

Attachment E: Response to Comments

Response to Comments Summary on FY 2009 Draft NPM Guidance

Office of Enforcement and Compliance Assurance

Comment	Commenter(s)	Response	Change to Draft (Y/N/NA)	Modification
Issue Area: Border State Role in Transboundary Waste Monitoring				
-no discussion of the role of border states in improving transboundary waste monitoring under the monitoring and enforcement strategic sub-objective 5.1.3 on p.57 suggesting that role is small or not required -recommend clarifying border state role & relationship with Customs	Texas Commission on Environmental Quality	-NPM Guidance primarily directs federal activities -Currently, states have no transboundary waste monitoring obligation at Customs and Border Patrol (CBP) locations under EPA authorities. -The question of state roles and relationships under EPA authorities at CBP border locations would need further consideration in consultation with the EPA Regions.	N	N/A
Issue Area: Clean Air Act Evaluations for Title V Major Sources				
-Clarify whether compliance evaluations on p.43 in the Clean Air Act NSPS/NESHAP/MACT PROGRAMS section refer to full compliance evaluations	Region 4	-Refers to full compliance evaluations and partial compliance evaluations -Revised guidance to clarify	Y	See p. 45 for additional details.

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Issue Area: Oversight under the Clean Air Act				
- What are OECA's expectations on compliance/enforcement commitments in air grant work plans given the advent of title 5 fees and the reduction in 105 grant dollars?	Region 4	-Revised guidance to clarify and removed reference to grants	Y	See p.52 for additional details
-Clarify whether the term “evaluate” in the Clean Air Act core program section on p. 50 means “program oversight”	Region 4	-Additional clarification on the definition of oversight inspections added to the guidance.	Y	See p.52 for additional details
-Clarify whether written reports documenting CAA results in the core program section on p.50 refer to CMS evaluations or the SRF	Region 4	-Additional clarification on the integration of the CMS and SRF reviews added to the guidance.	Y	See p.52 for additional details
Issue Area: Clean Air Act Risk Management Plans, Section 112(r)				
-Clean Air Act Risk Management Plan section does not accurately reflect regional focus, nor does it support the level of program expenses devoted to on site inspections -Desk audits on a RMPlan require 1 hour, while an on-site inspection of the prevention program requires 8 hours (or more).	Region 4	-Revised section per recommendation to characterize regional work more accurately	Y	See p.49 for additional details.

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Issue Area: Clean Water Act Compliance Monitoring Strategy				
<p>-Requiring manual reporting of every category covered by the CMS is an increased burden and significantly increases the ACS type commitments in the NPDES program.</p> <p>-Too much for the regions to divert focus from the Wet Weather Strategic Implementation Plans to provide additional oversight of state's implementation of the CMS.</p>	Region 2	<p>-Implementation dates of CMS will occur before the rule delineating the MDRs for ICIS-NPDES is completed. -Draft CMS was widely circulated for a number of months for comment; this was date agreed upon through that process. Until ICIS-NPDES data issues are resolved, reporting will need to be manual.</p> <p>-Sent memorandum transmitting the CMS on October 17, 2007.</p> <p>-The CMS and ACS both indicate that well established and well functioning planning processes between EPA and the states will satisfy the requirement.</p> <p>-The CMS deals with various components of the core program, and reflects areas that have been national priorities since at least FY 2005.</p> <p>-While there are frequency goals articulated in some areas where none have been articulated before at the national level, all of the CMS program areas have been addressed for at least the past three years, and some since the beginning of the program.</p> <p>-Flexibility is provided to allow deviation from suggested targets where appropriate.</p>	N	N/A

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Recommend beginning inspection targeting based on new software in FY 2010 rather than FY 2009.	Region 4	-Date changed to FY 2010 -Software for ICIS-NPDES states may be available for testing in June 2008. -Tools for PCS may also be available in that timeframe. -Agree that FY 2009 should be a pilot year for using the targeting model with full implementation in FY 2010.	Y	See pp.25-27 for additional details.
-Recommend no set inspection frequency or goal for biosolid inspections	Region 4	-1 inspection every 5 years is a minimal inspection presence. -If frequency goal cannot be met there is flexibility in the CMS to articulate/ document rationale for different level.	N	N/A
-Request credit for reviews of biosolid reports toward inspection goals	Region 4	-Do not concur; this idea would need to be discussed with the NPDES Branch Chiefs, and perhaps at the upcoming biosolids conference in Potomac, MD. -Biosolids report reviews require some level of on-site inspections to confirm accuracy of the reports.	N	N/A

