance. The majority of these discussions will take place over the phone unless adequate travel funds are available for in-person reviews. The UST staff will review and concur on end-of-year reports prepared by the states.

Where EPA disagrees with the conclusions of the state's assessment, it should provide written comments outlining its perspective within 30 working days of receipt of the draft, as directed by the State Assistance Program's process schedule. These comments may be incorporated into the final end-of-year report.

9. **Procedures for follow-up with the organization reviewed**

The results of the PPA review will be incorporated into EPA's end-of-year review for the state's PPA. If either the midyear or end-of-year reviews find the need for state changes or attention to certain program elements, the EPA and the state will jointly develop a strategy to improve the performance and that strategy may or may not be incorporated into the PPA. EPA will follow-up with the state at the next review to determine the progress that the State has made in addressing the deficiency. The results of that follow-up will be noted in the next review cycle.

10. **Chain-of-command concurrence required for reports, decisions and required actions**

If there are issues that cannot be resolved by the staff, the Unit Chief will work with the state program chief. After that level if no resolution is reached, the issue would move to the Water Director level who works with the state water director. If the issue cannot be resolved at that level, the issue is elevated to the Assistant Regional Administrator (ARA). If the issue is still unresolved, the Regional Administrator (RA) will make the final decision or direct the action to be taken. The chain-of-command is the same for concurrence on reports, decisions, and required actions: 1) staff concurs, 2) Unit Chief concurs, 4) Water Program Director concurs, 5) ARA concurs, 6) RA signs, decides, or initiates action.

11. **Incorporating long-term required actions into grant work plans or other agreements**

The findings from the midyear and end-of-year program reviews will determine actions for inclusion in future grant work plans, PPAs or other identified vehicles. If EPA identifies areas for improvement, the EPA and the State will develop future plans or agreements which will identify time frames to improve the performance and agree to which of these vehicles should be used.

IV. Definitions of Standards for all Program Elements

PROGRAM AREA: Program Administration

Citation – Title 40 CFR part 280, 281, OSWER Directive 9630.10, 9610.5-1, 9650.10A, OUST Memo dated 08/14/1996. State UST program grants and LUST Trust Fund cooperative agreement funds are awarded and administered in accordance with federal regulations appearing in 40 CFR Parts 31 and 35, and the Code of Federal Domestic Assistance (CFDA) Sections 66.804 (State and Tribal Underground Storage Tanks Program) and 66.805 (Leaking Underground Storage Tanks Program).

Activity – Program Description

Authority
Memorandum of Agreement
UST ACCESS Inventory Database
National Program Measures

Two Tier Performance Goals (Specific criteria are under development):

- 1) Meets or exceeds expectations as provided in EPA rules, regulations, guidance, and policies.
- 2) Needs improvement.

Accreditation Method of Evaluation:

EPA Region 8 Oversight for State RCRA, NPDES, Air, and PWSS Enforcement Programs

Overview

The nature and scope of oversight activities and documentation of program assessments and reviews for state RCRA Subtitle C, NPDES, and CAA Stationary Source enforcement programs is dependent upon performance as documented during the previous year, therefore, may vary from year to year. This differential oversight will range from minimum or baseline oversight for strong programs to annual program assessments for those programs with ongoing significant problems. Each year, the results of activities and assessments/reviews that have occurred during the year will be documented by ECEJ in an end-of-year (EOY) report or program assessment report. States will have an opportunity to review and comment on EOY reports and program assessment reports.

Program Assessment Using the OECA/ECOS SRF and UEOS

At least once every three years, state RCRA Subtitle C, NPDES, and CAA Stationary Source enforcement program performance will be evaluated using the OECA/ECOS State Review Framework (SRF) and associated guidance. Likewise, Public Water System Supervision (PWSS) enforcement program performance will continue to be evaluated using the Uniform Enforcement Oversight System (UEOS), however, like the SRF reviews, the frequency of reviews may be up to once every three years.

The SRF is based on Region 8's UEOS and was developed jointly by the EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten EPA regions. The SRF was developed as a tool to assess state enforcement and compliance assurance program performance and to provide a mechanism for EPA regions, working collaboratively with their states, to ensure that states meet agreed upon performance levels. An SRF Overview is attached below.

Annual Program Assessment/Review

The frequency of program assessments using SRF or UEOS will be dependent upon program performance as determined by the most recent SRF or UEOS review. Oversight activities occurring during years in which SRF or UEOS reviews are not planned will range from a minimum or baseline level of oversight to a more enhanced level of oversight (including targeted oversight activities) as described in the table below. Should baseline or targeted oversight activities demonstrate that program performance has declined such that program standards are generally no longer met, or, there are significant deficiencies in key areas, then an SRF review

(or UEOS for PWSS) may be conducted for the next performance period.

For PWSS, Region 8 also conducts annual on-site (audit) visits with each state to review the effectiveness of the state enforcement programs, as resources allow. These visits are conducted between November and February, and some of the information gathered is used for the UEOS evaluation. Region 8 staff review the files of specific public water systems and evaluate how the state has responded to violations and the accuracy of data contained in state and federal databases. A report documenting the findings of the visit is issued to the state. As a part of the review, Region 8 identifies corrective actions that the state should implement to improve its enforcement program, and such actions may be incorporated into the PPA along with UEOS findings.

Differential Oversight Levels

Program Status	Resultant Oversight
I. Program standards are met (may have small problems in some areas).	SRF every three years (UEOS for PWSS program). Minimum / baseline * oversight activities during “off” years.
II. Program standards are generally met, however, some areas for improvement have been identified.	SRF every three years (UEOS for PWSS program). Baseline plus targeted ** oversight activities during “off” years.
III. Program standards are generally not met, or, there are significant deficiencies in key areas.	SRF every year; escalating actions if progress is not made to correct problem areas.

* Minimum/baseline oversight activities to occur every year will include:

- Review and documentation (through ECEJ End of Year Report) of progress towards meeting grant commitments,
- Routine communications and information sharing with state (to discuss, for example, HPVs, SNC, QNCR, etc.).
- Watch List review and follow-up,
- Data Metrics review,
- Follow-up on open action items/recommendations from previous reviews.
- Other oversight activities required by national program guidance (e.g. oversight inspections, etc.).

** Targeted oversight activities may include (in addition to baseline activities):

- Targeted program improvement plans to be incorporated into PPAs.
- More frequent communications and information sharing with state.
- Increased number of oversight inspections.
- Targeted after-the-fact and real time review of state files.

Documentation of Oversight Activities

End of Year Reports will be completed annually for all programs. For those years in which SRF reports (or UEOS for PWSS) are completed, they will serve the purpose of the EOY report. EOY reviews and documentation through the EOY Reports may utilize applicable portions of the SRF or UEOS guidance (*e.g.* review metrics), as appropriate. At a minimum, End of Year reports will incorporate the results of the minimum/baseline activities described above and the scope will address the following review areas: 1) inspections, 2) enforcement activity, 3) annual agreements, and 4) data management.

Specific oversight activities planned and actions planned to address any areas for improvement will be described in the final SRF or UEOS report and/or the End of Year Report as well as in the next PPA.

Review Schedule

While oversight and program review and assessment activities occur throughout the year, formal documentation of results doesn't begin until after data are available for the year under review and state EOY reports have been received. This is generally the middle of January following the year under review.

Draft documentation of annual program assessments/review will be completed by the end of April of the year after fiscal year reviewed. This is to allow findings and any corrective actions to be incorporated into the PPA negotiation process for the following fiscal year. The SRF guidance includes a comprehensive process for developing the report which includes many opportunities for findings to be discussed with states and for states to review and comment on draft reports prior to finalization. Final SRF reports will be completed by the end of the fiscal year following the fiscal year reviewed.

EOY reports documenting oversight activities and review results (for years in which an SRF/UEOS assessment is not conducted) will be finalized by the end of April following the fiscal year under review.

Overview Enforcement and Compliance Assurance State Review Framework

Introduction

The EPA Office of Enforcement and Compliance Assurance (OECA), all ten EPA Regions, the Environmental Council of States (ECOS) Compliance Committee and state representatives from each of the ten regions have jointly developed a tool to assess state (or regional in the case of direct implementation responsibilities) performance in enforcement and compliance assurance programs. The purpose of the assessment is to provide a consistent level of environmental and public health protection across the country and provide a consistent mechanism by which EPA Regions, working collaboratively with their states, can ensure that states meet agreed upon performance levels. This Framework is meant to establish a dialogue on enforcement and compliance performance that will lead to improved program management and environmental results.

EPA's Enforcement and Compliance Assurance Program embraces the principle of "Smart Enforcement" in all aspects of its implementation. The Smart Enforcement approach is comprised of five components that, in combination, lead to a strategic and focused program. These components include: 1) addressing significant environmental problems; 2) using data to help make strategic decisions for better resource utilization; 3) using the most appropriate tool to achieve the best possible outcome; 4) assessing the effectiveness of program activities to ensure continuous improvement and desired program performance; and 5) effectively communicating the environmental, public health and compliance outcomes of our activities to enhance program effectiveness.

This Framework for state program review is a management tool to support the Smart Enforcement approach. It is intended to use data we have to assess the effectiveness of our programs and improve our performance. It is meant to maintain the fair and consistent enforcement of Federal environmental laws. EPA Regions and HQ are using this Framework to review the enforcement and compliance assurance components of federally-authorized state programs (or regional programs where they have direct implementation authorities) and ensure they achieve environmental and public health benefits by complying with applicable federal legal, policy and guidance requirements.

To reduce the burden of this review, the Framework uses required program data already reported to EPA as a starting point in order to identify strengths and potential problems where additional information may need to be gathered. This can help to strategically focus file review efforts where they are most needed. The Framework, in some cases, identifies information that can supplement the required national data, but, if it is not already reported to national data systems, it is optional for states to choose to provide this additional data in the course of the review. EPA and states all have limited resources and it is recognized that, while data from our national databases is only one source, it is a valuable source when trying to honor the states' request to

not impose new reporting burdens. The experience of EPA and states in oversight tells us that while quantitative data is useful, it needs to be viewed in the context of qualitative information that can only be gained by file reviews, examining negotiated commitments and objective dialogue between parties.

This review is an opportunity for states to voluntarily share data not in the federal data systems, including outcome information they have collected on the effectiveness of their programs. States are invited to share data, results and outcomes not just in the core program activities included in the Framework's twelve required elements, but also in compliance assistance and other approaches to achieving compliance the state may have adopted. While not required, these state data help to provide a more comprehensive picture of a state's program, though not substituting for core program activities under element 1 through 12.

This Framework embraces the principles of the National Environmental Performance Partnership System (NEPPS), which provide a mechanism for joint planning and program management between EPA and states that takes full advantage of the unique capabilities of each in addressing pressing environmental problems. On April 15, 2004, ECOS and EPA signaled a renewed support for the NEPPS partnership. In a joint letter, ECOS and EPA articulated a vision that "Performance plans and measurement systems that assure internal and external accountability for performance and that focus on environmental results need to be essential elements of the overall planning system. These systems need to be adaptive to support continuous improvement and need to be evaluated periodically to create joint learning opportunities for improvement." This vision is also the vision for this State Review Framework. It is built on collaboration and proposes to evaluate and improve management practices in the compliance and enforcement program.

It is expected that these reviews will become a regular topic in regional/state planning meetings and in the negotiation of work plan commitments. Initially, the region and state should negotiate the timing of the initial review and plan for how it will proceed. If there are local delegations that assist in the implementation of one of the three media programs being reviewed, then they should be brought into those planning discussions. Depending on the type and extent of local delegations, including local agencies could add to the time and resources it takes to conduct the review and needs to be proactively considered. Once the review has occurred, it is expected that major recommendations will get incorporated into the next round of PPA/PPG/categorical grant work plans, where they will be tracked and managed to a successful conclusion.

The State Review Framework is also intended to be responsive to issues raised in EPA Inspector General audits of state programs; concerns raised by states and the ECOS Compliance Committee; program withdrawal petitions; and other assessment efforts by EPA media program offices. It will help us to identify and understand existing areas where improvements are needed and highlight areas where strong performance may provide examples to other states and regions.

The Benefits of Implementing this Framework

Discussions between EPA and states have led to the identification of benefits for EPA, the states, the public and the environment of implementing this Framework. Some of these include:

- 1) Better communication and mutual understanding, leading to an improved federal/state relationship. It will help to further the implementation of the “no surprises” concept.
- 2) It provides a more strategic focus for resource utilization; reduction of duplicative work; more effective work sharing between regions and states. It also may provide workforce deployment opportunities.
- 3) It will offer opportunities for EPA to learn from states and share innovations and best practices.
- 4) It will provide a consistent and predictable baseline oversight approach across states and regions. It will serve to promote equity among states - through a consistent set of elements and metrics used to review performance; consistent thresholds for corrective action; consistent general guidelines for response to continuing problems; and the provision of a level playing field for states in competition for business.
- 5) It offers a mechanism through which the compliance and enforcement program can offer differential oversight based on EPA’s assessment of state performance. States demonstrating an adequate core program will qualify for benefits while state performance not meeting minimum standards will result in enhanced oversight. This process does not negate EPA’s responsibility for oversight, simply determines the level, intensity and focus of the oversight.
- 6) The review process will lead to continuous program improvements that, in turn, will produce improved overall environmental results.
- 7) This proactive approach to identifying problems and developing plans to fix them should result in reduced vulnerability to criticisms regarding EPA’s level of oversight, particularly from the Inspector General, GAO, and the public; it should provide protection to states from citizen suits. It will improve the public’s confidence in our programs.
- 8) The EPA/State relationship will benefit from agreed upon and clear up-front expectations for program management.
- 9) This process will result in the ability for states and EPA (HQ and regions) to pull management reports and see data that drives reviews at any time. It will allow close management of performance and early identification of problems.
- 10) This will provide the foundation for acknowledgment and recognition of good state performance in internal and external communications.

Structural Foundation of the Framework

The Framework is based upon compliance and enforcement policies and guidance that have been in place for many years. The foundation begins with the August 1986 guidance memorandum signed by the then Deputy Administrator, Jim Barnes, entitled “*Revised Policy Framework for State/EPA Enforcement Agreements.*” The evaluation areas posed by this Framework are consistent with evaluation areas delineated in that memo and consequent addenda. It utilizes existing program guidance, such as our EPA national enforcement response policies, compliance

monitoring policies, and civil penalty policies and models or similar state policies (where in use and consistent with national policy) to evaluate state performance and to help guide our definitions of a minimum level of performance. As previously mentioned, it is consistent with the NEPPS principles and is envisioned to be integrated into Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs) that are negotiated using the NEPPS principles.

True to the NEPPS principles, the Framework builds into its metrics the consideration of negotiated commitments in PPAs, PPGs and/or categorical grant agreements that may differ from what guidance or policy dictates. It is recognized that application of the required elements may vary from state to state, based on those specific delegation or grant agreements. It is expected that in documenting findings of the reviews, regions will acknowledge where flexibility has been negotiated and consider performance in terms of commitments made. Reviews may include feedback to the regions and states when negotiated commitment levels fall short of program expectations, which can then be dealt with in prospective state negotiations.

The State Review Framework also integrates planning and accountability processes developed since the issuance of the existing guidance documents mentioned above. EPA's Strategic Plan includes the compliance and enforcement program under Goal 5: Compliance and Environmental Stewardship. EPA has worked with states to align all National Program Guidance to implement the Strategic Plan, and OECA's guidance includes a listing of national priorities, core program requirements and a description of the State Review Framework. Regional plans are developed to support Goal 5 and the National Program Guidance. These regional plans should reflect negotiations with their states on priorities, work sharing and program management. These priorities, core program requirements and negotiated commitments form the base of activities and results which the State Review Framework sets out to examine.

Elements of the Framework

There are several essential elements that apply to all enforcement and compliance assurance programs upon which this Framework is based. It is also necessary, however, to review performance on a program-specific basis because each of EPA's programs contains unique requirements. The State Review Framework currently assesses core program performance in three media programs: the Clean Air Act (CAA) Stationary Sources program, the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES), and the Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste program. Broadening the scope of the Framework to include other programs (such as the Safe Drinking Water Act) may be contemplated in future reviews.

For each media program, the Framework defines the essential elements and then, in a companion Implementation Guide, more fully defines how each element is applied and measured. The scope of the twelve essential elements includes compliance monitoring, civil enforcement and data management. The State Review Framework does include flexibility for reviews beyond the essential elements by the inclusion of a thirteenth element which is optional. This element allows for the inclusion of areas such as compliance assistance, self-disclosure initiatives, innovative

programs, and outcome-oriented measures and results that go beyond the core program. ECOS and EPA encourage regions and states to use the optional review element thirteen to include the full array of compliance and enforcement tools that relate to achieving compliance in any or all of the three core media programs included in the review, as well as to discuss program results and environmental outcomes. It is recognized that areas covered in this element are voluntary and should be negotiated and agreed to by regions and states. Guidance for these submissions are also found in the Implementation Guide.