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<p>-Clarify how lag time in state inspection data reporting should be factored into the development and reporting of CMS inspection activities on p.24 in paragraph 2</p>	<p>Region 5</p>	<p>- Not able to respond to this comment without more information from Region 5.</p>	<p>N</p>	<p>N/A</p>
<p>- Other than the state oversight ACS measure, the CMS annual commitment is the only measure of performance for the CWA NPDES program. -Request separate tracking of regional and state CMS activities by inspection category, rather than combined as proposed. -Tracking accomplishments by state should be considered.</p>	<p>Region 5</p>	<p>-Clarifying language added to guidance</p>	<p>Y</p>	<p>See pp. 24-29 for additional details.</p>
<p>-New CMS commitment should require a report of accomplishments as of midyear and end of year, rather than a plan. Please clarify. -Also, the commitment should track regional performance separately from state performance.</p>	<p>Region 5</p>	<p>-Clarifying language added to guidance</p>	<p>Y</p>	<p>See pp. 25-26 for additional details.</p>

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<p>-Clarify why regions should review all DMRs received as indicated on p.27 in the CWA Section 311 program oversight section as states conduct this review in delegated programs</p> <p>-Regions should not duplicate this effort, nor do we have staff resources to do so.</p>	Region 5	-Clarifying language and reformatting added to address comment	Y	See pp. 28-29 for additional details.
Issue Area: Combined Sewer Overflow Priority				
<p>-This guidance states that CSOs are a major contributor to beach closings.</p> <p>-While it is reasonable to assume that CSOs impact water quality at beaches, Region 5 does not have data to support them as a “major” contributor</p>	Region 5	Clarified CSO contribution to beach closings in response to comments.	Y	See p.6 for additional details.
Issue Area: Compliance Assistance for Tribes				
-Explain OECA’s role with tribes vs. states to develop compliance assistance and enforcement priorities in the EPA-State Relations section	Eight Northern Indian Pueblo Council Environment Department	<p>-Guidance discusses OECA’s role with tribes in section L, entitled “Requirements: Indian Program.”</p> <p>-Added sentence to Section F directing readers to the EPA Tribal Relations section in section L of the NPM Guidance.</p>	Y	See p.20 for additional details.

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-Include compliance assistance information on additional information sources for tribes including information for small systems from Indian Health Service, Tribal Utility Advisory Committees, Rural Water Association, and the Rural Community Assistance Corporations	Eight Northern Indian Pueblo Council Environment Department	-Clarifying language on information sources added to guidance	Y	See p. 31 for additional details.
-May be necessary to have more than a single full time regional compliance assistance coordinator; regions should determine if tribal compliance assistance requires an additional tribal liaison.	Eight Northern Indian Pueblo Council Environment Department	-The guidance indicates that Compliance Assistance Coordinators coordinate with tribes. -Compliance Assistance Coordinators work on each national priority, including the Indian country priority. -Coordinators work with the Regional Indian Programs and enforcement and compliance personnel to ensure that compliance assistance activities are properly reported and tools provided to tribes	N	N/A

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Issue Area: Compliance Assistance Measures				
<p>-Measuring environmental management practice results for compliance assistance is resource intensive due to preparation and follow-up required</p>	<p>Region 4</p>	<p>-Data reporting is not mandatory for this measure (not an annual commitment in the NPM Guidance.) -It is externally reported in the federal budget, the Performance and Accountability Report, and the Quarterly Management Report & there are no plans to eliminate it for FY 2009. -Headquarters has and will continue to provide assistance to Regions to support collection of this measure.</p>	<p>N</p>	<p>N/A</p>

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Issue Area: Compliance Monitoring				
<p>-The NPM Guidance does not provide a consistent definition of what constitutes a federal oversight inspection and how Regions should document and report on oversight inspection findings</p> <p>-Recommends providing further guidance on federal oversight inspections, to include a definition that covers all relevant media (Water, RCRA, etc); that lists the key activities to be conducted during a federal oversight inspection; and a discussion of how the findings are to be analyzed and reported.</p> <p>-Without requiring a consistent reporting process and mechanism, it is difficult to see how federal oversight inspections will inform the State Review Framework process in a positive and helpful way</p> <p>-Define the term “oversight” as used on p.12 in the core program compliance monitoring section</p>	<p align="center">Region 4</p>	<p>-Clarifying language defining oversight added to guidance</p>	<p align="center">Y</p>	<p>See pp. 14-15; 26-29; & 52 for additional details.</p>