The State Review Framework is based upon a process and system that was developed by EPA Region 8 in Denver. The essential (required) elements for evaluating state performance include:

- 1) The degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities).
- 2) The degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations.
- 3) The degree to which inspection reports are completed in a timely manner, including timely identification of violations.
- 4) The degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner.
- 5) The degree to which state enforcement actions include required corrective or complying actions (injunctive relief) that will return facilities to compliance in a specific time frame.
- 6) The degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media.
- 7) The degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the BEN model or similar state model (where in use and consistent with national policy).
- 8) The degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies.
- 9) The degree to which enforcement commitments in the PPA/PPG/ categorical grants (written agreements to deliver a product/project at a specified time), if they exist, are met and any products or projects are completed.
- 10) The degree to which the minimum data requirements are timely.
- 11) The degree to which the minimum data requirements are accurate.
- 12) The degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.
- 13) The thirteenth element is optional and open for negotiation between regions and states. EPA and ECOS encourage the use of the thirteenth element to ensure the review takes a measure of the full range of program activities and results. These components can add meaningful input into a state's overall performance and program. Examples of topics could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, outcome measures or environmental indicators that go beyond the core program activities covered in Elements 1 – 12, etc.

Interpreting Information to Determine Performance

This review process recognizes that determining an accurate picture of state performance can be complex, thus it incorporates the use of different types of data in its analysis. The national data metrics provide a snapshot of state activity and a “ballpark” of national averages of state activity as a first barometer of performance.

- 1) States may provide other data that will shed light on particular issues, provide context, add to the depth and scope of the review, and/or provide a validation (or lead to the correction) of data in the national systems. Information such as resource constraints, outcome information (such as compliance rates), etc. can help to explain decisions the state has made that might otherwise detract from a determination of adequate core CWA, CAA, or RCRA performance. This information could be made available as the review of elements 1 - 12 is occurring, or could be presented as part of Element 13.
- 2) The review also requires file reviews to collect more in-depth information from inspection and enforcement files, and delineates specific metrics to consider while conducting those file reviews.
- 3) Negotiated commitments are also considered, as states and regions may have negotiated different targets for inspections/evaluations or other activities than national guidance may set out. In that case, states will be held accountable for what commitments they have negotiated, though the review may provide feedback that those commitments need to be increased to fully demonstrate an adequate core program.
- 4) Finally, management discussions can help to explain anomalies, discuss management issues, brainstorm solutions and develop joint plans to address areas where improvements are needed.

Minimal or adequate levels of performance are established in the State Review Framework based on the metrics developed under the 12 required performance elements. In general, the minimum standards are based (where possible) on national media program policy, with consideration given for negotiated commitments in PPAs, PPGs and/or categorical grant agreements. These metrics are included in the Implementation Guidance associated with the Framework.

To ensure there are “no surprises” regarding data, elements of the State Review Framework that can be quantified using existing state data flows are utilized. EPA is developing an internal EPA/State Web site that will reside within the OTIS Management Reports area that will provide monthly updates for key metrics. This site will allow states and regions to benchmark progress towards goals within the Framework.

In synthesizing a conclusion about performance from these various sources of information, the determination of adequate performance may not be black and white. While this determination is guided by the national standards and goals outlined in EPA’s (or a state’s equivalent) enforcement response policies, compliance monitoring strategies, penalty policies, delegation agreements and policies and rules around reporting and data entry that are in place during the specified time of review, and based on the information collected in the review, it is the regions’ judgment that ultimately synthesizes this information into a conclusion about performance. In

making a determination about performance, the weights of each of these sources of data should be balanced. EPA recognizes that the review may reach different conclusions about the adequacy of each of the media enforcement programs, or that a state's core CWA, CAA or RCRA enforcement programs may have minor areas of improvement identified in a review and still be determined to have an adequate program.

The initial reviews will serve as a baseline from which performance over time can be compared. As additional review cycles are implemented, trend analysis will be incorporated into the review. This will entail comparing performance at the time of the review with performance during the initial or baseline review to see how a state's performance may have improved over time. This does not signal an escalating burden or changing standards or requirements, but will offer a more expansive view of performance over time.

Defining and Rewarding Performance

States that meet minimum standards of performance (an adequate core program) will qualify for benefits, while state performance that does not meet the minimum standards will result in enhanced oversight. In the associated Implementation Guidance document, menus of potential benefits and enhanced oversight are provided to offer examples of what these two concepts of oversight may involve, though these are not comprehensive or all inclusive. Rather, they provide guidelines as to how to consistently interpret and implement these terms. One example is that, among other things, states that meet the minimum performance levels would have the opportunity to lead national cases and settlements, where appropriate, in coordination with and within general bounds set by EPA, as long as the state had adequate resources to do so. States not meeting the minimum performance levels would be expected to focus on the program areas that need strengthening, and would not be given the opportunity to lead cases until their overall performance met the minimum standards. Nothing in this process negates EPA's responsibility for oversight; this simply serves as a tool for determining the level, intensity and focus of the oversight.

In cases where problems are encountered in state performance covered by this Framework, EPA will continue its practice of taking escalating actions over time. Generally, this escalation follows the following process:

- 1) The region and state work together to precisely define a state's attributes and deficiencies, then develop a schedule for implementing needed changes.
- 2) The region and state work on the joint development of a plan to address improved performance, using established mechanisms to codify the plans like PPAs, PPGs, or categorical grant agreements.
- 3) The state is accorded increased levels and frequency of oversight during implementation of the plan to ensure progress as planned and to identify and deal with issues as they arise.
- 4) Should the above approach not be effective, additional responses may include:

- 1) the intervention on a real time basis in program areas with repeated and serious errors or deficiencies;

- 2) the withholding of grant funds; or
- 3) the withdrawal of an authorized program.

Ensuring Consistency

The establishment and implementation of this Framework and metrics is in itself a large step towards bringing consistency to regional oversight of state programs. The Framework establishes agreed upon oversight review elements, metrics, thresholds and responses. It sets standard protocols and procedures for conducting state oversight reviews, including an established methodology for selecting files for review, consistent file review discussion guides, a consistent level of management involvement, etc. The Framework establishes standard time lines for implementing the reviews and standard formats for reporting findings. OECA HQ will manage the overall review process, including reviewing reports to ensure consistency and tracking recommendations to ensure their successful conclusion. Compiling the information to a national level will require that national attention be paid to the consistency of findings across regions.

Further consistency across EPA's ten regions will be provided by periodically conducting post-review surveys and sending questionnaires to states and regions that have undergone a review to evaluate the national process, promote consistency and make improvements. The use of national guidance as a yardstick in determining minimum performance will also help to ensure consistency. Joint training of EPA and state staff and managers responsible for conducting reviews will help to ensure all parties get the same messages, information and guidance for conducting the reviews, interpreting results, and documenting and implementing findings and recommendations.

Documenting Findings and Recommendations

The purpose of this State Review Framework is **not** to develop a ranking or scorecard of state performance, but to be able to improve the effectiveness and results of the core CWA, CAA and RCRA enforcement programs and to communicate a national picture of compliance and enforcement programs across the country. However, because this information likely will be available to the public via the Freedom of Information Act, external entities may perform their own analyses and interpretation of this information. Generally, documenting the findings of these reviews via the following steps can help to report results in a way that does not encourage the ranking of performance:

- 1) Each region will prepare a report on the findings from each state review (or HQ for regional direct implementation programs) according to the documentation protocol included in the Implementation Guidance. The region and state will jointly review the findings and conclusions of each review before they are reported to HQ. Where local agencies are involved in the review, they should also be a part of the report review process.
- 2) Regions may develop a narrative report, supported with quantitative results where appropriate, about findings across states from a regional perspective. This would not report state-specific findings but would consolidate findings to the regional level.

- 3) Reports will be shared with EPA Headquarters who will assess the reviews nationally and create a national narrative, with quantitative results where appropriate, about the performance of the national program. This would not report regional or state specific findings but would consolidate findings at the national level.
- 4) Other than for internal regional or state oversight resource allocation purposes, no rankings or scorecards should be associated with review conclusions.
- 5) EPA and states (and locals where appropriate) should jointly communicate the results on a local and national basis. This should provide an opportunity for EPA and states to speak with one voice and to mitigate against unintended comparisons.

Integration and Coordination with Existing Agreements and Evaluations

The Framework reviews will be integrated into the NEPPS and other planning mechanisms. In fact, the April 15, 2004 affirmation of support for the NEPPS partnership between EPA and ECOS states that “PPAs will be more valuable in defining the State -EPA relationship and the work to be accomplished by including these recommended essential elements: 1) A description of environmental conditions, priorities and strategies; 2) Performance measures for evaluating environmental progress; 3) A process to jointly evaluate how well the PPA is working; 4) A structure and process for mutual accountability; and 5) A description of how the priorities align with those in EPA’s Strategic Plan, EPA Regional Plan, and/or the State’s own strategic priorities and initiatives (optional).” This review is compatible with this vision of PPAs and can serve as a vehicle to measure and evaluate the compliance and enforcement components of these agreements.

The implementation of these state reviews and associated improvement plans should be synchronized with and integrated into existing and future PPAs, PPGs, and/or categorical grant work plans. These agreements should become the primary mechanism by which the Framework reviews are planned and scheduled, as well as where program improvements are documented and implemented. This review process has been built into EPA’s FY2005 to 2007 National Program Guidance, and progress in implementing the reviews is being tracked in the Annual Commitment System (ACS). The ACS also tracks the number of recommendations for program improvements arising from the reviews. In the future, some measure of the value of the program improvements may be appropriate to include instead of just a count.

The State Review Framework should continue to be reflected as **the** tool to evaluate adequate state performance in the CWA, CAA and RCRA compliance and enforcement program. Other compliance and enforcement reviews, if they cover the same information, may be utilized to gather or report this information. If existing reviews do not cover the information in this review, then this review framework will prevail. This is not intended to negate or change EPA’s responsibilities to oversee state grants in accordance with applicable regulations, orders and guidance. It is meant to ensure consistency in the information used to manage the compliance and enforcement program. Where grant reviews look at this information on a more frequent basis, this information should get integrated into the next Framework review to avoid duplication of effort. How grant reviews and Framework reviews fit together should be the subject of discussion between regions and states during the annual planning process.

Every effort will be made to align this Framework with other known national program reviews with enforcement metrics. OECA has met with the other National Media Program Managers to discuss these reviews and learn about and coordinate any plans for other media reviews. The Framework will be designed to reduce burden to the regions and states to the extent possible. The Implementation Guidance will direct reviewers to evaluate what other assessments may have occurred in these areas within a 2-year window, and to determine whether the data from those other reviews can be utilized before collecting additional information. Information from other reviews may be utilized in this review, as long as it can be clearly identified in a manner compatible with that described in the Documentation Protocol.

Implementing the Framework

Beginning in July 2005, building upon the completion and assessment of the pilots, OECA will work with states and regions to complete assessments of all states by the end of fiscal year 2007. Training for the next round of states will be held at the end of June 2005. Training will be available periodically for states being reviewed for the first time to ensure that all who participate understand the tone, philosophy and materials of the review.

A tracking system will be developed to monitor the timing and frequency of each state review over time, as the timing and frequency of reviews will be determined by state performance. Regions may conduct the reviews as often as they deem necessary but states with adequate performance may negotiate a schedule up to three years. After all states have been reviewed, a second evaluation phase will be conducted to collect new lessons and foster continuous improvement.

As mentioned above, OECA HQ will review all review reports for consistency purposes and will track recommendations to ensure successful conclusion. Communication materials will be shared on a periodic basis in order for all participants to keep abreast of program progress and updates. As issues arise and get addressed, it may be necessary to modify Framework documents or metrics. ECOS and EPA will deal with these issues jointly to ensure that both remain committed to the implementation of the Framework reviews.

The key to the success of the State Review Framework process is communication. It is essential for regions and states to spend time early in the process to ensure everyone involved understands the philosophy and purpose of the review. Where regions have utilized other methods to review states, it is important to distinguish between the former systems of review and this Framework. Communications need to be explicit within regions and states, with management clearly articulating expectations around how it will be conducted and involved enough to ensure the review is done consistently across media and across states.

The initiation of the review for the remaining states in July will not mark the end of the development process. Ongoing work remains to be addressed which may lead to inclusion in the Framework of additional documents or the modification of existing guidance. Some of these areas include the development of OTIS management reports to support regional and state data

pulls; exploration of how to value submissions under Element 13; summarizing best practices derived from the pilots and other reviews as they occur; and analyzing reviews for necessary policy or other HQ or regional follow-up. EPA, ECOS and the state media associations (ASIWPCA, ASTSWMO and STAPPA/ALAPCO) will continue to collaborate as full partners on these and any other issues that may arise in the implementation of the State Review Framework.

Overview of EPA Region 8's Uniform Enforcement Oversight System (UEOS)

Summary

EPA Region 8's UEOS is a differential oversight system designed to evaluate state compliance and enforcement program performance. The objective is to strengthen state programs and reward strong programs with reduced oversight. The system currently assesses performance in the state delegated Public Water Supply Supervision (PWSS) enforcement programs. In the past, UEOS was also used to assess performance in the following three state delegated programs: National Pollutant Discharge Elimination System (NPDES), Resource Conservation and Recovery Act (RCRA), and Clean Air Act (CAA). Assessment of those programs is now done using the OECA/ECOS State Review Framework (SRF); a national oversight system patterned after UEOS. The UEOS was developed and has been subsequently updated with significant input from Region 8 states. Results of the UEOS evaluations are used to provide feedback to states regarding performance, to conduct joint planning with the states, and to manage the limited oversight resources of EPA Region 8. The Office of the Inspector General has evaluated the UEOS and has designated it as a Best Practice[®] in the area of State Agency oversight (USEPA IG Report: IC No 2001-P00013 B Aug. 2001, pp.54-55).

Background

The UEOS was developed in 1998 in response to several factors. First, the National Environmental Performance Partnership System (NEPPS) established in May 1995 called for the application of differential oversight. Also, the Office of the Inspector General had reported to Congress that EPA oversight of state programs was inadequate and EPA Region 8 senior management directed all regional programs to outline their oversight activities in an annual plan. Most significantly though, the State Environmental Directors in Region 8 requested that Regional oversight activities inform them of overall performance of their enforcement programs rather than relying solely on case-by-case reviews.

The UEOS was developed with the following goals in mind: accountability, clear expectations, consistency, fairness, and partnership. The system was based, in large part, on an existing Region 8 RCRA enforcement oversight system developed in 1993 by a state/EPA workgroup called the Appropriate State Oversight Project (ASOP). Based on internal and state feedback and in an effort to make the system more effective and streamlined, the UEOS has undergone several modifications since first developed. For example, the original system included 37 evaluation criteria and utilized a scoring system with results shared amongst the states. The current system has 14 criteria and feedback to the states is accomplished through a narrative assessment instead of scores.

Evaluation Performance Areas, Evaluation Criteria, and Interpretive Legends

The UEOS evaluation performance areas are: 1) Inspection Implementation, 2) Enforcement Activity, 3) Annual Agreements, 4) Data Integrity, 5) Timeliness of Materials, and 6) Alternative Projects. These core areas for evaluation were modified somewhat in 2002 with the new optional evaluation performance area called Alternative Projects[®] added to recognize the activities conducted by some state programs that go beyond the core program activities. Examples of alternative projects include efforts such as targeted geographic initiatives, the development of environmental outcome measurements, etc.. Within the six evaluation performance areas are 14 evaluation criteria (see Attachment 1).

Guidelines for evaluating the 14 UEOS criteria have been developed for each program and are updated periodically as needed. The guidelines, called Interpretive Legends, describe expectations for success and identify the source materials for those expectations (*i.e.* statutory or regulatory requirements, policy, guidance, etc.). For example, the program-specific legends for criterion #2 (inspection report documentation) either clearly identify the requirements for inspection report contents or include a reference to the document or documents that contain those requirements. An adequate level of program performance is achieved when each of the thirteen required evaluation criteria are met. See the Interpretive Legends for more detailed, program-specific information.

Process & Time Line

Throughout the evaluation period (generally, the federal fiscal year), EPA Region 8 staff conduct a number of oversight activities to gather information on state performance. Examples of oversight activities include on-site file reviews, review of inspection reports, discharge monitoring reports and enforcement actions, oversight inspections, and regular meetings/telephone calls with state counterparts. Unless otherwise specified in the Interpretive Legends, reports and other information identified for review are selected randomly. The number of reports, files, and other documents selected for review is a function of the previous year's level of performance. That is, the number of documents and other information selected for review generally decreases as performance improves. At the end of the performance period, the results of the evaluations are documented for each evaluation criterion using a standard format. The evaluations document the findings, a description of the information reviewed, and any recommendations for corrective action. The draft evaluations are forwarded to the state programs for review and comment and subsequently finalized. Finalized evaluations are provided to the state programs along with oversight plans that describe the level and nature of oversight activities planned for the next performance period. A description of the time line for the review cycle is provided as Attachment 2.

Use of the Results

UEOS evaluation results are used for several purposes. First, the results are used during mid-year planning meetings with states. These planning meetings are used to kick-off the annual process of Performance Partnership Agreement (PPA) and State/EPA Agreement (SEA) negotiations. The UEOS evaluations identify areas where additional performance commitments may be needed. The UEOS results also allow EPA to identify the areas where technical assistance, training, work sharing, and targeted or enhanced oversight activities might be appropriate. Based on the UEOS results, EPA develops program-specific oversight plans for each state which describe the nature and number of proposed baseline, targeted, and enhanced oversight activities planned for the next year.

Further Information

For more information on the UEOS, contact Corbin Darling of EPA Region 8's Office of Enforcement, Compliance, and Environmental Justice at (303) 312-6426 or via email at darling.corbin@epa.gov.

Attachment 1

Uniform Enforcement Oversight System (UEOS) Evaluation Criteria

These criteria describe the core activities that an adequate enforcement program should conduct. The fourteen criteria are:

Inspection Implementation

1. The universe of planned inspections (covering core requirements and federal, state and regional priorities) is completed.
2. Inspection reports document inspection findings, including accurate identification of violations.
3. Inspection reports are completed in a timely manner, including timely identification of violations.

Enforcement Activity

4. Significant violations are reported to EPA in a timely manner.
5. State enforcement actions include required injunctive relief that will return facilities to compliance in a specific time frame.
6. Enforcement actions are taken in a timely manner.
7. Gravity and economic benefit calculations are included for all penalties.
8. Final enforcement actions collect appropriate economic benefit and gravity portions of a penalty.

Annual Agreements

9. Enforcement commitments in the PPA/SEA are met and any products or projects are complete.

Data Integrity

10. Minimum Data Requirements are timely.
11. Minimum Data Requirements are accurate.
12. Minimum Data Requirements are complete.

Timeliness of Materials

13. Submission of materials is on time.

Alternative Projects (optional)

14. Alternative Projects Evaluation.

UEOS Timeline

October	EPA data pulls sent to states to do informal reconciliations of databases before evaluations begin for previous fiscal year.
November	
December	End-of-Year PPA/SEA state reports due on December 31.
January	Last of national databases closes. EPA staff begin drafting UEOS evaluations in close communication with state staff.
February	EPA Technical Enforcement Program Directors sign off on final draft UEOS evaluations before being sent to states for review.
March	States provide comments to EPA. EPA revises evaluations, as appropriate, addressing state comments.
April	Informal program mid-year meetings held. Status of review and draft results discussed. Final UEOS narrative report and oversight plan for next year sent to state program directors.
May	UEOS report and oversight plan used at state mid-year meetings with senior managers to kick-off planning for the next year.
June	
July	PPA/SEA negotiations commence using results of UEOS final report and resultant decisions regarding areas for targeted oversight.
August	
September	End of fiscal year, new cycle begins.

**EPA REGION 8
UNIFORM ENFORCEMENT OVERSIGHT SYSTEM (UEOS)
EVALUATION CRITERIA AND INTERPRETIVE LEGEND
FOR THE DRINKING WATER (PWSS)
COMPLIANCE AND ENFORCEMENT PROGRAM**

March 16, 2004

Evaluation Criteria Summary

Section 1: Sanitary Surveys

1. The universe of required sanitary surveys (covering core requirements and federal and state priorities) is completed.
2. Sanitary survey reports document inspection findings and include a list of recent violations.
3. Sanitary survey reports are completed in a timely manner.

Section 2: Enforcement Activity

4. State enforcement actions include required injunctive relief that will return facilities to compliance in a specific time frame.
5. The State follows its state-developed enforcement escalation policy.
6. Enforcement actions are taken in a timely manner.
7. An escalated enforcement action is taken when a system violates an existing formal enforcement action and a penalty is warranted.
8. Gravity and economic benefit calculations are appropriately calculated for all penalty actions.
9. Penalties in final enforcement actions (administrative settlements and judicial orders) include appropriate economic benefit and gravity.

Section 3: Annual Agreements

10. Enforcement commitments in the PPA/SEA are met and any products or projects are timely and complete.

Section 4: Database Integrity

11. Minimum Data Requirements are timely.
12. Minimum Data Requirements are accurate.
13. Minimum Data Requirements are complete.

Section 5: Alternative Projects

14. Alternative Projects Evaluation.

Section 1: Sanitary Surveys

Goal:

The goal of this section is to evaluate the process of the State program for conducting sanitary surveys / surveillance of water systems per the requirements of 40 CFR Parts 141 and 142 for conducting sanitary surveys. Site visits are an important activity that can help the State effectively determine intrinsic problems with operation and maintenance of a system, provide compliance assistance, and meet primary enforcement authority responsibilities under the Safe Drinking Water Act (SDWA).

Sources:

EPA will use end-of-year reports, the SDWIS database, on-site evaluations, sanitary surveys and other information provided by the State to evaluate this Section.

Sources include 40 CFR Parts 141 and 142 and the *Guidance Manual for Conducting Sanitary Surveys of Public Water Systems: Surface Water and Ground Water under the Direct Influence* (EPA 1999).

Evaluation Criteria:

1. The universe of required sanitary surveys (covering core requirements and federal and state priorities) is completed.

The regulatory sanitary survey schedule for primacy States is as follows:

All community ground water systems, and all noncommunity ground water systems which do not disinfect must receive a sanitary survey every 5 years, presuming all small systems wish to collect the minimum number of TCR samples per month. (40 CFR ' 141.21(d)).

Noncommunity ground water systems which use protected and disinfected groundwater must receive a sanitary survey every 10 years. (40 CFR ' 141.21(d)).

Community surface water systems must receive a sanitary survey every three years, unless State determines "outstanding performance"⁹ in which case sanitary surveys for those systems may be completed every five years. (40 CFR ' 142.16(3)(i-ii)).

Noncommunity surface water systems must receive a sanitary survey every five years.

⁹ The parameters which establish "outstanding performance" are to be described in the State's primacy application.

(40 CFR ' 142.16(3)(i)).

EPA will evaluate whether the completed surveys accurately reflect the regulatory requirements.

Based on the sanitary survey lists provided by the states and data from SDWIS-FED, EPA will evaluate the number of surveys conducted compared to the number required for the year for each type and source of water system listed above.

Example: The appropriate number of sanitary surveys was conducted for each type of water system (as required by 40 CFR ' ' 141.21 and 142.16(b)(3)).

2. Sanitary survey reports document inspection findings and include a list of recent violations.

Inspectors should document the following:

1. Significant deficiencies and/or recommendations for improved operation, and
2. Violations within the last two years.

While identifying deficiencies is the main goal of sanitary surveys, violation history and recommendations should also be included in the final sanitary survey report. To evaluate this, hard copies of the sanitary surveys will be compared to the SDWIS database and documentation in the system file. This criterion will be evaluated on the number of surveys that identify deficiencies or recommendations for improved operations, as well as recent violations noted in the sanitary survey report (EPA will review sanitary surveys for up to 10 systems that have had at least two violations over the previous two years).

Example: Of the 10 sanitary surveys reviewed, 7 documented inspection findings, including any significant deficiencies (if found) or recommendations for improvement, and violations that the system incurred within the past two years.

3. Sanitary survey reports are completed in a timely manner.

Sanitary survey reports will be considered timely if they are completed within 90 days of the site visit.

Example: Of 10 sanitary survey reports reviewed by EPA, 9 were completed and sent to the system within 90 days.

Section 2: Enforcement Activity

Goal:

The goal of this section is to ensure that timely and appropriate state enforcement response is taken where violations are found. Aspects which are evaluated include reporting of enforcement actions, timeliness of response to violations, appropriateness of actions in response to violations, adherence to the State's escalation policy, and addressing SNCs prior to the time that they become Exceptions.

Sources:

State enforcement actions are evaluated during enforcement file reviews and during on-going state program implementation. EPA will base this evaluation on a review of enforcement actions initiated, a review of the process used to address noncompliance, a review of actions taken to address SNCs and prevent Exceptions, and a file review.

Sources include: EPA Water Supply Guidance (WSG) 25 (January 25, 1985), EPA's *Implementation of an Enforcement Management System (EMS) for the Public Water System Supervision (PWSS) Program* (17 August 1993), EPA's *Model for Escalating Responses to Violations for the PWSS Program* (May 22, 1990), EPA *PWSS Priority Setting Guidance* (June 15, 1992), *Guidance for FY1987 PWSS Enforcement Agreements* (WSG 27, August 8, 1986), *Revised Policy Framework for State/EPA Enforcement Agreements* (August 1987), *Revised Definition of Significant Noncomplier and the Model for Escalating Responses to Violations for the PWSS Program* (WSG 57, May 22, 1990).

Evaluation Criteria:

4. State enforcement actions include required injunctive relief that will return facilities to compliance in a specific time frame.

Return to compliance means within the time frame specified in the formal administrative enforcement Order: Is each violation addressed with a specific injunctive relief requirement, and is a time frame for compliance specified?

These will be evaluated by an on-site file review or using copies of enforcement orders provided to EPA by the State.

Example: 10 Orders were issued and 7 of these systems had injunctive relief with time frames for achieving compliance specified for all violations identified in the Order.

5. The State follows its state-developed enforcement escalation policy.

Does the State have an effective enforcement escalation policy, and does it follow this policy when responding to violations (particularly prior to a system entering SNC

status)? EPA directives require that each State have an established written policy that describes the types and timing of actions that the State will take to address violations. Particularly, an effective escalation policy would require a State to respond to each violation, that each subsequent violation should receive a stronger response from the State, and that formal enforcement action should be taken prior to a system entering SNC status.

EPA will evaluate each State=s enforcement escalation policy by reviewing each State=s written policy and through annual on-site visits. EPA will determine if the State=s escalation policy clearly meets the above criteria (response to each violation, each subsequent violation receives a stronger response, and formal action prior to SNC status) and if the required enforcement responses are clearly described for each type of violation. In an on-site visit, EPA will review up to 15 PWS files and will compare the State=s written escalation policy to the actual formal and informal enforcement actions taken by the State, as shown in the files for each PWS.

Example: The State=s enforcement escalation policy meets the criteria for an effective policy. However out of 15 files reviewed, the State followed its escalation policy on 13 systems.

6. Enforcement actions are taken in a timely manner.

Are appropriate actions taken to address SNCs (Administrative Order, Bilateral Compliance Agreement, Civil or Criminal referral)? This will be determined by reviewing the SNC lists for each quarter over the fiscal year, and evaluating how many were addressed by the State before they became Exceptions. This will be evaluated as the number of SNCs which do not become Exceptions in the SDWIS database relative to the total number of systems that become SNCs during the fiscal year.

Example: There were 25 SNCs during the year and 24 of these were addressed before they became Exceptions.

7. An escalated enforcement action¹⁰ is taken when a system violates an existing formal enforcement action and a penalty is warranted.

Are there enforcement actions issued by the State which warrant a penalty, and for which no penalty is sought by the State? EPA will evaluate this through reviewing SDWIS data for formal enforcement actions over the past two years, and identifying those systems which had at least one subsequent violation of an order, as indicated by SDWIS. Those

¹⁰ For the purposes here, an escalated enforcement action would include collection of stipulated penalties, Administrative Penalty Order, or referral for civil judicial action for penalties.

systems may warrant penalty action by the State, and EPA will evaluate whether such penalty action has been taken. For each system that appears to warrant a penalty, EPA will also review the injunctive relief requirements contained in the formal enforcement action for that system and will confer with the State when necessary to determine if a penalty is justified.

Example: 1 system warranted a penalty due to violation of an Administrative Order, but no penalty was sought by the State.

8. Gravity and economic benefit calculations are appropriately calculated for all penalty actions.

Do penalty actions issued by the State include appropriate calculations for gravity and economic benefit? EPA will evaluate this through review of penalty actions taken by the State in the previous federal fiscal year, and compare the state=s results with those from EPA=s calculations using EPA=s penalty policy. EPA will also evaluate compliance with injunctive relief included in formal enforcement actions in the previous fiscal year. The State must provide EPA with copies of penalty actions with the supporting penalty calculation documentation no later than October 31 of each federal fiscal year, or upon request, in advance of a program audit.

Example: The State issued penalties to 5 water systems during the year and the State calculated appropriate gravity and economic benefit calculations for 4 of these penalties.

9. Penalties in final enforcement actions (administrative settlements and judicial orders) include appropriate economic benefit and gravity.

The final enforcement action (final administrative compliance order or consent order issued by the state, or the final judicial order) includes a requirement or agreement that the respondent pay a penalty which incorporates appropriate economic benefit and gravity components. If the final settlement collects less economic benefit and gravity than was originally sought, the case file adequately explains why the lesser economic benefit and gravity components are appropriate.

Copies of final enforcement actions (including final judicial actions) with justifications for reduced penalties and documentation of credit for Supplemental Environmental Projects shall be provided to EPA no later than October 31 of each fiscal year or upon request, in advance of a program audit.

Example: During the year, the State entered into 5 administrative settlements and one judicial order was issued by the State court. Three of the 5 administrative settlements incorporated appropriate economic benefit, gravity, and multi-day adjustments as assessed in the initial enforcement action. In the 4th settlement, the state accepted a

reduced penalty, and the case file adequately explained that the reduced penalty contained appropriate economic benefit and gravity. In the 5th settlement, the state accepted a reduced penalty, but the case file did not adequately justify how the reduced penalty contained appropriate economic benefit and gravity. In the judicial order, although the case file documented the calculation of appropriate economic benefit and gravity, the court ordered the respondent to pay less penalty than was sought by the state. Conclusion: Of 6 final enforcement actions, 5 of them sought/included appropriate economic benefit and gravity.

Section 3: Annual Agreements

Goal:

The goal of this section is to conduct an evaluation of the enforcement and compliance portions of the PPA or SEA (agreement).

Source:

The final agreement is evaluated based on the achievements and accomplishment of the planned enforcement and compliance activities. Because the agreement goes through a formal concurrence and signature process, it is assumed that any approved agreement adequately reflects national, regional, and state priorities.

Evaluation Criteria:

10. Enforcement commitments in the PPA/SEA are met and any products or projects are timely and complete.

Enforcement commitments, such as annotating the quarterly SNC lists, preparing an end-of-year report, or preparing a strategy for EPA=s review will be evaluated for completeness and submission according to due dates as established in the PPA/SEA or negotiated with the Region during the fiscal year.

Example: All PPA commitments were met and three out of three products were completed on time.

Section 4: Database Integrity

Goal:

The goal of this section is to evaluate state performance in maintaining the national database.

Sources:

This section will be evaluated using reports from the Safe Drinking Water Information System (SDWIS) database.

Evaluation Criteria:

11. Minimum Data Requirements are timely.

States are required to report inventory and compliance data by the 45th day after the end of the quarter (e.g., 1st quarter data (October - December) are due February 15th).

Timeliness of reporting will be determined by comparing the dates that data are successfully transmitted electronically to EPA to the dates that data are required to be submitted to EPA. EPA will determine the number of quarters during the fiscal year that the data were reported in a timely manner (within 5 days of the due date).

Example: Data were reported in a timely fashion three out of four quarters.

QUARTER	DATE DUE TO EPA	DATE RECEIVED BY EPA
Q1 (Oct - Dec)	FEBRUARY 15	FEBRUARY 10
Q2 (Jan - Mar)	MAY 15	MAY 1
Q3 (Apr - Jun)	AUGUST 15	AUGUST 30
Q4 (Jul - Sept)	NOVEMBER 15	NOVEMBER 7

12. Minimum Data Requirements are accurate.

The following processes will be used to evaluate data accuracy.

1. EPA will evaluate whether violations known to the State are accurately reported to SDWIS/Fed. This will be based on an analysis of changes that take place in the data from the State=s most recent Annual Compliance Report (ACR). EPA will compare the violations reported in the State=s most recent ACR, which is developed from an April 1 frozen database, to the number of violations for that same calendar year that exist in the production database as of the time the review is conducted (September/October for submittal to EPA HQ). This will determine the number of changes made by the State to the data for that calendar year. (Note: While the UEOS typically addresses a federal fiscal year, this review will be based on a calendar year since that is the time period covered by the ACR).

The State=s Annual Compliance Report must provide the number of violations which occurred during the calendar year in question, for each rule. A SDWIS/FED Report will be generated by EPA which will identify all violations reported to SDWIS/FED during the same time frame for the following rules: Total Coliform, Chemical/Radiological, Lead/Copper, Surface Water Treatment Rule and Consumer Confidence Reports (CCR=s). Additionally, query programs maintained by EPA will be used to determine the violation summary numbers for those rules not addressed by standard SDWIS/FED reports (i.e. IESWTR, DDBP and PN rules). Any new rules requiring reporting of violations will also be included in this evaluation.

EPA will determine the number of MCL and major M/R violations reported to SDWIS/FED for each of the rules identified above. These numbers will be compared to the number of violations reported by the States for these rules in their Annual Compliance Reports. The higher of each number will be used for the denominator, and the numerator will be the difference between the SDWIS/FED number and the State report. A percentage of difference will be computed for both MCL and M/R violations for each rule.

2. All mandatory violation and inventory data are to be entered into SDWIS/FED. EPA will perform on-site records review on a routine basis for all States. EPA will evaluate the degree to which State records and SDWIS/FED are consistent. SDWIS/FED printouts (SDWIS35) of violation and inventory data will be compared to hard copy information in the State files.

EPA will provide a narrative evaluation of the files reviewed which had information not reported to or inconsistent with the data in SDWIS/FED. File reviews will evaluate if all M/R, MCL, PN, treatment techniques and Consumer Confidence Report violations are reported to SDWIS/FED, and confirm that inventory information in SDWIS/FED is correct.

Example: Based on the table below, the data in the state=s ACR was determined to be 82% accurate when compared to the production database (18% difference or $100 - 18 = 82\%$ accurate). A file review was conducted and it was determined that all M/R, MCL, PN, treatment techniques and Consumer Confidence Report violations were reported to SDWIS-FED and inventory information in SDWIS/FED was correct for those files reviewed.