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Compliance Monitoring Tools				
-Suggest adding examples & broadening the scope of the compliance monitoring section on p.12 to include geographic information systems (GIS) and global positioning system (GPS) tools	Region 10	-Do not concur -Regions have a need for digital cameras and more importantly PC Tablets.	N	N/A
Issue Area: Core Program Implementation in Indian Country				
-Shouldn't Tribes be considered in the Default in CMS or is it only a state projection on p.44? -Tribal lands have the potential to contain unaccounted minor sources. -These numbers are necessary for Tribes to consider meeting annual commitments: CAA01, CAA01s, CAA02, CAA02s, CAA03, CAA03s. -Without an accurate account, maintained by individual Regions, of major and minor sources on tribal lands, Tribes cannot be considered to (or held responsible for) meeting this commitment [refers to the CAA05 commitment on Clean Air Act investigations.]	Eight Northern Indian Pueblo Council Environment Department	-Do not concur -These are only state projections. -The CAA CMS was negotiated with state and local agencies, not with tribes. -Hence, it would not be appropriate to require the tribes to comply with CMS. -The annual commitment CAA05 on Clean Air Act investigations is intended to measure Federal actions only, not actions taken by tribes with EPA inspection credentials	N	N/A

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<p>-The <i>Protecting Public Health and the Environment Through Enforcement and Compliance Assurance in Indian Country: A Strategy for Results (Strategy)</i> should not exclude Tribes from some of the programs provided to states.</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>-Guidance revised to incorporate comments on the role of Tribes</p>	<p align="center">Y</p>	<p>See p.78 for additional details.</p>
<p>-The guidance discusses an increase in EPA’s presence in Indian country and other tribal areas. -In what way or ways are we “increasing” our presence? -Would it be more accurate to simply say that we are “continuing our focus” in this area?</p>	<p>Region 10</p>	<p>-Guidance revised to incorporate comments on increasing our presence in Indian country</p>	<p align="center">Y</p>	<p>See p.78 for additional details.</p>

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Issue Area: Emergency Planning and Community Right to Know Act (EPCRA)				
<p>-Suggest conducting at most, 2 on-site data quality inspections</p> <p>-This area has higher violation rate historically than the data-quality inspection program, and addresses the primary goal of the “<u>community right-to-know</u>” law and regulations</p> <p>-To appropriately conduct data quality investigations, a significant resource investment must be made.</p> <p>-Current resources do not exist to warrant “a minimum of 4 on-site data quality inspections</p>	Region 5	<p>-Four on-site data quality inspections are appropriate because the region has a large TRI-regulated community.</p> <p>-This year, OEI is providing the regions with company targets thereby reducing the need by regions to conduct targeting.</p> <p>-Counter-proposal: Conduct two (2) data quality on-site inspections and increase the number of federal on-site inspections from 20 to 22.</p>	N	N/A
Issue Area: Environmental Justice				
<p>-Clarify both the US/Tribal Government and tribal advisory roles in the tribal priority compliance assistance section on p. 71</p>	Eight Northern Indian Pueblo Council Environment Department	<p>-Language clarified to indicate that tribes and tribal consortia play a role in UST environmental compliance issues.</p> <p>-Role exists irrespective of the inability to treat tribes in the same manner as states under RCRA.</p>	Y	See p.55 for additional details.

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Issue Area: Federal Facilities Compliance Assistance				
<p>-Unclear how the delivery of assistance through Fedcenter will be recorded/scored in terms of annual commitment outcomes attributed to Regions vs. to FFEO.</p> <p>-If R4 participates financially in a national program effort, will R4 have to look elsewhere for CA activities to meet the commitment we make?</p>	<p>Region 4</p>	<p>-Simply contributing financially does not satisfy the compliance assistance federal facilities commitment</p> <p>-Will consider giving credit for a Region that takes the lead in developing new compliance assistance content which could be delivered by all Regions & delivered via FedCenter during the ACS negotiation process for the compliance assistance annual commitment.</p> <p>-New exploratory areas may be good candidates for new CA.</p>	<p>N</p>	<p>N/A</p>

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Federal Facilities Inspections				
<p>-Continue to mandate multimedia federal facility inspections.</p>	<p>Region 3</p>	<p>-Modified text of annual commitment and guidance text -Commitment for multimedia inspections at federal facilities mandates ten inspections related to integrated strategy areas. -May achieve inspections through any combination of single and multimedia inspections with certain limitations. -Strongly encourage interested Regions to conduct multimedia inspections in integrated strategy areas. -Will provide contract support for multimedia inspections in integrated strategy areas as resources allow.</p>	<p>Y</p>	<p>See pp.67-70 for additional details.</p>

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<p>-Negotiation, targeting, and pursuit of <i>single medium inspections</i> across multiple media programs is an energy and commitment intensive, and suffers in the competition for resources with the big cases, such as utility-case work in the Clean Air area and with big boxes, SSO/CSOs, and homebuilders in the CWA program.</p> <p>-Regarding the maximum contribution of <i>three inspections from UST</i>, a better minimum contribution statement would be "...at least one inspection from each IS area."</p>	<p>Region 4</p>	<p>-Do not concur</p> <p>-National Integrated Strategies were developed by the Regions & HQ to address common problems and ensure a broad inspection presence at federal facilities.</p> <p>-Limiting underground storage tank inspections is appropriate in order to ensure a presence across many statutes</p> <p>-Additionally, some Regions may not be able to conduct inspections in all integrated strategy areas in 2009 due to prior year inspections.</p>	<p>N</p>	<p>N/A</p>

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<p>-Reducing <i>multi-media inspection</i> requirement further dilutes the impact of EPA enforcement activities on federal facilities, reduces the ability of inspectors/team leaders to meet with base commanders and facility directors, and greatly decreases the visibility of the federal environmental program.</p> <p>-There will be the loss of the other multi-media inspection benefits and the loss of institutional knowledge of this large component of the regulated universe</p>	<p>Region 4</p>	<p>-Modified text of annual commitment and guidance text</p> <ul style="list-style-type: none"> - The annual commitment for multimedia inspections at federal facilities (FEDFAC05) mandates ten inspections related to integrated strategy areas. -Any combination of single and multimedia inspections with certain limitations may be counted. -Strongly encourage interested Regions to conduct multimedia inspections in integrated strategy areas. -Will provide contract support for multimedia inspections in integrated strategy areas as resources allow. 	<p>Y</p>	<p>See pp.67-70 for additional details.</p>

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<p>-Add “Identified Regional Priorities” to the types of inspections counted for single media federal facilities inspections</p>	<p>Region 9</p>	<p>-Do not concur -Guidance establishes a base of EPA activities focused on federal facilities -Regions are free to conduct additional activities in regional priority areas. -Added language to guidance on possibility for substitutions if a Region has a specific federal facility integrated strategy other than the national strategies</p>	<p>N</p>	<p>N/A</p>
<p>Issue Area: FIFRA</p>				
<p>-Question national applicability of new FIFRA fumigant initiative & EPA vs. state role in regulating use/misuse -Provide specific guidance on the approaches and benefits of EPA vs. state compliance inspections/enforcement actions on fumigant use</p>	<p>Region 2, 3, 6, 8, 10</p>	<p>-Revised write-up to acknowledge State program primacy for use and misuse investigations and enforcement. -Revisions provide some scenarios that might benefit from federal support or involvement.</p>	<p>Y</p>	<p>See p. 37 for additional details.</p>

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-Strongly support FIFRA pesticide imports initiative & request guidance on national consistency, establishment of a working relationship with US Customs, enabling port inspections whenever regional resources are available	Region 2, 3, 6, 8, 9, 10	-Revised the section on FIFRA initiatives to clarify the focus of the initiative and expected outcomes.	Y	See p. 37 for additional details.
-Question national applicability of new FIFRA return/collection center initiative -Support participation from all 10 regions in any national initiative	Region 2, 3, 6, 9	-Revised guidance to clarify that HQ will collaborate with appropriate regions to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement.	Y	See pp. 37-38 for additional details.
-Support identification of antimicrobial testing program as an ongoing national FIFRA initiative	Region 2, 6, 8, 9	-Recognize the importance of the antimicrobial testing program -Will use FY 2009 to assess the need for additional national focus on that program or other issues related to antimicrobial products.	N	N/A
-FIFRA fumigant initiative expectations unclear -Goal of fumigant initiative unclear (human exposure vs. misuse) -Expected outcomes, outputs, and activities of the fumigant initiative are unclear	Region 3, 9, 10	-Revised guidance to acknowledge that State program primacy for use and misuse investigations and enforcement. -Provides some scenarios that might benefit from federal support or involvement.	Y	See p. 37 for additional details.

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-Regions/states need additional info to understand Headquarters' goals for fumigant initiative	Region 3	-Revised guidance to acknowledge State program primacy for use and misuse investigations and enforcement. -Provided some scenarios that might benefit from federal support or involvement	Y	See p. 37 for additional details.
-Place emphasis on unapproved registered sources as active ingredients in registered sources often changed to lower cost ingredients without EPA's knowledge and consent	Region 3	-Agree; revised guidance to include unapproved registered sources. -Also clarified expectations of the fumigant initiative	Y	See p. 37 for additional details.
-Is the focus of the initiative on Big Box stores or locations where Big Box stores send their damaged pesticide merchandise and how those locations handle the material?	Region 3	- Focus: Both big box stores and the locations where big box stores send damaged pesticide merchandise -Revised guidance to clarify that HQ will collaborate with appropriate regions to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement.	Y	See pp. 37-38 for additional details.