STATE ACR COMPARISON										
	TCR		CHEMICAL		SWTR		LEAD/COPPER		CCR	
	MCL	M/R	MCL	M/R	T/T	M/R	T/T	M/R		
STATE ACR	50	403	8	1235	91	58	2	63	39	
PROD DBASE	50	397	13	1244	84	62	18	76	39	
% DIFF	0	1%	38%	1%	8%	6%	89%	17%	0%	18%

13. Minimum Data Requirements are complete.

The following reports/documents will be used to ascertain data completeness; all reports will be generated from SDWIS/FED except the Annual Compliance Reports prepared by the States:

1. Specific data elements are required by National policy for each PWS in the SDWIS/FED inventory. EPA will evaluate the completeness of the inventory data using the Grant Eligibility Report (SDWIS32A thru C) and/or the Grant Withholding Report (SDWIS32D thru F) to determine the completeness of the core data attributes for the State inventory. These reports will provide a percentage of PWSs reported to SDWIS/FED which include all the minimum grant requirements. Please note there are 7 sub-reports as follows:
 - b. SDWIS32A Report: A detailed report listing systems not grant eligible and the reasons for failure.
 - c. SDWIS32B Report: Provides state summary totals of reasons why Public Water Systems are not grant eligible.
 - d. SDWIS32C Report: Provides various state summary totals such as PWS-Type break-down for active systems, Grant Eligibility percentage among current, active water supplies and the total number of grant eligible, active community systems with the population served.
 - e. SDWIS32D Report: A detailed report which, for each selected water system which did not meet all Grant Withholding requirements, list the Grant Withholding attribute(s) for which the water system did not meet the Grant Withholding requirement and the reason(s) for failure.
 - f. SDWIS32E Report: A report sorted by state that show the count of selected water systems that did not meet the Grant Withholding

- Requirement for each Grant Withholding attribute.
- g. SDWIS32F Report: A report showing counts and percentages of selected water systems meeting all the Grant Withholding Requirements.
 - 1. SDWIS32F Report (Part 2): A report showing summary counts and percentages of Grant Eligible water systems meeting all the Grant Withholding requirements. If a water system meets all grant formula requirements, it is considered Grant Eligible.

The Grant Eligibility and Grant Withholding Reports will be run following the closure of the SDWIS/FED data base each quarter. From these reports EPA will determine the number and percentage of PWSs in the State inventory which include all the minimum grant data.

- 2. All monitoring/reporting/treatment technique and MCL violations are to be reported to SDWIS/FED on a quarterly basis for the following rules: Total Coliform, Chemical Radiological, Lead/Copper, Surface Water Treatment Rule and Public Notice. (In future years Consumer Confidence Report violations and Public Notice violations will also be reported to SDWIS/FED) Additionally, query programs maintained by EPA will be used to determine the summary numbers for those rules not covered by the ACR or SDWIS 20 violations summary reports (IESWTR and DDBP, etc.) EPA will evaluate whether or not all monitoring/reporting violation data appear to be entered into SDWIS/FED by the presence/absence method. Violation Summary Reports (SDWIS 20) identify all violations reported to SDWIS/FED for a particular rule in any compliance period.

A SDWIS/FED Violation Summary Report will be generated for the fiscal year, and evaluated to determine if there are any rules for which no monitoring/reporting violations are reported. Additionally, queries will be developed to determine violation summary counts for those rules that have not been programmed into the SDWIS standard reports.

Example: Overall, 691 (or 34%) of the 2012 PWSs in the state have complete data in SDWIS/FED. Also, the state has reported violations for eight of the ten major rule categories. This is not necessarily an indicator of a data completeness problem but is provided for the state's consideration.

Section 6: Alternative Projects

Goal:

This is an optional area for program evaluation. Each State program should discuss with EPA, at the beginning of the fiscal year, any state priority areas where they would like to invest

enforcement resources. This may include special projects for innovative measures, new models for enforcement approaches, or other activities beyond the core program. This evaluation will focus on joint discussions regarding the effectiveness of such alternative projects and will publicize good models to EPA headquarters and other state programs.

Source:

PPA/SEA or other document.

Evaluation Criteria:

14. Alternative Projects Evaluation:

The evaluation for this criterion will include, for each alternative project identified by the state, a discussion of the project and its effectiveness and will include a review of the project goals/milestones, which would be identified in the PPA or project plan.

File Review Spreadsheet

Name of System						
System ID	Population	#Connections		Type	Source	
Sampling Req=d: TCR Nitrates IOCs VOCs SOCs SWTR Pb/Cu Rads Variance/ Exemptions? Mo Qtr CCR						
Violation Date	Violation Type	In SDWIS Fed? What code used?	State Actions SDWIS-Fed	State Actions State File	Meets State Escalation Policy?	Comments
Sanitary Survey conducted?	Date of Survey	Completion date w/in 90 days?	Deficiencies noted?	Multiple violations w/in last 2 years noted?	Comments:	
SS Recommendations:						

Preparing for State Audit

Before you go:

- Become familiar with State enforcement escalation policy and procedures, so you can verify that it is being followed
- Look at the enforcement section of the State/EPA PPA
- Look at previous UEOS or audit results to see if any issues need to be followed up on
- Run a SDWIS/FED 24 report and choose systems to review. Transfer the relevant data to the file review spreadsheet. Have all materials printed, organized, and pre-populated
- Bring current SNC list. If EPA is considering action for NOVs, ask the state for its current plans for those systems and make sure to pull info from those files to help prepare NOVs
- Get SDWIS-Fed Sanitary Survey report for the year being audited. Ask state for its list of systems that had SS conducted that year
- Get list of acute violations from past year to discuss with state
- Notify the state of the systems to be reviewed, request all files related to those systems be pulled and/or made available in a central location. Request that monitoring schedules and waiver information be provided
- Do as much as possible before you travel

For choosing cases to review:

- get about 5 more cases than you need, in case some fall through at the state office (plan to review 15 files, but identify 5 extra for backup)
- get selection of CWS and NTNC with M/R, MCL or AL exceedances for: Nitrates, Inorganics, SOCs, VOCs, Pb/Cu
- NC with M/R or MCL violations for nitrate and TCR
- PWS with SWTR violations
- Get some SNCs and some pre-SNCs
- choose some that have been referred to the state AG
- choose some that have received state enforcement action, to see if the order was complied with
- look at time period: last three years

Entrance Meeting with the State

Meet with the state on first day to discuss procedures:

- Will review 15 PWS files to see if information is correct in SDWIS, see if enforcement policy is followed and to see if PPA commitments are being met
- Get staff names, phone numbers and locations so that you can ask questions when needed
- Will have exit interview to discuss general issues raised by the file reviews

Questions to ask:

- Are there any concerns you have with EPA - UEOS, PPA, enforcement, etc?
- Has anything changed with State staffing that helps or hinders your ability to conduct enforcement?
- Have you changed any enforcement procedures since EPA was last there that would help our understanding if we knew?
- Do you have any surface water or GUIDI systems that are not yet filtering? Are any beyond the 18 month deadline?
- Has testing been done to determine that all GUIDI systems are identified?
- Have you referred any civil cases to the State Attorney General's Office this year? Does that process work well?
- Are there any particularly troublesome PWSs or issues in the state? How is the State addressing these?
- Are there PWSs owned and/or operated by Tribal governments in the state inventory? If so, does the state get involved in enforcement actions with these systems?
- Are there any enforcement highlights you would like to share? Any success stories that EPA can be aware of?
- How many emergency acute incidents does the state deal with in a typical year (or the last year?)
- Under what conditions does the state issue a boil order?
- Are there any problems with entering or uploading the data into SDWIS?
- Are waivers or variances granted to PWSs? How much documentation is required for the state to justify issuing a waiver or variance?
- Do you have administrative authority or administrative penalty authority? (Ask on first visit to the state)

Exit Interview:

- Discuss good things found & kudos
- Discuss concerns found in general
- Ask if any questions

ECEJ Oversight Plan Form

(Describes Planned Oversight Activities for FY05 Based on the FY03 Performance Evaluation)

STATE:

PROGRAM:

DATE:

TEP STATE LEAD/PHONE:

Proposed Oversight Activity* or Other Commitment**	Activity Type***	Summary of Relevant UEOS Criteria, Findings, and Recommendations (from Evaluation Form - Form A)

- * AOversight Activities@ include overseeing implementation of negotiated state corrective actions (using the specific recommendations from the UEOS evaluations as a starting point), EPA technical assistance, and increased oversight to verify performance. Oversight activities also include baseline oversight activities.
- ** AOther Commitments@ include EPA or joint activities that are not necessarily a result of UEOS (e.g. CAFO work sharing, etc.).
- *** AActivity Type@ is either B = Baseline Oversight (minimum oversight activities) or TE = Targeted/Enhanced Oversight (oversight activities addressing specific performance issues or overall performance problems).

**USEPA Region 8
UNIFORM ENFORCEMENT OVERSIGHT SYSTEM (UEOS)**

Form A - Evaluation Form

Date: EPA Evaluator: Phone:
State: Program Evaluated:

Section 1: Review of State Inspection Implementation

2. Degree to which state program has completed the universe of planned inspections (covering core requirements and federal, state, and regional priorities).

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

3. Degree to which inspection reports document inspection findings, including accurate identification of violations.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

4. Degree to which inspection reports are completed in a timely manner, including timely identification of violations.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

Section 2: Review of State Enforcement Actions

- 1. Degree to which significant violations are reported to EPA in a timely manner.**

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

- 2. Degree to which state enforcement actions require injunctive relief that will return facilities to compliance in a specific time frame.**

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

3. Degree to which the State takes enforcement actions in a timely manner.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

4. Degree to which the State includes both gravity and economic benefit calculations for all penalties.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

- 5. Degree to which final enforcement actions (settlements or judicial results) collect appropriate economic benefit and gravity portions of a penalty, in accordance with penalty policy considerations.**

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

Section 3: Review of Performance Partnership Agreement or State/EPA Agreement

Degree to which enforcement and compliance commitments in the agreement were completed and of high quality, including products or deliverables that were funded by the Performance Partnership Grant

Findings:

Recommendations if corrective action is needed:

Section 4: Review of Database Integrity

1. Degree to which the state Minimum Data Requirements are timely.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

2. Degree to which the state Minimum Data Requirements are accurate.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

3. Degree to which the state Minimum Data Requirements are complete.

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

Section 5: Timeliness of Materials

- 6. Materials are generally submitted on time. Yes / No (Select one)**

Findings:

Citation of information reviewed for this criteria:

Recommendations if corrective action is needed:

Section 6: Alternative Projects

1. Alternative Projects Evaluation

Findings:

**PROPOSAL
TO DEVELOP AN OVERSIGHT SYSTEM
FOR UIC STATE/TRIBAL ENFORCEMENT PROGRAMS
USEPA Region 8
4/5/07**

The purpose of preparing a uniform enforcement oversight system for the state/tribal UIC enforcement programs is to assure a credible oversight system, jointly developed with states and tribes, that assures effective environmental protection in Region 8. The proposal to develop a uniform system is intended to include all classes of UIC wells and be applicable to programs delegated to state health, environmental and oil & gas agencies.

The following table will be used in the development of the UIC UEOS criteria for delegated UIC state/tribal compliance/enforcement programs. It is based primarily on the UEOS system currently in use in ECEJ, and UIC program and enforcement guidance on delegated UIC program oversight.

Steps to Developing the UIC Enforcement Oversight System

Internal Discussions of Criteria

1. OPRA and ECEJ shall discuss and resolve the following issues:

- X and, if so, what are the evaluation standards used
- X Following the Regional Order 5700.04 at paragraph 3.D. which states that ...performance assessments of individual programs will be coordinated, onsite review conducted jointly, ECEJ and OPRA will determine whether state/tribal reviews will be conducted jointly
- X ECEJ and OPRA will explore how to integrate the enforcement oversight system with the program oversight system to make a comprehensive package for UIC state/tribal programs

External Discussions

- 2. ECEJ will meet with state/tribal programs in the health, environmental, and oil & gas agencies to discuss the development of the uniform oversight system.
- X Develop Uniform Enforcement Oversight System with states/tribe
- X Apply Uniform Enforcement Oversight System
- X Conduct evaluations of performance of states/tribe

The items identified in the table below are based primarily on the Region 8 Uniform Enforcement Oversight System (UEOS).

UEOS Criteria	Applicable Existing UIC Oversight Guidance	Lead ARA-ship	Future Discussion & Coordination
<i>Inspections Implementation</i>			
1. The universe of planned inspections is completed. (covering core requirements and federal, state and regional priorities)	Current UIC Oversight Guidance lists this task – inspection numbers are reported in the EPA UIC 7520 forms	TBD	need to determine if OPRA currently does this
2. Inspection reports document inspection findings, including accurate identification of violations.	Process may need to be developed and negotiated with the States	TBD	need to determine if OPRA currently does this and the performance measure
3. Inspection reports are completed in a timely manner, including timely identification of violations.	Process may need to be developed and negotiated with the States	TBD	need to determine if OPRA currently does this and what is “timely”
<i>Enforcement Activity</i>			
4. Significant violations are reported to EPA in a timely manner.	SNCs are reported to EPA with the Form 7520 reporting schedule (ea. 6 months)	TBD	Need to define SNC; what do we expect reported to us - total number or details of each SNC; need to define timely
5. State enforcement actions include required injunctive relief that will return facilities to compliance in a specific time frame.	Current UIC Guidance on oversight covers this criterion	TBD	Need to define required injunctive relief and specific time frame
6. Enforcement actions are taken in a timely manner.	Current UIC Guidance on oversight covers this criterion	TBD	type and timeliness of follow up need performance measures
6.a. Alternative enforcement tools	Current UIC Guidance on oversight covers this criterion	TBD	how do we capture other tools that state uses that may be effective in returning operators to compliance

7. Gravity and economic benefit calculations are included for all penalties. See 6.a.	Current UIC Guidance on oversight covers this criterion	TBD	Determine if OPRA currently does this. Is this relevant for states which use other tools, such as pipeline severance?
8. Final enforcement actions collect appropriate economic benefit and gravity portions of a penalty. See 6.a.	Current UIC Guidance on oversight covers this criterion	TBD	Need to define criteria for determining Appropriate@
<i>Annual Agreements</i>			
9. Enforcement commitments in the PPA/SEA are met and any products or projects are complete.	Revise Enforcement Agreement and other enforcement language in State Program Delegation packages where needed. And coordinate development of enforcement language in workplans.	OPRA	Discuss enforcement agreement revisions w/states/tribe
<i>Data Integrity</i>			
10. Minimum Data Requirements are timely.	This requirement is not really applicable, since no electronic data submission occurs.*	No	May need in the future
11. Minimum Data Requirements are accurate.	This requirement is not really applicable, since no electronic data submission occurs.*	No	May need in the future
12. Minimum Data Requirements are complete.	This requirement is not really applicable, since no electronic data submission occurs.*	No	May need in the future
<i>Timeliness of Materials</i>			
13. Submission of materials is on time.	Will be included in UEOS oversight for current 7520s, measures, PPAs, and eventually national database (in development)	TBD	Refer to 7520 forms, PPAs, enforcement agreements
<i>Alternative Projects</i>			
14. Alternative Projects Evaluation (optional)	?	?	?
<i>Non UEOS Criterion</i>			
Financial Responsibility	Not covered in UEOS or UIC Oversight Guidance, but need to assure timely plugging of wells to assure non-endangerment of USDWs	?	Need to discuss if this criterion is needed

*Develop requirements consistent with National UIC Database for FY08.

10/17/03 Edition

**NPDES PROGRAM ASSESSMENT CRITERIA
for
STATE AUDITS**

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- EXHIBITS.....
- Exhibit 1 (Acronyms Used throughout this Report).....
- Exhibit 2 (Organizational Chart)

SECTION I: PROGRAM ADMINISTRATION

A. Delegation Documentation

1. Prior to the onsite audit obtain from the State a complete copy of their current water quality statute and all current State NPDES implementing regulations.
2. Has the State's water quality statute been amended since the State received delegation of the NPDES program (or, since EPA's last NPDES program review)? If so, please furnish copies of all statutory amendments (amended language before and after the amendment) since that time.
3. Have the State's regulations implementing its delegated NPDES program been amended since the State received delegation of the NPDES program (or, since EPA's last NPDES program review)? If so, please furnish copies of all regulatory amendments (amended language before and after the amendment) since that time.
4. Has the Attorney General issued written statements regarding the State's NPDES legal authorities since the State received delegation of the NPDES program (or, since EPA's last NPDES program review)? If so, please furnish copies of all such Attorney General statements.
5. With regard to EPA initiatives, (WET, 304(1), sludge and storm water) will the State need to amend its present NPDES regulations or adopt new regulations to implement these initiatives? If so, describe generally the nature of any needed regulatory changes and any plans the State may have to amend its regulations in this area. If not, please cite current State regulations that authorize the State to implement these initiatives?
6. With regard to these initiatives, will the State need to amend its present water quality statute to implement this initiative? If so, describe generally the nature of any needed legislative changes and any plans the State may have in this area. If not, please cite the current State statutory sections(s) that authorize the State to implement these initiatives.
7. Does the Program Description and the MOA reflect present operating conditions? If not,

what areas are incorrect and should they be revised?

8. Is there a State/EPA Enforcement Agreement (EA)? If no, what is the status of development and when is it scheduled to be completed? If yes, does this agreement reflect current operating conditions? If not, what areas are not being followed? Does the agreement need to be revised to reflect present operating procedures, or do we need to modify current operating procedures so that the EA is followed?

B. State Resources and Organization

1. What is the funding source for the State NPDES program? What percent of resources come from Section 106 or 205(g) funds? Has there been a funding shortfall identified for future years?
2. What were the FTEs directly assigned to this program in the last fiscal year? What are they in the current year? How does this compare to Program Description? What is the projection for the next fiscal year? Are there FTE taps? If there are, state size of tap and purpose.
3. Are State resources adequate? If resources are inadequate, which area of program are being adversely impacted?
4. What was the organizational structure of this program at the beginning of the last and current fiscal years, respectively? How does the present organizational structure compare to that described in the program description? Show number of FTEs assigned to each unit of this program? Obtain copies of current organizational charts showing duties and responsibilities of each person.
5. Was this program reorganized since the beginning of last FY? If yes, why was the program reorganized and what was the FTE impact? Are there any additional reorganizations planned? If yes, discuss the why, the when, and the proposed organizational structure. Also, discuss resource implications.
6. How can the State's NPDES organization work more effectively?

7. What fraction of an FTE is allocated to the WET activity? Pretreatment? Biosolids? Stormwater? CAFOs? SSOs/CSOs? What is the outlook for increasing the level of resources assigned to these activities?
8. Has the State developed a training program for inspectors, permit writers, WQ (including WET) and pretreatment staff? If so, please describe.

C. File System

1. Do the files appear complete? Are they well organized? How are the files structured? Do the files contain copies of all appropriate permits, reissued permits, permit modifications, formal enforcement actions, SOB, correspondence directly related to permits and enforcement actions, inspections, inspection follow-up, internal memos, telephone memos, meeting notes and DMRs?
2. How many years of information are held in each file? Are files archived? Where are archived files held and for how long?
3. Are the files open to the public? To what degree does the public use the files?
4. What actions has the State initiated to direct permittees to mail copies of all NPDES correspondence to EPA?
5. Are there enforcement sensitive files? If yes, how are they managed? Where are they kept?

D. Source Inventory

1. What type of a source inventory system do you have? Manual, computer, both? If computers, is it PCS?
2. Who maintains/updates the system?

3. Does this system contain full facility information? Does this inventory include POTW SIUs? What other data is included in the inventory?
4. How often is the system updated?
5. Is the system readily accessible to anyone who needs/wants to use it?
6. Who uses the system? Does it adequately meet their needs? What improvements are required?

E. Permits Compliance System (PCS)

1. Is the State a direct user of PCS?
2. How many PCS or terminals does the State have for PCS?
3. Does the State require the use of PCS preprinted DMRs for all major permittees? Minors? General Permit coverages?
4. Does the State produce graphs or other data summaries from PCS? If yes, provide examples. Has PCS data been used for summarizing permit compliance data? If yes, provide examples. If no, can the State download PCS data from the EPA mainframe to a PC?
5. Does the State code and enter all permit effluent (DMRs) and reporting (CSS) requirements into PCS? If not, what is not coded and entered and what is the current schedule for achieving full permit entry? If yes, for which permits? Majors? Minors? General?
6. Is there a backlog of coding/entry/printing of DMRs for new and modified permits? Compliance schedules?
7. Are all the State's formal enforcement actions coded into the compliance schedule and

enforcement action PCS records? If not, why not? If yes, how soon after issuance?

8. What management system is used to ensure that issued, reissued and modified permits are coded and entered into PCS?
9. What management system is used to ensure that formal enforcement actions are coded and entered into PCS?
10. Explain the State's experience with PCS and discuss expectations.
11. What are the procedures and time frame for entering all WENDB data into PCS? What is the status of WENDB data entry?
12. What WENDB elements are entered? Are all required elements being entered?
13. What are the procedures and time frame for entering DMRs into PCS?
14. Is pretreatment PPETS data entered into PCS? What data are entered?
15. To what extent is PCS used for minor permittees (WENDB, DMRs, compliance schedules, etc.)?
16. What is the State's current plan for use of PCS? Discuss majors and minors separately.
17. What are the procedures and time frames for entering compliance inspections into PCS? If not now being accomplished, when will the State initiate this task?
18. What are the State's PCS QA procedures for maintaining and improving the quality and completeness of the PCS data base?

19. How is PCS being utilized for Graphical Information System (GIS) activities?

SECTION II: PERMIT ISSUANCE & REISSUANCE

A. Permit Quality

1. What is the permit application review criteria?
2. What kinds of quality control are used in the permit drafting procedures?
3. How does the State ensure that water quality standards (WQS) are protective of the Designated Uses? Are appropriate WQS in place to address antidegradation, whole effluent toxicity, nutrient, chemical, and biological criteria?
4. How many evidentiary hearing requests has the State had this fiscal year? What were they for? Did any of them stay permit conditions? Were hearings actually held and if so what was the outcome? What is the hearing process? What is the appeal process beyond the hearing? Has it been used?
5. How often does the State review permit boiler plate to update per new State, EPA regulations and policy?
6. What kind of training do permit writers receive on a yearly basis? Have all permit writers gone to EPA sponsored permit training?
7. Does the State prepare fact sheets for permits as well as SOBs? What is the purpose of each?
8. Does the State prepare permit administrative records for every permit? What goes in the record?
9. Does the State have a mixing zone policy? If so, how is it applied to permits?
10. What State program prepares WLA for WQ based permits? If WLAs are prepared in a different Section, how is the need for the WLA coordinated between sections? Are all WLAs submitted to EPA for review?

11. Does the State coordinate compliance schedules with the permittees before the permit is public noticed?
12. Does the State prepare both a draft and a proposed permit for EPA review? If not, would the State be willing to do so?
13. Is there a permit issuance tracking mechanism? If yes, explain.
14. What is the approach used in public noticing permits? Is it by groups of permits, or certain day of each month? Please explain.

B. Permit Backlog

1. How many permits are backlogged (expired permits)? What is the percent expired? Total universe? Majors? Minors?
2. What is your schedule for drafting and issuing backlogged permits?
3. How many permits expire in this fiscal year? What is the schedule for issuing these permits?
4. What problems if any do you anticipate in the issuance of permits this year?

C. Whole Effluent Toxicity (WET)

1. Is there a WET specialist on the permit staff?
2. For the Whole Effluent toxicity Program (WET), how does the state implement its WET program so that it complies with Federal WET regulations? How does the state ensure that WQS for WET are met (numeric and narrative criteria)?

3. In what areas, if any, do the state permits vary from the basic requirements in the ARegion VIII NPDES Whole Effluent Toxics Control Program@.
4. Have any major dischargers been exempted from WET coverage?
5. If major dischargers were exempted, what was the criteria used, and how was it explained?
6. Were any minor dischargers included under the WET program?
7. If minor dischargers were included, what criteria was used in the determination?
8. If challenged on permit WET contents, does the state intend to rely heavily on EPA resources to defend it, or will it defend the permit primarily with state resources?
9. Does the state propose to continue to write permits, with respect o WET, in the same manner during the next year?

D. Sludge

1. Are sludge reopener clauses placed in all municipal permits including lagoons?
2. Which Section/Department has sludge disposal responsibilities? Who is the contact?
3. If the Sludge Program is handled by another section besides Permits and Enforcement is there good coordination between sections?
4. Does the State maintain records of numbers of minor/major permits that contain sludge monitoring requirements?
5. Are specific sludge limitations placed in priority (major, pretreatment) NPDES permits?

6. Are there sludge give away programs in the State? Do sludges meet PFRP, PSRP per 40 CFR 257?
7. Does the State have sludge regulations? If so, please provide a copy. How are these regulations enforced? Do the permits follow these regulations?
8. Are regulatory changes required to implement the EPA municipal sludge program?
9. What is the anticipated schedule to obtain these changes?

E. Storm water

1. If regulatory changes are required to allow stormwater permitting, what is the estimated time to make the necessary changes? If not, please cite current State regulations that authorize the State to implement stormwater?
2. What format does the State use to track storm water general permit coverage?
3. What is the State=s status and timeframe for the development of Phase II Construction Permits?
4. What is the State=s status and timeframe of the development of small MS4 Permits?
5. Is your state implementing the Ano exposure provision@? If so, what is its status and your plans for implementation?
6. What designation criteria has your state developed, or plans to develop, for designating small MS4s that are not in urbanized areas?
7. What Phase II waivers, if any, will your state offer (construction, small MS4s)?

8. What State resources (i.e. personnel, etc.) are available for stormwater permitting and enforcement? Are any changes (additions or subtractions) to the current stormwater resource levels planned?

F. Pretreatment

10. If State has not assumed pretreatment program delegation, what is the schedule for assuming delegation?
11. Is the level of coordination between the State and EPA on pretreatment issues sufficient?
12. Are there any future candidates for pretreatment program development?
13. What kind of control mechanism is used by the State to control industrial user discharges in non-approved programs?
14. Is the State aware of any POTWs receiving, by any means, waste from a CERCLA site? If so, give full description.
15. Is the State aware of any POTWs receiving RCRA regulated waste by dedicated pipe or truck? If so, give full description.
16. Is the State aware of any POTWs receiving waste (e.g. leachate) from a landfill operation? If so, give full description.
17. What is the approved pretreatment State doing to assure regulations are in compliance with the revised PIRT requirements published October 17, 1988?
18. What is the approved pretreatment State doing to assure POTWs are making the necessary program changes to comply with the PIRT regulation changes?

19. What is the approved pretreatment State doing to make certain that appropriate local limits are developed by approved POTWs?
20. Is the State taking any steps to identify appropriate local limits in non-approved POTWs?
21. What kind of training programs does the State have to support pretreatment?

G. General Permits

1. List the various types of general NPDES permits issued by the State.
2. Do each of the state's general permits consider the effect of different water quality standard classifications for the various receiving waters throughout the state?
3. Does the state provide a comprehensive public notice process to assure that all interested or potentially effected parties are provided a reasonable opportunity to comment? Does the state generate any mailing lists or specifically contact trade representatives or environmental organizations when preparing the Adraft@ general permit?
4. Does the state public notice both the Adraft@ and Aproposed@ general permits?
5. What is the state=s administrative appellate process regarding general permits?
6. What are the state=s priorities for issuing general permits? List the criteria and the types of activities being considered.
7. How do the administrative procedures for general permits differ from individual permits? Describe the general permit tracking process.
8. Do each of the State's general permits have an application process (or equivalent, i.e., notice of intent) for individual facilities to seek discharge authorization?

SECTION III: COMPLIANCE MONITORING

A. Compliance Statistics

1. What is the compliance rate (SNC) for majors? Complete the attached Table I and review trends.
2. What is the compliance rate for minor dischargers? Municipal? Non Municipal? Federal? How is this rate established? Measured or estimated?

B. Enforcement Management System

3. Has the State prepared a formal EMS document? If not, what is the plan and schedule for developing one? If it has, does the document reflect current operating procedures? If it does not reflect current procedures is there a schedule for revising the document? Does the State EMS address pretreatment?
4. Does the State follow its EMS? Is there evidence that the State is not following its EMS?
5. How are violations of permit, formal and informal enforcement actions identified? Is this system effective? How can it be improved?
6. What are the procedures and time frame for review of DMRs (receipt, violations, incomplete, etc.)? Majors? Minors? Generals?
7. What follow-up does the State conduct on submittal of incomplete DMRs? Majors? Minors?
8. What are the procedures and time frames for review of biomonitoring reports (receipt, toxicity, incomplete, etc.)?
9. What follow-up does the State conduct on submittal of incomplete biomonitoring reports?

10. How does the State track permit reporting requirements (other than DMRs)? What are the procedures used to review and follow-up on incomplete and/or deficient reports?
11. What type of tracking system is used to aid in knowing when a permit requirement, or a formal action requirement, or an informal action requirement is due and has or has not been received? If manual, does it adequately meet tracking requirements? If its computerized, does it furnish enough information to track compliance? Is it PCS or a state computer system? Does the screener maintain the tracking system?
12. Who screens submitted permit reports, CSs and DMRs? Same person for all?
13. Does this same person also determine if there are violations? If not, who?
14. Are there written procedures or guidelines, that specify whose responsibility 10 & 11 are?
15. If a report/reply is late or inadequate, what type of action is taken & whose responsibility is it? What is the time frame involved: for action to be taken? for responses due? Are there specific procedure/criteria, etc., used when determining the specific action?
16. For violations, who is responsible for initiating an enforcement action? At what level is the preparation of an enforcement action approved?
17. What written guidelines/procedures are used for?
 - a. determining the appropriate level of action to be taken for specific categories of violations. (Enforcement Response Guide).
 - b. analytical process or sequence of steps to follow to reach an enforcement action.
 - c. procedures for handling cases of questionable significance until higher cases are completed.
 - d. procedures for compiling enforcement action background information to support the

enforcement decision.

- e. time frame controls at each level of evaluation and decision making.
 - f. staff responsible for completing each phase of enforcement evaluation.
 - g. staff level responsible for making decision on appropriate action.
 - h. staff level responsible for initiating enforcement action.
 - i. procedures for information flow and decision making necessary to secure concurrence or nonconcurrence on the enforcement action.
 - j. coordinating and communicating with other affected agencies on enforcement actions.
 - k. procedures for escalating enforcement action if compliance isn't achieved expeditiously after initial actions taken.
 - l. procedures for follow-up to insure adequate enforcement response is received on time.
 - m. procedures for closing out and updating file and sending information to the data base.
 - n. procedures delineating roll of technical/legal staff and establishing procedures for coordination.
18. Who determines CS violations? What criteria is used to determine violations? How are they determined?
19. What type of informal or formal action is taken for CS violations? Who determines action? Criteria used? Who prepares/writes enforcement action?

20. Who tracks CS due and received dates? Same person track violations? How tracked? If computer, how often updated and who updates?
21. What are established procedures for escalating the level of response when permittees fail to respond to initial State compliance actions? (Describe). Is there a response guide?

C. Whole Effluent Toxicity (WET)

1. Does the State, review WET data for analytical anomalies such as age of species, etc.?
2. Assuming the above takes place, does the State follow through with the permittee or laboratory to correct the deficiencies?
3. Does the State have its own ADP program for the WET data? If so, describe. Does the State intend to put the data into PCS? If so, how?
4. Does the State have the ability to perform WET testing in their own laboratory?
5. How is a decision to require a TRE made?
6. How will TRE progress be tracked?
7. Does the State plan to review and approve TREs before they are implemented?
8. Are the 304(1) listed permittees on track with their schedules to meet the 1992 compliance date?

D. Pretreatment

1. Does the State have any pretreatment POTW candidates that are failing to implement their

programs? If so, who are they and what are they lacking? What is the State doing about it?

2. Does the State track pretreatment annual report receipt and follow-up on problems identified in annual reports? What type of follow-up is done?
3. Are all necessary POTW program development compliance schedules in permits or formal enforcement actions? Which POTWs are developing programs? Are they in compliance with their schedules?
4. What efforts have been made to find IUs in non-approved cities? Have any new SIUS been found? Does the State have an IU inventory? If yes, is it divided between approved and non-approved POTWs?
5. Is the State aware of any POTWs experiencing pass-through or interference as a result of industrial discharges? If so, discuss situation and proposed State action to resolve. Determination of pass-through and interference includes sludge contamination and sewer worker safety problems.

E. Sludge

1. Does the State maintain a data base on POTW sludge management practices? Does this data base contain sludge quality data?
2. Are sludge data submittal requirements being tracked? Are sludge data reviewed against permit specified monitoring requirements?

F. General Permits

1. Are there any special compliance activities developed especially to monitor general permits?
2. Does the State have a general permit inspection strategy?

3. Are there any general permit monitoring forms (i.e., DMRs) for authorized facilities to submit?

G. Inspections

1. When was the inspection plan signed by the State? EPA?
2. Is the plan being followed by the State? EPA?
3. What % of the majors were inspected by the State in the last (July 1 - June 30) inspection year? What is the total number of the majors identified in the plan?
4. What % of the approved pretreatment programs were reviewed by a PCI or audit in the last inspection year by the State? What is the total number of approved pretreatment programs?
5. What is the total number of inspections at major dischargers? What is the total number of state inspections of permitted facilities, major, minor and general permittee? What is the universe of Majors? Minors? How frequently are minors inspected by the State?
6. Complete the attached Table II for inspections at major dischargers and review with State.
7. Does the State have the capability to perform the full range of inspections (CSI, CEI, PAI, BIO, Pretreatment, etc.)? If not, which inspections can not the State perform and when will the capability be developed to conduct these inspections?
8. Does the State use DMR QA data to plan types of inspection to be conducted? If not, why not? If not, when?
9. Do all State inspections include a review of records to verify data reported on the DMRs? Majors? Minors?

10. Do State inspections find violations?
11. How many enforcement actions were taken as a result of inspections?
12. Are State inspections unannounced?
13. Are reports sent to dischargers in a timely manner? What is the time frame?
14. What is the turnaround time between conducting pretreatment inspections and audits and preparing/sending reports to the facilities?
15. Does the State have adequate laboratory support? Are PAIs effectively supported by the laboratory?
16. Inspectors
 - a. How many?
 - b. Type of training they have?
 - c. Any type of ongoing training system?
 - d. Training needs?
 - e. Background (education)?
17. Does the State enter their inspection data into PCS? If not, why? If entered, what is the time frame for data entry?
18. Based on oversight inspections, are State inspections complete and accurate?