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<p>-PART measures should only be used to evaluate the overall pesticides enforcement program and not be used as a tool to compare state programs</p> <p>-Each state program operates differently and these measures do not provide an equal playing field.</p> <p>-Do not want results used to penalize a state because of program differences.</p>	<p>Region 4</p>	<p>-Will establish a national baseline and grantee specific targets in FY 2008.</p> <p>-Regions will negotiate specific targets beginning with the 2010 grant year through individual state, tribal and territorial cooperative agreements.</p> <p>-Though state to state comparisons will inevitably occur, each state/tribe will have a specific target.</p> <p>-Agree that state/tribal differences may explain, in part, differences in results and will use opportunities to explain these differences</p> <p>-Do not intend to use the results to penalize/reward individual grantees, but rather to improve performance.</p>	<p>N</p>	<p>N/A</p>

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<p>-Separate the tribal-specific component of the FIFRA-FED1 inspection measure from other types of inspections</p> <p>-FIFRA inspections done by tribal members on behalf of EPA with EPA-issued federal inspection credentials should count as federal inspections.</p>	Region 4	<p>-FIFRA projections in the Annual Commitment System (ACS) currently do not include state-by-state projections or reporting.</p> <p>-Including tribal country-by-tribal country reporting or projections would appear to be a new measure, and premature for a change in ACS.</p> <p>-Regarding counting some tribal inspections as federal, this issue has been under discussion and not yet been resolved.</p> <p>-Premature to make change.</p>	N	N/A
<p>-Remind Regions to: ensure state/tribal inspectors who inspect on behalf of EPA are trained, credentialed, & review all state/tribal inspection reports, take appropriate enforcement actions based on those inspection case files, and provide feedback on the quality of the inspections/reports to the appropriate states or tribes in the guidance</p>	Region 5	<p>-Agree; added language to reiterate this message.</p>	Y	See p.35 for additional details.

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<p>-Strengthen description of the complementary roles of EPA, states, and tribes</p> <p>-Specifically state that “EPA is primarily responsible for the registration, production, labeling, and distribution of pesticides in commerce while the states and tribes, under effective cooperative agreements, are primarily responsible for the use of pesticides within their respective jurisdictions.”</p>	<p>Region 5, 9</p>	<p>-Agree, however, state responsibility is based upon primacy, not “cooperative agreements.”</p> <p>-Tribal responsibility is based upon cooperative agreements.</p> <p>-Added clarification on cooperative agreements to guidance</p>	<p>Y</p>	<p>See p.35 for additional details.</p>
<p>-Fumigant initiative should not necessarily be a special focus within the core federal FIFRA program, but rather a special focus within the State and Tribal Cooperative Agreement program</p> <p>-Perhaps a State Cooperative Agreement guidance priority would be more applicable.</p>	<p>Region 5, 9</p>	<p>-Revised guidance to acknowledge State program primacy for use and misuse investigations and enforcement.</p> <p>-Revised guidance provides some scenarios that might benefit from federal support or involvement.</p>	<p>Y</p>	<p>See p.37 for additional details.</p>

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<p>-Return/Collection Center initiative focus should address the FIFRA-RCRA interface, e.g. once a chemical is no longer intended to be used as a pesticide (FIFRA regulated), it is then a waste and RCRA regulated.</p>	<p>Region 5</p>	<p>-Revised guidance to clarify that HQ will collaborate with appropriate regions to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement.</p>	<p>Y</p>	<p>See pp.37-38 for additional details.</p>
<p>-Making fumigants a priority for state inspection targeting is probably a more effective approach -Might be useful to focus efforts initially on a couple of products or use sites. -Are there some that OPP has identified as particularly troublesome or problematic?</p>	<p>Region 8</p>	<p>-Revised guidance to acknowledge State program primacy for use and misuse investigations and enforcement. -Revised guidance provides some scenarios that might benefit from federal support or involvement. -There have been a number of serious incidents of human pesticide exposure that warrant national focus.</p>	<p>Y</p>	<p>See pp. 35-37 for additional details.</p>

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<p>-Would like to see a better definition of the problem before making it a national priority (i.e. number, locations)</p> <p>-Could work with states in 2009 to better define before making it a national priority if info unavailable</p> <p>-States could gather data regarding the handling of unsold/damaged pesticides during market place inspections in 2009</p> <p>-Would hopefully allow EPA to better define the scope of the issue and provide some initial targeting data.</p>	Region 8	<p>-Revised guidance to clarify that HQ will collaborate with appropriate regions to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement.</p>	Y	See pp. 37-38 for additional details.
<p>-Fumigant cases not frequently referred to EPA</p>	Region 9	<p>-Revised guidance to acknowledge State program primacy for use and misuse investigations and enforcement.</p> <p>-Revisions provide some scenarios that might benefit from federal support or involvement.</p>	Y	See p.37 for additional details.
<p>-Would also be great to follow up on Region 2's initial efforts to stop import of illegal technicals under the pesticide import initiative</p>	Region 9	<p>-Revised initiative narrative to clarify the focus of the initiative and expected outcomes.</p>	Y	See p.37 for additional details.