19. Do inspectors keep field notes? Are there SOPs for all types of inspections? If so can we have a copy?

H. Quarterly Noncompliance Report

1. Is the QNCR for the scheduled quarter pulled from PCS and corrected on time?
2. Is the QNCR accurate and complete? Are all instances of noncompliance reported on QNCR? Does the State QNCR include POTWs, if appropriate, for violation of pretreatment requirements?
3. Who evaluates the QNCR for accuracy?
4. How does the State determine who goes on the QNCR for pretreatment violations since they must be manually flagged?
5. Where does this information that isn't in PCS come from (automatic data base, manual logs, etc.)?

I. Discharge Monitoring Report (DMR) Quality Assurance

1. How does the State respond to:
 - a. non response?
 - b. incomplete response?
 - c. poor results?

2. Is the State lab involved in DMR QA?
3. Does the State utilize the results of the DMR QA studies? If yes, how are they used?

J. Minor Permittees

1. How does the State track compliance of minor dischargers?
2. Are all minor DMRs reviewed?
3. Does the State treat minors any differently than majors (tracking, noncompliance, follow-up, etc.)?

SECTION IV: ENFORCEMENT

A. Number and Quality of Enforcement Actions

1. What are the trends in numbers of AOs and referrals? Complete the attached Table III and review with State.
2. Did the State collect any penalties during the last fiscal year? If yes, how much and how many penalty actions? What is the trend in penalties when compared to previous fiscal year assessments?
3. Do the Administrative Orders issued by the State meet EPA's definition of a formal enforcement action? Provide examples.
4. Were State Administrative Orders and/or Consent Decrees effective in returning major permittee to full permit compliance? If they were not effective, why not?

B. Exceptions Lists

1. How many facilities have appeared on the exceptions list in the past year by quarters?
QTR #1 _____, #2 _____, #3 _____, #4 _____.
2. What % of the number of majors have been on the exceptions list by quarter?
QTR #1 _____, #2 _____, #3 _____, #4 _____.
3. What is the quality of the justifications?
4. Are there instances of RNC (which are not SNC) on the QNCR which have gone unaddressed for significant periods of time? If yes, why? What is the plan for resolving each of these RNC issues?

C. Reporting

1. Does the State accurately report the number of enforcement actions taken at the end of each quarter in a timely manner?

D. State Attorney General

1. What are the procedures for routine coordination with the State AG?
2. Does the Program receive adequate legal support?
3. Are cases filed promptly after referral?
4. Are settlements obtained promptly?
5. Have any cases gone to trial?
6. Can the program take the lead in settling non complex penalty cases without significant AG involvement?

E. Penalty Policy

1. Does the State have a written penalty policy If not, when will it?
2. Does the State follow it?
3. Does a review of the file on past enforcement actions document how the penalties were calculated?
4. Does the State consider economic benefit in calculating their proposed penalty? If yes, how does the State calculate the economic benefit of noncompliance?
5. Does the State obtain the economic benefit as part of the penalty?
6. Does the State publicize its enforcement actions? If yes, how are they publicized?

F. Pretreatment

1. What types of follow-up action on PCIs, Audits, Annual Reports, etc. are taken?
2. What enforcement actions have been identified by the State against SIUs? In approved POTWs? In non-approved POTWs?
3. What enforcement actions have been initiated by the State against approved POTWs for failure to implement their pretreatment programs?

G. Municipal Compliance

1. What is the State's strategy for maintaining continued municipal compliance?
2. Has the State required interim measures be instituted to maintain compliance?
3. What procedures have been established to ensure that representatives from the various Sections of the State water pollution control program (e.g., P/S review & permits) speak with one voice in dealing with Permit NC issues?
4. Does the State respond any differently to municipal and non municipal noncompliance?
5. What penalties has the State collected from municipalities?

G. Criminal Enforcement

1. Has the State discovered any violations which may be criminal?
2. Has the State taken any criminal enforcement actions?
3. Has the State referred any instances of alleged criminal activity to EPA's Office of Criminal Investigations?

SECTION V: STATE ASSESSMENT OF EPA PERFORMANCE

Has EPA been responsive to the State?

1. How did EPA help the State?
2. How did EPA hinder the State?
3. What can EPA do to be of more assistance?
4. What EPA training and workshops were useful?
5. What EPA training and workshops are desired?
6. Does the State have the need for EPA contractors? If yes, for what tasks?
7. Is EPA following the inspection plan?

EXHIBITS

Exhibit 1 (Acronyms Used throughout this Report)

AG	Adjutant General
CA	Consent Agreement
CAFO	Concentrated Animal Feeding Operation
CS	Compliance Schedule
DMR	Discharge Monitoring Report
FTE	Full-time Employee, a unit of labor equal to 2080 hours per year
I&I	Inflow and infiltration
LOV	Letter of Violation
NDDH	North Dakota Department of Health
NDPDES	North Dakota Pollutant Discharge Elimination System
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
PCS	Permits Compliance System (database)
QNCR	Quarterly Non-Compliance Report
SIU	Significant Industrial User
WENDB	Water Enforcement National Data Base
WET	Whole Effluent Toxicity

Exhibit 2 (Organizational Chart)

OPRA Pesticides Program

DRAFT 4/25/07

**U.S. EPA REGION 8
OFFICE OF PARTNERSHIP AND REGULATORY ASSISTANCE;
POLLUTION PREVENTION, PESTICIDES, AND TOXICS PROGRAM;**

**PESTICIDE TEAM
STANDARD OPERATING PROCEDURES
FOR OVERSIGHT OF STATE PESTICIDE PROGRAMS**

DRAFT

U.S. EPA-REGION 8 OFFICE OF PARTNERSHIPS AND REGULATORY ASSISTANCE

PESTICIDE PROGRAM OVERSIGHT OF STATE PESTICIDE WASTE PROGRAMS

I. Introduction

The mission of EPA's National Pesticide Program is to protect human health and the environment from adverse effects resulting from pesticide use and to ensure pesticides and alternatives are available for safe use. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the National Pesticide Program's specific responsibilities include protecting consumers, pesticide users or workers who may be exposed to pesticides, and protecting eco-systems, including non-target plants and species. The Office of Pesticide Programs (OPP) and the Office of Enforcement and Compliance Assistance (OECA) are the joint national program managers. With the exception of Wyoming, all R8 states have been authorized primary responsibility for the FIFRA pesticide program.

The Region 8 Pesticide Team is responsible for the execution of EPA's Pesticide Field Programs within its designated states and tribes. The Pesticide Field Program is made up of the frontline implementation activities carried out by states, tribes, and EPA Regional pesticide experts. The formal components of the field program are the Worker Protection Standards (WPS) Program to protect agricultural workers; the Pesticide Applicator Certification and Training (C&T) Program for users of restricted use pesticides to enhance competence of pesticide applicators and ensure safe use; the Endangered Species Protection Program (ESPP) to promote protection of endangered and threatened species; and the Pesticide Water Quality (WQ) Program to protect the nation's water supplies from pesticide contamination and risk.

The FIFRA Technical Enforcement Program is responsible for assuring that only registered pesticides are distributed, sold and used according to label directions.

Region 8 has the responsibility for direct management of state grant programs.* These grants are provided to states to implement the pesticide field programs listed above. Each state has a designated state lead agency (SLA) that has primary authority for these programs.

II. Purpose of Oversight of State Pesticide Programs

EPA conducts oversight of state pesticide field programs for two primary reasons:

3. to document to Congress or other oversight authorities that state administration of authorized programs meets the standards set forth in law, regulation and authorization documents; and

4. to verify that the annual Federal financial assistance to the states is spent responsibly.

* Because FIFRA only allows for partial tribal program authorization, this SOP does not apply to tribes.

III. Oversight Process

The Region 8 Pesticide Team negotiates annual program activities and commitments with each state that lead to the achievement of regional and national goals and objectives. The Pesticide Team is the primary office that evaluates the states' performance toward the achievement of agreed-upon OPP activities and commitments while the Pesticide Team and FIFRA Technical Enforcement Program jointly evaluate the states' enforcement programs. The program conducts oversight of state pesticide field programs through three major mechanisms:

1) Performance Partnership Grants (PPG) and Cooperative Grant Agreements

PPGs and cooperative grant agreements are negotiated on an annual basis with each state to establish clear expectations regarding implementation of the FIFRA program. Specific OPP and OECA program measures as well as core and supplemental activities are listed in the *JOINT EPA OPP/OECA STATE/TRIBAL COOPERATIVE AGREEMENT GUIDANCE*. The agreed upon commitments in the PPG or cooperative grant agreement work plans are reviewed at the end of each year to assess the state's performance and to ensure that required information is transmitted to EPA for purposes of reporting on national accountability measures.

2) Annual End-of-Year (EOY) Oversight Report

The key document in the oversight process is the annual EOY report prepared jointly by the OPRA Pesticide Team and the FIFRA Technical Enforcement Program. This report includes key findings, conclusions and recommendations from all elements of the pesticide program, and consolidates the results of oversight activities throughout the year. The report is organized around the key elements of the FIFRA program: Certification and Training of Pesticide Applicators; Worker Protection Standards; Endangered Species Protection Program; Protecting Water Resources from Pesticides; Compliance Monitoring and Enforcement; and Program Management.

In most cases, the state either prepares its own self-assessment prior to the EPA EOY report or participates in the drafting of the EOY report. All states have an opportunity to review a draft of the EOY report. There is often a meeting between EPA project officers and their respective state to present and discuss the draft EOY report. States may request meetings with the appropriate level of management to attempt to resolve concerns or issues. Issues are resolved or negotiated for the next fiscal year.

The FIFRA Technical Enforcement Program will be collaborating with Region 8 states with authorized FIFRA pesticide field programs to develop a Uniform Enforcement Oversight System (UEOS) process for Region 8 states with authorized FIFRA pesticide field programs. UEOS is a differential oversight system designed to evaluate state compliance and enforcement program performance. The objective is to strengthen state programs and reward strong programs with reduced oversight. The system currently assesses performance in the following four state delegated programs: National Pollutant Discharge Elimination System (NPDES), Public Water

Supply Supervision (PWSS), Resource Conservation and Recovery Act (RCRA), and Clean Air Act (CAA).

The system will be developed collaboratively with the state lead agencies. Results of the annual UEOS evaluations are used to provide feedback to states regarding performance, to conduct joint annual planning with the states, and to manage the limited oversight resources of EPA Region 8. The Office of the Inspector General has evaluated the UEOS and has designated it as a Best Practice in the area of State Agency oversight (USEPA IG Report: IC No 2001-P00013 B Aug. 2001, pp.54-55).

3) **Real-Time Oversight/Technical Assistance**

The Pesticide Team and the FIFRA Technical Enforcement Program are frequently called upon to assist the states with technical aspects of their programs. This is often done through real-time oversight of state-lead activities.

IV. State Program Oversight Standard Operating Procedures

In Region 8, most state programs have many years of experience administering the FIFRA program. EPA's oversight of mature programs is generally designed to determine the adequacy of state performance by reviewing a representative sample of activities in order to detect and correct patterns of performance problems. EPA believes oversight generally should focus greater emphasis on the entire program and its results rather than on the individual activities and details that may or may not produce those results.

EPA's oversight is not designed to comprehensively review all or most state actions to correct all specific problems in all situations. Region 8 believes this would be a duplicative and inefficient use of limited resources.

1. Coordination of Program Elements:

Technical – Most of the regional states have mature programs that require less oversight than recently authorized programs. The Region 8 program maintains a technical competence that ensures fully adequate support and assistance to state programs. The regional program helps state program staff to address specific issues or activities via initiatives and/or agreements. Quarterly, all-state conference calls are conducted between EPA program staff and state program staff to facilitate problem solving, as well as the exchange of innovative approaches to issues. Annual meetings are hosted by Region 8 to discuss issues and upcoming priorities with EPA.

Regulatory – FIFRA legal authority reviews are conducted for new federal regulations for all states as needed. The EOY report, discussed above, provides a review of the minimum

federal regulatory requirements that must be satisfied to maintain program authorization.

Compliance and Enforcement – The OPRA Pesticide Team and the FIFRA Technical Enforcement Program coordinate the state EOY reviews.

2. **Oversight Schedule:**

EPA may conduct oversight at any time of the year, but most oversight occurs during the EOY review at the end of the state/federal fiscal year. The EOY review process is conducted by the OPRA Pesticide Team in concert with the annual review conducted by the FIFRA Technical Enforcement Program. The EOY review is conducted both to assure that the administration of authorized programs meets the standards set forth in law, regulation and authorization documents, and to verify that the annual Federal financial assistance to the states is spent responsibly.

3. **Instructions for File and Document Review:**

The state oversight process includes a state file review component to ensure quality documentation exists on the state's systems and that data management reports are validated.

4. **Interviews of Managers and Staff:**

As part of EOY reviews, appropriate EPA program staff conduct joint assessments either by phone or in-person interviews with state counterparts to determine mutual reviews of accomplishments and shortfalls of the state in meeting PPG or cooperative grant agreement commitments.

5. **Basis for determining fully adequate program performance and determining required and recommended actions:**

The OPRA Pesticide Team consults with state counterparts to review the status of the state's activities in meeting the requirements of the PPG or Cooperative Grant Agreement. Based upon the findings from these reviews, EPA may require or recommend that the state undertake future action to ensure they meet the minimum federal requirements for program authorization.

6. **Procedures for presenting findings (both verbal and written):**

During the EOY reviews, EPA staff work directly with state counterparts to discuss the status of the state's performance. The majority of these discussions take place in person unless adequate travel funds are not available, in which case the discussions will occur over the phone.

7. **Procedures for follow-up with the organization reviewed:**

If the EOY review determines the need for state changes or attention to certain program elements, EPA and the state jointly develop a strategy to improve the performance and that strategy may be incorporated into the PPG or cooperative grant agreement work plan. EPA conducts follow-up with the state at the next review to determine the progress that the state has made in addressing the strategy. The results of that follow-up are noted in the next review cycle.

8. Incorporating long-term required actions into PPGs, cooperative grant agreement work plans, or other agreements:

The findings from the EOY reviews determine actions for inclusion in future PPG or cooperative grant agreement work plans, PPGs or other identified vehicles. If EPA identifies areas for improvement, EPA and the state develop future plans or agreements which identify time frames to improve performance.

9. Issue Elevation Plan:

At the conclusion of the EOY review, EPA and the state identify significant program issues to be raised for discussion to the appropriate level of management.

V. State Role in Oversight

The state participates in the oversight process primarily by the following:

1. Work with EPA to develop and review annual commitments that are included in the PPG workplans or cooperative grant agreement workplans.
2. Maintain all required data in the national Certification and Training data system and provide other data as required (outreach activities, measures, etc.).
3. Periodically report to EPA on progress that leads toward achieving agreed upon activities and results, particularly in the annual EOY.
4. Provide EPA with access to files and any other documents needed to evaluate state performance.
5. If necessary, meet with EPA to provide additional insight into state actions and decisions, and to develop follow-up plans to address any identified issues.
6. Review and provide input on the EOY Report.

References

FIFRA End-of-Year Report Format (May 8, 2006)

2008-2010 JOINT EPA OPP/OECA STATE/TRIBAL COOPERATIVE AGREEMENT
GUIDANCE

FIFRA Project Officer Manual State/EPA Cooperative Program Management (July 2002)

Grants and Quality Assurance Oversight Procedures

Revised Draft
March 2005

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Required Elements for Oversight Manual - Quality Assurance Program

U.S. EPA Region 8

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**Region 8 Post-Award Management Plan for Assistance Agreements
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Acronyms

CY	Calendar Year
ECEJ	Enforcement, Compliance, and Environmental Justice
EPA	Environmental Protection Agency
EPR	Ecosystems Protection and Remediation
FMP	Financial Management Program
FSR	Financial Status Report
FY	Fiscal Year
GAP	Grants, Audit and Procurement
GCAI	Grantee Compliance Assistance Initiative
GMO	Grants Management Office
IAG	Interagency Agreement
IFMS	Integrated Financial Management System
IGMS	Integrated Grants Management System
M/WBE	Minority/Women-Owned Business Enterprise
MOO	Montana Operations Office
NPO	Non-Profit Organization
OCPI	Office of Communications and Public Involvement
OGD	Office of Grants and Debarment
OI	Office of Innovation
OIG	Office of the Inspector General
OMB	Office of Management and Budget
OPRA	Office of Partnerships and Regulatory Assistance
PPA	Performance Partnership Agreement
PPG	Performance Partnership Grant
QA	Quality Assurance
SRF	State Revolving Fund
SRO	Senior Resource Official
TAP	Tribal Assistance Program
TMS	Technical and Management Services

Region 8 Post-Award Management Plan for Assistance Agreements CY 2005

I. Purpose and Scope

This document sets forth a consolidated, regional plan for post-award management of assistance agreements in Region 8 in order to assure that federal financial award recipients are meeting the terms and conditions of their assistance agreements. The plan applies to all Region 8 grants and cooperative agreements.

II. Background

Grant management was identified as a material weakness during 1996 congressional hearings and through several Office of Inspector General (OIG) audits since that time. In response to these findings, EPA developed and implemented a number of new policies, beginning with GPI-98-6 which focuses on Grants Management Offices (GMO), followed by Order 5700.3 for program offices, and finally Order 5700.4 which seeks to supplement the requirements of the two previous policies.

Most recently, EPA issued the Policy on Compliance, Review and Monitoring which consolidates, improves, and makes consistent all existing EPA post-award management policies. The policy became effective on January 8, 2003 and rescinds and replaces EPA Order 5700.4, 5700.3 (and GPI-99-5), GPI-98-6, and GPI-98-2.

Assistance agreement management in Region 8 is a cooperative effort involving the Office of Technical and Management Services (TMS) Grants, Audit and Procurement Program (GAP), the Region's program offices, and the Montana Operations Office. This document represents a consolidated plan to be implemented Region-wide for post-award management of assistance agreements during calendar year 2005, in accordance with the Policy on Compliance, Review and Monitoring. This post-award management plan is updated annually as required by Agency policy.

III. Implementation Plan

Region 8's post-award management policies and procedures are outlined below and include baseline and advanced monitoring requirements for program offices, the Montana Operations Office, and the Grants Management Office. The plan also identifies criteria for selection of recipients, time-frames, responsible offices and procedures to be used in post-award management and monitoring. Post-award monitoring training, communications, reporting, senior management review and resources are also addressed in this plan.

1. Plan Development:

This plan was developed cooperatively with the program offices, Montana Operations Office, and the Grants Management Office (GMO). The plan will be used by all parties involved in the Region's assistance agreement management program. The GMO is responsible for the

oversight and reporting of post-award management activities for the Region.

Region 8 undertook a number of efforts in FY01 and FY02 to improve grant management. Among these efforts was the development of a Post-Award Monitoring Work Group (PAM Work Group), which includes membership from each program office and the Montana Operations Office. The PAM Work Group has met several times to discuss post-award monitoring issues and communicates important information back to the programs and project officers. The PAM Work Group also helped develop this plan.

2. Baseline Monitoring:

Post-award monitoring has been, and continues to be, a high priority area for Region 8. The Grants Management Office, program offices, and Montana Operations Office will perform baseline monitoring of all assistance agreements. Baseline monitoring is the minimum, routine oversight that is performed on an ongoing basis on every award throughout its lifetime.

i. Grants Management Office Baseline Post-Award Monitoring

The Grants Management Office will document all of its baseline post-award monitoring in the Official Grant File. The Grants Specialists will perform the following minimum baseline post-award monitoring activities for all assistance agreements:

- a) monitor the recipient=s compliance with all terms and conditions in the agreement;
- b) communicate with the project officer and the recipient at least once during the life of the award (preferably communications are initiated by the GMO);
- c) monitor payments and work with the project officer to identify any concerns with drawdowns;
- d) monitor unliquidated obligations in a timely fashion once assistance agreements are no longer active;
- e) monitor compliance with administrative reporting requirements, such as interim and final Financial Status Reports (FSR), Minority/Women-Owned Business Enterprise reports, Civil Rights forms, Lobbying and Litigation Certifications, etc.;
- f) in conjunction with the project officer, ascertain the need for changes to the agreement and assure such actions are taken;
- g) document the files with records of communication with the project officer and award recipient and with post-award monitoring efforts; and
- h) provide recipients and project officers with customer service, responding to requests or concerns in an expeditious manner.

The Region received a Comprehensive Grants Management Review (CGMR) in 2004.

One finding involved the need to improve the quality of grant documents. This finding applies to the GMO grants files and the documentation of post award baseline monitoring. The first step the Region is undertaking regarding this finding is to include in its Self Assessment (being performed in December, 2004 thru January, 2005) a further, more detailed review of GMO grant files. The second step, after the Self Assessment is completed, will be to modify the baseline monitoring form used in the GMO grant files, based on the findings from the CGMR and Self Assessment.

The Grants Management Office will continue to properly address grants issues resulting from audits under OMB Circular A-133 (Single Audit) and relevant findings in audit reports pursuant to EPA Order 2750. Findings from such audits have resulted in the GMO conducting on-site visits, declaring grantees to be high risk, and suspending further awards to grantees.

ii. Project Officers Baseline Post-Award Monitoring

According to EPA's *Managing Your Financial Assistance Agreement, Project Officer Responsibilities* training manual, one of the project officer's main responsibilities is to keep track of progress on the assistance agreement and to ensure the recipient and any sub-recipients comply with the programmatic requirements of the award. The following actions will be conducted by the project officer as part of baseline monitoring:

1. communicate with the GMO, recipient and others (e.g. Finance Office and Quality Assurance Officer, etc.) at least once a year during the life of the award;
2. monitor the recipient's compliance with the statement of work, assistance agreement programmatic terms and conditions and budget expenditures;
3. document files;
4. review and evaluate the recipient's progress in accordance with 40 CFR 30, 31, and 35, including the joint evaluation process as described in 40 CFR 35.115, as applicable;
5. pro-actively evaluate the need for changes to the assistance agreement and communicate them to the GMO; and
6. certify receipt of the final technical report to facilitate assistance agreement close-out.

The Region 8 Comprehensive Grants Management Review (CGMR) in 2004 found significant weaknesses in the Region's documentation of baseline monitoring in Project Officer files. The relevant section in the CGMR follows:

We found very limited documentation of baseline monitoring. Either there was no documentation of baseline monitoring in the grant files or the documentation that was in the file was incomplete. However, in the project officer survey, project officers indicated that they were frequently monitoring recipient activities. For example, about 97% of the project officers reported that at least two or more times a year they evaluated recipient progress and monitored recipient compliance with the grant workplan. The overall

conclusion that can be reached from these findings is that while project officers are monitoring their grants they are not documenting this effort.

In response to this finding, the Region is implementing a new approach regarding baseline monitoring by project officers. During the first quarter of each fiscal year, a list of grants will be identified that are in a situation requiring some type of baseline monitoring (basically, this is all grants except those recently awarded and those due for closeout). The project officers for the list of grants subject to baseline monitoring will be required to complete the "Program Synopsis" questionnaire and to provide a copy to the Grants Office by July 1 of each fiscal year. This new Regional requirements will be explained to Project Officers during refresher training to held in the 2nd quarter of FY 2005.

Responsibilities for Baseline Post-Award Monitoring of Assistance Agreements

Baseline Post-Award Monitoring Activity	Grant Specialist (GS)	Project Officer (PO)
monitor recipients= compliance with terms and conditions	Administrative	programmatic
communicate with recipient and grant specialist/project officer	once during life of award	once/yr during life of award
monitor payments/budget expenditures and identify any concerns with drawdowns	X	X
monitor and evaluate recipient=s progress	compliance with administrative reporting requirements	programmatic (scope of work)
evaluate the need for changes to assistance agreements	initiate action to make changes to agreement	communicate need for changes to GMO
document files with records of communication and post-award monitoring efforts	X	X
assess need for audits and respond to relevant audit findings	under OMB A-133 and other provisions	programmatic audit requirements & results
certify receipt of the final technical report to facilitate close-out		X
monitoring unliquidated obligations once agreement is no longer active	X	
provide customer service, responding to requests or concerns in an expeditious manner	X	X

3. Advanced Monitoring Activities:

Advanced monitoring is the process by which a recipient's compliance with applicable administrative and financial statutes, regulations, conditions and policies is evaluated. Advanced Monitoring may take the form of on-site evaluative reviews, or off-site (desk) evaluative reviews. The on-site evaluation is not intended to substitute for a formal audit, but rather, through effective monitoring, should help to ensure that the recipient will avoid or reduce negative audit findings, or waste or abuse of federal funds. Desk reviews serve the same purpose and may be performed in lieu of on-site evaluations in consideration of travel and resource constraints.

In accordance with the consolidated option for the regions, Region 8 will perform no less than 24 advanced monitoring reviews during calendar year 2005. This figure represents 10% of the region's 244 active grantees as of October 1, 2004. The Region is striving to ensure compliance well beyond the 24 advanced reviews dictated by the Region 8 baseline. The Region has targeted a goal of 10% of each office's grantees for reviews, which when combined with the Grants Office commitments, results in an overall Regional goal of 40 reviews.

OFFICE		# of Active Grantees	10% Target
Grants Management Office			8*
OPRA		143	14
	Water	88	8
	P3T	16	2
	Tribal Assistance Program	19	2
	Air & Radiation	12	1
	State Assistance Program	8	1
EPR		107	11
	8EPR-EP	48	5
	8EPR-SA	35	4
	8EPR-PS	15	1
	8EPR-SR	9	1

Montana Office	35	4
ECEJ	10	1
OCPI	21	2
TOTAL		40

* The Grants Office target includes seven desk reviews (reflecting the seven Grants Specialists in the Region) and one on-site review.

i. Grants Management Office Advanced Post-Award Monitoring

The Grants Management Office (GMO) will conduct seven desk reviews and one on-site review during 2005. For instances where a recipient requires a second evaluation within the calendar year, separate reports will be filed for each evaluation to count. All reports will be completed within 60 calendar days of the review. Advanced Monitoring will not be counted until the report is filed and the information is entered into the Grantee Compliance Database by the Grant Specialist.

In order to select recipients for Advanced Monitoring, the GMO will consider the following criteria: Referrals, Audit Findings, Agency Priority, Recipient Experience, Project(s) Cost, Risk, Recipient Location, Statutory or other Requirements, Earmarks, and Funding by Multiple Programs. The criteria used to select a recipient for Advanced Monitoring will be documented in the Official Grant File for each review. To the maximum extent possible, the Grants Office will coordinate all advanced monitoring reviews with the Project Officers.

As stated above, Advanced Monitoring may take the form of an on-site review or off-site (desk) review. The GMO will conduct a minimum number of desk reviews equal to one for each Grants Specialist during the Plan year. Region 8 has seven Grant Specialists (i.e., this is the number of grant specialists onboard as of January 1, 2005), so a minimum of seven desk reviews will be completed by the GMO during calendar year 2005.

The Region 8 GMO has targeted advanced monitoring on various types of grantees in previous years. In 2003, desk reviews were targeted on universities. In 2002, desk reviews were focused on non-profit grantees. In 2001, desk reviews were completed on municipal and university grantees. Nearly all on-site reviews for the past eight years and more have been dedicated toward the Region=s Tribal grantees.

For 2005, the GMO will continue to focus its desk reviews on non-profits with no previous or recent grants with Region. This set of grantees were focused upon in 2004, and a number of issues were identified. While no major problems were identified, the desk reviews in 2004 may very well have helped to keep minor issues from evolving into significant grantee weaknesses. From the group of non-profits, with no previous or recent grants with the Region, we are working down the list starting with the largest dollar amount of grant(s) awarded. Based on this approach, the following grantees have been selected:

[list to be determined]

Tentative plans are for the GMO desk reviews to be undertaken in January through March of 2005.

One on-site review will be conducted during the October-November timeframe, which will very likely involve a Tribal grantee. This Tribal review will be determined by a variety of factors, including the amount of grants they have been awarded and whether there are indications of risk based on compliance with grant requirements. Another factor in determining this on-site Tribal review may be a followup site visit to a Tribe designated as Ahigh risk@.

All on-site reviews will follow the format required under EPA Order 5700.6 APolicy on Compliance, Review and Monitoring.@ This guidance details the four phases of on-site reviews, which include Preparation, Implementation (including transaction testing), Reporting, and Corrective Action. On-site reviews will be documented using the protocol contained in the Order. http://intranet.epa.gov/ogd/policy/Order/5700_6A1.pdf

Transaction testing for the on-site review will be accomplished differently than in past years. In the past couple of years, an outside contractor (an accounting firm) has been used to perform transaction testing of grantees. The GMO now has accounting expertise as reflected in a grant specialist that previously worked as an accountant in the Region 8 Finance Office for many years. Further, if needed, the Region 8 Finance Office is preparing to assist in grantee reviews.

In addition to completing on-site and off-site evaluative reviews, the GMO may also conduct Assistance Activities, which may count towards the 10% Advanced Monitoring Goal. At this time, no such activities are planned by the GMO.

ii. Project Officer Advanced Post-Award Monitoring

The Program Offices and the Montana Operations Office will conduct Advanced Monitoring on a minimum of 10% of their active grantees (as of the previous October 1) in order to determine recipient=s programmatic performance under their assistance agreements. All reports will be filed within 60 calendar days of the review. Advanced Monitoring will not be counted until the report and/or completed protocol is filed, and the information is entered into the Grantee Compliance Database by the Grants Management Office. The Region will continue to have the Grants Management Office receive the information electronically from the programs and enter it into the Grantee Compliance Database. One of the senior grants specialists is

designated to monitor progress by the Region 8 programs, and to enter the reports into the Database.

The Program Offices and the Montana Operations Office will select recipients for Advanced Monitoring by considering the following criteria: Referrals, Audit Findings, Agency Priority, Recipient Experience, Project(s) Cost, Risk, Recipient Location, Statutory or other Requirements, Earmarks, and Funding by Multiple Programs. The criteria used to select a recipient for Advanced Monitoring will be documented in the Official Grant File for each review.

Off-site reviews will be conducted via conference call and documented in a brief report. The report will include: 1) the date of the conference call and EPA staff involved; 2) the name of the recipient; 3) the purpose of the contact; 4) the individual(s) with whom EPA spoke; 5) a summary of the topics discussed, conclusions reached and issues identified and resolved; and, 6) a list of follow-up actions, responsible parties and deadlines. The report will be distributed to all involved parties, and any follow-up actions, letters, etc., will be included in the Official Project File.

On-site reviews will be documented using the same format as for off-site reviews (above). The report will be distributed to all involved parties, and any follow-up actions, letters, etc., will be included in the Official Project File.

For on-site and off-site (desk) reviews, the Program Offices and the Montana Operations Office will complete the protocol provided in EPA Order 5700.6 A Policy on Compliance, Review and Monitoring. The protocol targets five core areas: 1) Ensuring equipment purchased under the award is properly managed and accounted for, 2) Comparison of the recipient's workplan/application to actual progress under the award, 3) Examination of the award's finances to ensure funds are available to complete the project, 4) Evaluation that all programmatic terms and conditions are met, and 5) Evaluation that all programmatic statutory and regulatory requirements are met. The Order and protocols are at: http://intranet.epa.gov/ogd/policy/Order/5700_6A1.pdf

Programmatic Assistance Activities may also count toward the 10% Advanced Monitoring Goal. No such activities are planned at this time. Assistance related to the Baseline or Advanced Monitoring Activities performed by the Program Offices or the Montana Operations Office will not count towards the goal. All Assistance Activities will be documented in the Official Project File.

4. Non-Compliance with Award:

A wide range of problems can occur during the implementation of an assistance agreement, some within the control of the recipient and others over which they may have little control. Problems may involve technical issues, poor performance, or even criminal matters. When an entity accepts a federal financial award they become responsible for complying with all terms and conditions of that assistance agreement. Material failure of the recipient to comply with terms and conditions of an award, whether stated in statute, regulation, an assurance, application, or elsewhere (Civil Rights Act, labor laws, procurement requirements) is referred to as non-compliance. Non-compliance can also involve non-performance by the recipient, such as

failure to request prior approval or to submit required reports, or poor performance (e.g. the purpose of grant not being fulfilled). Project officers, grant specialists and other staff involved in the management of the assistance agreement should always coordinate with each other whenever anything occurs that could endanger the successful completion of the project or when the recipient is not complying with the terms and conditions of the agreement.

Remedies for noncompliance with award terms and conditions will vary according to the circumstances, and should be discussed between the grant specialist, project officer and/or other involved staff:

a. **Informal Resolution** - Informal resolution is most appropriate for initially addressing issues identified during baseline monitoring, as opposed to during compliance assistance (e.g. evaluative reviews). Informal resolution will be pursued first, through a phone call to the recipient to discuss the non-compliance issues and to seek agreement on how and when the problems will be resolved. The grant specialist or project officer will document the assistance agreement file and are advised to follow up with a letter to the recipient confirming the telephone conversation and agreements reached. If the issue is not subsequently resolved in the agreed upon time frame, a second letter may be necessary. Such a letter should again identify the problem(s) and timetable for the recipient=s response and spell out the consequences of the recipient=s continued failure to respond or implement corrective action (i.e. outline the measures the Agency intends to take if the problem is not promptly corrected). EPA staff involved should coordinate and agree on their respective roles in monitoring the recipient=s progress on the identified solution(s).

b. **Formal Enforcement Actions** - If a recipient does not comply with the terms and conditions of an award and informal resolution fails or is inappropriate, other actions are available to the Agency. The recipient may request review of decisions under the dispute process, as applicable. Region 8 may take formal action to address non-compliance with assistance agreement terms and conditions, which includes:

(1) Temporarily withholding cash payments pending correction of the deficiency by the recipient. Project officers wishing to pursue this option should notify the Grants, Audit and Procurement (GAP) Program and the grant specialist will prepare the appropriate letter for the Program Director=s signature. This is a serious, legal remedy; and the recipient has certain appeal rights.

(2) Disallowance of all or part of the cost of the activity for which the recipient is in non-compliance.

(3) Withholding further awards for the project or program in the case of non-compliance with assistance agreement terms and conditions

(4) Suspension of work under the award, either in whole or in part (i.e. a stop work order to stop all or part of the project for a certain time period).

When taking a formal enforcement action, EPA must provide the recipient with an opportunity for a hearing, appeal, or other administrative proceeding to which the recipient is

entitled under any statute or regulation applicable to the action involved. The exact process for implementing each of these options and the person authorized to initiate the action may vary. For example, a stop work order must be issued by the award official. As such, all formal enforcement actions will be coordinated with the GAP Program.

c. Termination - Termination of the award, in whole or part, can be pursued only if (1), (2), or (3) below applies.