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<p>-Need to define return/collection centers & add guidance on whether the initiative focus is federal or for cause</p>	<p>Region 9</p>	<p>-Revised guidance to clarify that HQ will collaborate with appropriate regions to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement.</p>	<p>Y</p>	<p>See pp.37-38 for additional details.</p>
<p>-Pesticide misuse delegated to the states & Regions are rarely involved in such cases -If OECA would like the Regions to increase resources in this area, it would be useful to describe the additional activities required -Does this mean providing additional compliance assistance, oversight efforts? -If so, is OECA developing materials for Regions/states to use? -Are we concerned about specific fumigant products/chemicals?</p>	<p>Region 10</p>	<p>-Revised guidance to acknowledge State program primacy for use and misuse investigations and enforcement. -Revisions provide some scenarios that might benefit from federal support or involvement.</p>	<p>Y</p>	<p>See pp.35-37 for additional details.</p>
<p>-If OECA expects the Regions to request states to increase their efforts (e.g., more inspections or compliance assistance) then this needs to be addressed in the FIFRA Cooperative Agreement Guidance, in addition to the NPM Guidance.</p>	<p>Region 10</p>	<p>-OECA does not expect the states to increase their efforts (e.g., more inspections or compliance assistance).</p>	<p>N</p>	<p>N/A</p>

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-It isn't clear what additional resources and activities are expected for the pesticide import initiative	Region 10	-No additional resources anticipated for this initiative. -Initiative will be part of the CORE program allowing the regions to target resources with this priority in mind. -Revised narrative to clarify the focus of the initiative and expected outcomes	Y	See p. 37 for additional details.
-Would be useful to identify a specific pesticide product type/device of widespread concern due to noncompliance in which to focus national and regional efforts or provide guidance on how to improve targeting of imports of concern.	Region 10	-Revised guidance to clarify the focus of the initiative and expected outcomes.	Y	See p. 37 for additional details.
-Support return collection center initiative & request that this initiative be addressed in the Cooperative Agreement Guidance for maximum affect. For example, we have asked our states to collect information related to this effort during their routine marketplace inspections.	Region 10	-Revised guidance to clarify that HQ will collaborate with appropriate regions to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement.	Y	See pp. 37-38 for additional details.

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Issue Area: Formatting				
-Add table of contents	Region 10	-Table of contents included as electronic bookmarks on web site.	No	N/A
Issue Area: Identifying Federal Activities Conducted in Indian Country				
-Suggest the tribal-specific component of mineral processing investigations, Clean Air Act full and partial compliance evaluations, Clean Water Act pretreatment and majors inspections, TSCA asbestos, EPCRA FIFRA, stormwater, RCRA LQG, and TSCA core inspection annual commitments be separated out.	Region 4	-Requires additional consultation with HQ and regional offices	N/A	N/A

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<p>-TSCA lead/asbestos/PCB, CAFO, CWA pretreatment, CWA major, EPCRA, FIFRA, stormwater inspections done by tribal members on behalf of EPA with EPA-issued federal inspection credentials should count as federal inspections for annual commitments</p>	<p>Region 4</p>	<p>-Currently under consideration with HQ and regional management -Changes to the measures would be made where necessary and appropriate. -Not yet appropriate to change the language in the NPM Guidance.</p>	<p>N</p>	<p>N/A</p>
<p>-Suggest that the NPM report the tribal-specific component of environmental management practice improvements in response to EPA compliance assistance measure separately</p>	<p>Region 4</p>	<p>-This is not a NPM Guidance measure -The compliance assistance measure on environmental management practice improvements is designed to report aggregate, nationwide results of EPA compliance assistance activities in the federal budget and the Performance and Accountability Report -Information on Federal compliance assistance activities conducted in Indian country by region are available upon request -Contact Catherine Tunis for additional details 202-564-0476</p>	<p>N</p>	<p>N/A</p>

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Comment	Commenter(s)	Response	Change to Draft (Y/N/NA)	Modification
<p>-Distinguish the US/Tribal government relationship from the tribal advisory role in the EJ section of the guidance on pp. 71-72</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>-Revised guidance to distinguish the government-to-government relationship between US and Tribes and requirement for adequate consultation.</p>	<p>Y</p>	<p>See pp. 75-77 for additional details.</p>
<p>-Explain how OECA is working with Tribes to develop guidance on enforcement and compliance assistance priorities in the EPA State Relations section on p.19 -It would be helpful for NPMs to understand the difference in the level of relationship the EPA has with states in contrast to Tribes, as well as defining the means to get to tribal priorities.</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>-Added text to guidance to direct readers to the tribal program section -Comment refers to the EPA State Relations section which begins on page 19. -The Tribal Program section beginning on p. 74 discusses how OECA is working with Tribes on core programs -Separate section on the Indian country national priority on p.8. -Discussion fairly detailed in Section L and addresses concerns raised by the commenter. -See Section L. Requirements: Indian Program.</p>	<p>Y</p>	<p>See p.19; 77-81 for additional details.</p>
<p>-Tribes are not the public and the public input process under EJ policy is not adequate.</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>- Revised guidance to clarify the requirement for appropriate consultation with Tribal governments consistent with the Executive Order 13175, and EPA policies and guidance.</p>	<p>Y</p>	<p>See pp. 75-77 for additional details.</p>

Attachment E: Response to Comments

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<p>-Suggest that tribal-specific components of TSCA PCB and asbestos state grant template measures be separated out.</p> <p>-Inspections done by tribal members on behalf of EPA with EPA-issued federal inspection credentials should count as federal inspections.</p>	Region 4	<p>-TSCA polychlorinated biphenyl (PCB) and asbestos inspection measures TSC-G02a, TSC-G03a, TSC-G03b are measures specifically designed to track the results of state TSCA grant recipient performance</p> <p>-Measures do not track federal inspections conducted in Indian country</p>	N	N/A
<p>-Clarify that tribal priority commitments for public water systems calculate results for PWS facilities in Indian country <u>on trust land</u> only, while PWS facilities on fee land in Indian country are not counted.</p>	Region 4	<p>-Do not concur</p> <p>-Measure designed to cover all PWSs in Indian country, whether on fee or trust land.</p>	N	N/A
<p>-Correct typo in the text of the annual commitment PBS-TB15 “Decrease by 10% the number of Clean Water Surveys (CWS) in Indian country with new significant violations of monitoring and reporting requirements.”</p> <p>- CWS is a "Community Water Systems"</p>	Region 4	<p>-Agree; revised text of measure in database response to comments</p>	Y	N/A

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<p>-While NETI is a valuable national tool for training across the nation, localized, tribally specific training is more valuable to tribes.</p> <p>-OECA should attempt to partner with more tribal consortia to bring enforcement and compliance assistance training to Indian country</p>	<p align="center">Region 4</p>	<p>-While localized, tribal-specific training may be more valuable, NETI has had some success at the national level</p> <p>-NETI directly trained a total of 51 tribal members in FY 2007 in its three core courses, Basic and Advanced Inspector training and its Teamwork course; this was an 11% increase over FY 2006.</p> <p>-Work on annual basis with Northern Arizona University's Institute for Tribal Environmental Professionals to deliver two tribal-specific basic inspector training courses a year</p> <p>-Several tribes are considering requesting NETI courses on reservations based on the attendance of senior tribal representatives in NETI's courses; NETI will most likely favorably consider any such request; done twice in recent years.</p> <p>-Also work the Northeast Environmental Enforcement Project (NEEP) to make outreach efforts to tribes in their region to determine their environmental enforcement training needs</p> <p>-Other resource constraints limit what NETI can commit to on a specific tribal basis</p>	<p align="center">N</p>	<p align="center">N/A</p>

Attachment E: Response to Comments

Comment	Commenter(s)	Response	Change to Draft (Y/N/NA)	Modification
Issue Area: Lead Paint				
<p>-The first sentence in the second paragraph on p. 41 of the TSCA lead section states, "...the enforcement program will implement an integrated strategy focused on the outcome of obtaining abatement (permanent elimination) of LBP hazards in housing...:"</p> <p>-Abatement is not a requirement of the EPA regulations, so abatement should not be the emphasis of the strategy.</p>	<p>Region 10</p>	<ul style="list-style-type: none"> - Rules do not require abatement -Committed to leveraging enforcement activities into actual hazard reduction benefits -Striving to meet the 2010 goals -Requires an integrated strategy because current rules don't require abatement or pollution reductions, and universe is very large and may not be addressed in a timely manner -Focuses resources to reduce the greatest number of housing units with lead-based paint and the greatest number of children with elevated blood lead levels -Concur on Census data comments -Included targeting information in guidance to provide each Region with the flexibility to allocate the resources to address the unique LBP hazards -Encourage regions to work with local health departments and HUD to identify toxic dwellings/community hot spots & coordinate these efforts with their EJ activities. 	<p>N</p>	<p>N/A</p>

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<p>-The first sentence in the second paragraph on p. 41 of the TSCA lead section states, "...the enforcement program will implement an integrated strategy focused on the outcome of obtaining abatement (permanent elimination) of LBP hazards in housing...:"</p> <p>-Abatement is not a requirement of the EPA regulations, so abatement should not be the emphasis of the strategy.</p>	<p>Region 10</p>	<p>See above response on p.27.</p>	<p>N</p>	<p>N/A</p>