(1) EPA can terminate an award, in whole or part, if a recipient materially fails to comply with the terms and conditions of an award.

(2) EPA, with the consent of the recipient, can agree on award termination conditions, including the effective date and if a partial termination of the award, the portion to be terminated.

(3) The recipient can terminate the award in whole or part by sending EPA a written notification, setting forth the reasons and effective date for the termination, and if a partial termination, the portion of the award to be terminated. EPA must consent to the termination. If EPA determines in the case of a partial termination that the reduced or modified portion of the assistance agreement will not accomplish the purposes for which the award was made, the Agency may terminate the grant in its entirety under either (1) or (2) above.

The effects of suspension and termination must be considered prior to taking the action. If work is stopped or the award terminated, costs incurred by the recipient after the effective date are not allowable, unless EPA expressly authorizes them in the notice of suspension or termination or subsequently authorizes them. This action could also have an impact on future awards; however, the recipient is not put on any kind of list on this basis. EPA may, however, designate a recipient as Ahigh risk or otherwise not responsible.@

A recipient is considered Ahigh risk@ if the awarding agency determines that the grantee:

- < has a history of unsatisfactory performance;
- < is not financially stable;
- < has a management system that does not meet standards in Part 30 or 31;
- < has not conformed to the terms and conditions of the previous award(s); or
- < is otherwise not responsible (person or organization).

If EPA determines that an award will be made to an applicant that is designated high risk, has a history of poor performance, is not financially stable, or otherwise not responsible, special conditions will be included in the award. Conditions may include:

- < payment on a reimbursement basis;
- < withholding authority to proceed to the next phase of the project or program until the Region has received receipt of evidence of acceptable performance within a given funding period;
- < a requirement for additional, more detailed financial reports;
- < additional project monitoring;

- < a requirement that the grantee obtain technical or management assistance; and/or
- < establishment of additional prior approval requirements.

If such conditions are imposed, the award official must notify the recipient, in writing, of:

- (1) the nature of the special conditions/restrictions;
- (2) the reason(s) for imposing the additional requirements;
- (3) the corrective actions which must be taken before the conditions will be removed and the time allowed for completing the corrective actions; and
- (4) the method for requesting reconsideration of the conditions/restrictions imposed.

In extreme cases, it may also be necessary to involve the Offices of Regional Counsel and Suspension and Debarment. In any case, all actions and how the problems are resolved will be documented.

5. Training:

The Region will provide refresher training to all Region 8 project officers in February - March, 2005. A major focus will be on new grants management policies. Another emphasis will be on the weaknesses and issues identified in the 2004 Comprehensive Grants Management Review Report. This will include a item highlighting the new Regional procedures to ensure Project Officers properly document baseline monitoring.

The Region will also continue to have dedicated meetings between the Grants Office and the Tribal Assistance Office to coordinate and brainstorm approaches to strengthening Tribal compliance with grants requirements.

6. Communications Strategy:

Region 8 will conduct periodic management meetings to discuss grant management issues, newsletters from the Grants, Audit and Procurement (GAP) Program to all Project Officers and managers, and the establishment of a Post Award Monitoring Work Group to further disseminate important grant information. The Post Award Monitoring Work Group is comprised of representatives from each Program Office and the Montana Operations Office. This Work Group contributed to the development of this plan.

Additionally, the Region has a point of contact in the Grants, Audit and Procurement (GAP) Program to oversee the development of this Plan and to coordinate all reporting requirements. This point person is a senior grants specialist.

7. Protocols

As noted in earlier sections of this Plan, the protocols for conducting and preparing reports for off-site and desk reviews will follow those included in the EPA Order 5700.6 A Policy on Compliance, Review and Monitoring. Copies of the specific protocols in the Order are at: http://intranet.epa.gov/ogd/policy/Order/5700_6A1.pdf

8. Discussion of 2004 Plan and Issue Resolution:

Previously noted in this Plan were the findings of the 2004 Comprehensive Grants Management Review of the Region. Several findings were relevant to the preparation of this Plan, including the lack of documentation of baseline monitoring in the project officer files, and the need for better documentation of baseline monitoring in grant specialist files. The 2005 Region 8 Plan identifies the actions the Region will take to address these issues.

The Grants Office implemented a significant restructuring of responsibilities in 2004 by creating three senior, GS-13 level, grant specialist positions. The intent was to enable a better focus on the cross-Region grants management issues. One such issue that needed improved attention was post award monitoring. In 2004, after the selection of individuals for these senior positions, one of the senior specialists was assigned to oversee the Region=s post award monitoring efforts. This new approach has already helped the Region improve its post award monitoring program. The Region was getting very behind in getting advanced monitoring reports closed out in the Grantee Compliance Database. By assigning a senior grants specialist to address this situation, the Region improved tremendously in a short period of time. At the end of November, 2004, the Region had closed 89% of its 2003 reports, which was greater than the Agency average of 71%. The number of advanced reports conducted in 2003 that still remained to be closed as of November 29, 2004 totaled five.

The Region successfully met and exceeded the 2004 commitment for post award advanced monitoring activities. However, three areas need further attention. First, the Region wants all its program offices to contribute to the advanced monitoring efforts, and the 2004 results show that several offices did not get reports completed and submitted to the Region 8 Grants Office. The second issue, which is related to the first issue, is that it not clear that program offices are effectively using the criteria in the Plan to select grantees for advanced reviews. And the third issue, program evaluation reports are not being submitted to the Grants Office in the specified 60 day timeframe so they can be input into the National compliance database on a timely basis. All three of these issues will be discussed with Region 8 managers of grant programs in January, 2005, and an approach will be agreed upon to address these issues.

IV. Close-Out of Assistance Agreements

Commitment: The Region will follow the close-out process described to achieve the Agency goals regarding the closeout of grants.

The Region met the Agency goals regarding grant closeouts for 2004, which continues the Region=s success in this area.

In June, 2004, the Region=s closeout process was modified to reflect the changes due to the Las Vegas Finance Office assuming grantee payment responsibilities for Region 8 grants. When a grant is to expire within 90 days, a AProject Officer Closeout Alert@ is sent by the Grants Office to the Project Officer to advise them that the grant is closing. The Project Officer has two choices: the project will end as specified by the grant agreement, or they must work with the

grantee to determine a time extension.

The Las Vegas Finance Office sends the grantee a letter very shortly after the grant ends. This letter specifies what items must be completed and who they need to send them to. Las Vegas receives final payment requests and Final Financial Status Reports, and then proceeds to make a financial closure of the grant. Las Vegas keeps the Region informed throughout this process and alerts the Region to any issues.

The Grant Specialist will be able to close the grant in IGMS and inform the grantee, once Las Vegas concludes the financial closeout, and specialists receives the following:

- < MBE/WBE,
- < Final Report accepted by PO,
- < Negotiated Indirect Cost Agreement and
- < Certification for Lobbying

If requirements are not met, then another letter (A120 Day Letter@) is sent from the Grant Specialist requesting the grantee to respond within 30 days of this letter. At least one call/email is usually made by the Grant Specialist to assist the grantee on meeting the requirements. If requirements are met, then the Grant Specialist will close out the grant.

If not received after the 120 Day Letter and some other form of contact (call, email, contact from PO is on-going), a A150 Day Letter@ is sent from Wayne Anthofer, Director, Grants, Audit & Procurement Program, informing them that the status of the grant is now a concern. If requirements are met, the Grant Specialist will close out the grant.

If requirements are not met and the Grant Specialist and PO have made numerous attempts to assist the grantee, a A180 Day Letter@ is sent by Certified Mail advising the grantee that EPA is proposing to terminate the grant and disallow costs. At this time, the Grant Office begins working with the Office of Regional Counsel to ensure all formal procedures are correctly followed.

Required Elements for Oversight Manual Quality Assurance Program

1. Does the state have a Quality Management Plan (QMP), conforming to the National Consensus Standard, ANSI E4 and or EPA Order 5360. 1 (A) (2)?

Yes, 9

No, 9

What is the schedule to complete a QMP?

2. Are Quality Assurance Project Plans (QAPPs) completed, approved and contained in the project files?

Yes, 9

No, 9

Project Officer must complete QAPP prior to data collection.

3. (a) What formal training is required of Project Officers to assure compliance with QA practices?

(b) Is training documented?

Yes, 9

No, 9

QMP must be revised to require documentation of training.

4. Describe the project planning process used by the state to assure data collection meet project needs. An example, is EPA=s Data Quality Objectives Process.

5. Once data are generated, is the data assessment process documented and contained in the project record?

6. Is the Peer Review Process documented for projects involving a major scientific undertaking and/or data collection leading to a significant environmental policy or rulemaking?

Yes, 9 Where are these records kept?

No, 9 Is the decision to not perform peer review documented?

Specific for Drinking Water Programs

1. Does the state have an authorized Drinking Water Laboratory Certification Program?

Yes, 9

No, 9 Are certain analytes under provisional certification?

Oversight of Performance Partnership Agreements

Revised Draft
April 2005

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State/EPA Performance Partnership Agreements End-of-Year Review Procedures

Regional Guidance to States on Implementing the Final Part 35 as it Applies to Performance Partnership Grants and Agreements

State/EPA Performance Partnership Agreements End-of-Year Review Procedures

The Performance Partnership Agreement (PPA) is the central document defining the relationship between the state and EPA, and containing the annual work plans and commitments of the agencies for continuing environmental programs within the state. The PPA is used as the formal control point for program and grant commitments, assessments, and oversight determinations. Following the requirements of 40 CFR Part 31.40 and 40 CFR Part 35.115, and Regional Order 5700.04, EPA and the state annually monitor, evaluate and report on accomplishments using procedures agreed to in the PPA.

Evaluation process - The state and the regional office will undertake a joint evaluation of commitments and accomplishments from the Performance Partnership Agreement at the end of the fiscal year. The specific evaluation process for any state will be described in its PPA. In general, the process will follow the steps outlined below.

Step 1: At the conclusion of the fiscal year covered by the grant, the state and EPA programs will each prepare a draft report on their commitments contained in the PPA. The reports will combine program and enforcement accomplishments, and should refer to other current program evaluations and measures of environmental conditions. During preparation of the drafts, program-to-program discussions may begin on the accomplishment of the goals and objectives. The state and EPA will exchange the draft reports by the beginning of December, or within sixty days after the end of the grant period.

Step 2: State and EPA program and enforcement managers should discuss the information gathered on performance to determine if program goals and objectives are being met. This may occur through phone calls or meetings. The state and EPA should share draft versions of end-of-year assessments on a program-to-program basis to initiate discussions on performance. The state and EPA should attempt to come to an agreement on the information being provided in the end-of-year report, although there may be situations where the state and EPA do not agree on the level of performance.

Step 3: The state takes the lead in drafting the end-of-year report to meet federal grant requirements. The report should include a summary of successes, areas for improvement, and action items for each program and cross-cutting initiative in the PPA. It should also provide or reference quantitative and/or qualitative data on each of the performance measures in the PPA, unless otherwise negotiated with EPA. The state can either send in the report as a final “self-assessment” (with EPA input), or it can send it in as a draft assessment and negotiate a final joint report with EPA. If the state submits a self-assessment, EPA may provide the state with comments on its’ evaluation of state performance, if different from the state’s perspective or beyond the scope of the PPA. Please note that EPA may conduct other reviews and assessments of delegated programs throughout the year as part of its oversight role. These other reviews may be accomplished differently from state-to-state and program-to-program according to the results

of accreditation audits performed. Information from any review may be incorporated in state end-of-year reports or in another format, determined by the program. The End-of-Year report is due no later than 90 days after the end of the grant period.

Evaluation follow-up - Within 45 days of the completion of the report, EPA and State Program Directors should be in contact to clarify information submitted and discuss appropriate follow up. If there are any outstanding issues, they will be referred to Senior Managers for resolution.

During the first quarter, the final End-of-Year Assessment and all other pertinent reports will be distributed to all the EPA and state managers to be used to prioritize future work efforts and track the resolution of issues. Changes to the current PPA may be necessary to address new issues or priorities. Serious, ongoing performance problems may necessitate grant conditions, sanctions or other actions by the EPA..

March - April - Programs should conduct individual midyear reviews to check on progress, review and set priorities and plan for future work.

**Regional Guidance to States
on Implementing the Final Part 35
as it Applies to Performance Partnership Grants and Agreements
May 1, 2001**

The revisions to Part 35 became effective for States on April 9, 2001. This rule updates, clarifies, and streamlines requirements governing environmental program grants, which include:

- § increasing State flexibility to direct resources where they are needed most to address environmental and public health needs;
- § explicitly requiring that State priorities and needs be considered, along with national and regional guidance, in negotiating all grant work plans;
- § requiring the State and EPA to jointly evaluate and report on progress under the work plan;
- § minimizing duplicative efforts by allowing multiple uses of information or processes wherever appropriate.; and
- § accommodating all potential variations in how EPA and individual States may work to build partnerships.

The revised Rule closely follows EPA's PPG Interim Guidance, issued September 22, 1998. More information is provided in the EPA Part 35 Rule including Performance Partnership Grants, Summary of Key Features, which is provided as an attachment to this document. The regulation advances ongoing efforts to build more effective State-EPA partnerships and to improve environmental conditions through greater flexibility to direct resources where needed most. The rule also establishes the requirements for the Performance Partnership Grant program. The rule includes results-oriented and joint planning approaches to managing environmental programs.

Sections 35.130 through 35.138 contain requirements that apply only to Performance Partnership Grants.

These sections pertain to programs and activities eligible for inclusion, cost share requirements, application requirements, and inclusion of eligible competitive grants. Following are key points from Part 35, as they apply to Performance Partnership Grants and Performance Partnership Agreements. These points are presented in the form of questions and answers.

Questions and Answers

- Q. When does this rule go into effect?
- A. This rule applies to grants awarded after the effective date of the rule. The rule may be applied to currently active one-year and multi year PPGs if agreed to in writing by the Regional Administrator and the State agency. It does not apply to amendments made during the current grant budget period. Therefore, unless otherwise agreed to, current PPGs fall under the old Part 35 until these PPGs are closed out.
- Q. Has the list of programs eligible for inclusion into the PPG changed?
- A. No. Eligible programs are listed in section 35.101 and defined in section 35.133.

However, unless prohibited by statute or regulation, EPA may add a grant established after the effective date of this rule by specifying its PPG eligibility in the guidance establishing the grant.

Q. Does a State agency have to have a Performance Partnership Agreement to receive a Performance Partnership Grant?

A. No.

Q. Does a State agency have to use EPA's GPRA budget and planning system to request or report on grant budget or work plans?

A. No. EPA will use the budget information that the states provide in grant applications as a basis for linking the grant expenditures with commitments and accomplishments and with the GPRA architecture. We may ask for your assistance, as we negotiate the Agreement, but we cannot require it. Part 35 does require recipients to specify the estimated work years and the estimated funding amounts for each work plan component. A work plan component might be a traditional media program, such as Air Quality, or it might be a goal that is comprised of parts of many programs. This requirement does not preclude a state from shifting awards after they have applied for the PPG..

Q. States have had the option to use one or two-year grant budget periods. Does the revised Part 35 change this option?

A. The length of the grant period is flexible and can be negotiated with EPA. EPA strongly encourages States to keep the budget period to no more than 5 years.

Q. What must be in an approvable work plan? What happens if there are delays in negotiating the final points of a PPA/SEA or an amendment?

A. Part 35.107 requires that an approvable work plan must specify:

- the work plan components included in the grant,
- the work years and funding associated with each component,
- specific work plan commitments and time frame for completion,
- describe the performance evaluation process and reporting schedule, and
- describe the respective roles and responsibilities for both the State and EPA.

The State and EPA must develop and document in the work plan an evaluation process that includes a discussion of:

- accomplishments as measured against work plan commitments,
- the cumulative effectiveness of the work performed under all work components,

- existing and potential problem areas; and
- suggestions for improvement and, where feasible, schedules for making improvements.

Part 35 also describes the role of the Regional Administrator in resolving issues and taking formal actions.

Q. What happens if there are delays in receiving EPA guidance? Will State=s needs and priorities be heard?

A. Applicants may use the guidance in effect to develop work plans when EPA is late in issuing new guidance. The Region 8 policy of using the first Monday in May as the cut-off for issuing guidance still stands. Furthermore, the rule explicitly requires consideration of State priorities along with national program and regional supplemental guidance in negotiating grants.

Pre-award costs may be reimbursed under the grants without prior approval if they are incurred within the budget period, are identified in the grant application, and would have been allowable if incurred after the award. So, if there are delays in reaching final agreement on the content of the work plan, pre-award costs may be reimbursed. However, States take a risk if they incur expenses on items on which the State and EPA have strong disagreement, as the items may not be allowable after the award.

Q. What do we do with outcome measures that cannot be measured and reported until after the grant ends?

A. According to the preamble, a work plan must have commitments and a time frame for accomplishing the commitments, but nothing in the rule says that the time frame for accomplishment of an outcome be within the funding period. Outputs, however, must be measurable during a grant funding period. The definitions for outcome and output are provided in the rule. The rule does not specify the desirable mix of output and outcome measures, but we expect that core measures, national and regional guidance, and state priorities and objectives will provide direction for the types and mixes of measures.