Attachment E: Response to Comments

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Issue Area: National Environmental Policy Act (NEPA) & Clean Air Act Section 309				
-The allowable percentage of significant NEPA impacts has the potential to greatly and adversely affect Indian country in any region and should be reduced. -Perhaps 90% of the 10% allowed	Eight Northern Indian Pueblo Council Environment Department	-EPA comments on actions conducted by other federal agencies, which are submitted pursuant to our authority under Section 309 of the Clean Air Act, are advisory. -Comments are not binding on the other federal agencies -EPA believes that 70% impact reduction in response to comments is an appropriate goal for 309 activities. -The percentage of 90% applies to EPA actions subject to NEPA. For these actions, EPA has decision-making authority, and can ensure the needed mitigation is implemented.	N	N/A
Issue Area: RCRA Oversight				
-Similar to previous comments, state readers of this section of the Guidance might be misled to believe that the SRF is the only mechanism to be used for oversight of state RCRA-C enforcement programs. -Some acknowledgement of other ongoing annual oversight activities should be added.	Region 8	-The SRF is described as the primary tool for RCRA-C oversight, which correctly implies that other tools exist for state oversight. -See other examples in the same paragraph, such as EPA's Watch List and citizens' complaints.	N	N/A

Attachment E: Response to Comments

Comment	Commenter(s)	Response	Change to Draft (Y/N/NA)	Modification
Issue Area: RCRA Hazardous Waste				
<p>Are federal RCRA hazardous waste enforcement & compliance assurance activities the sole activities in Indian country as indicated on p.51?</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>-Generally, federal compliance assurance and enforcement activities include all of Indian country and complement the activities of tribal environmental programs under tribal laws -Language added to the guidance to respond to this question on the scope of RCRA hazwaste authority.</p>	<p align="center">Y</p>	<p>See p.53 for additional details.</p>
Issue Area: RCRA Underground Storage Tanks				
<p>-The 3rd paragraph on p.52 mentions RCRA precluding Tribes from authorizing UST programs. -While this is true, the paragraph should mention that Tribes and Tribal Consortia have UST Programs which offer compliance assistance and monitoring.</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>-Federal compliance assurance and enforcement activities cover all of Indian country because RCRA precludes EPA from authorizing tribal UST programs. -Regions should, therefore, implement the UST program in Indian country in coordination with tribes and tribal consortium -Language added to the guidance to respond to this question on the scope of RCRA UST authority.</p>	<p align="center">Y</p>	<p>See p.55 for additional details.</p>

Attachment E: Response to Comments

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Issue Area: Safe Drinking Water Annual Commitment				
<p>-Should the text of the annual commitment for safe drinking water (SDWA02) start with the following language, “States, Tribes, and EPA will...”?</p>	<p>Eight Northern Indian Pueblo Council Environment Department</p>	<p>-Primacy states, tribes and EPA will address or resolve Public Water Systems listed on a ‘Fixed Base’ SNC/Exceptions list.” -Only states and tribes with primacy can meet this commitment. -Revised guidance to clarify</p>	<p>Y</p>	<p>See p.87 for additional details.</p>
Issue Area: State Review Framework (SRF)				
<p>-The next SRF round should not be launched until the findings/lessons learned from round 1 are adequately shared and addressed</p> <p>-Key issues: consideration of differential oversight and the development of data metrics (e.g. air data metrics); a clear pathway for states to obtain resource flexibility credit for alternative compliance approaches (Element 13), and better accommodation of multi-media approaches.</p>	<p>New England State Commissioners</p>	<p>-This comment is not recommending changes to the NPM guidance, rather, it identifies several issues the NE Commissioners have raised about revisions to the SRF program. -States raised these issues within the SRF evaluation workgroup -Addressing with state participation and input through workgroup and through the ECOS Compliance Committee -Proposals for addressing these issues were discussed with Commissioners at the April ECOS meeting.</p>	<p>N</p>	<p>N/A</p>

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<p>- Round 2 of the State Review Framework has a 4 year cycle but the NPM guidance sets the deadline for completing the reviews by the end of FY2010.</p> <p>-That would only give us 2.5 years to complete all of the state reviews.</p> <p>-Date for completion of SRF reviews listed in the guidance on p.42 in the Clean Air Act core section is FY 2010, hasn't this changed to FY 2012?</p>	Region 3, 4	-The commenter is correct, the date for the completion of Round 2 of the SRF is FY2012	Y	See p.45 for additional details.
<p>-Definition of oversight in the air enforcement section varies from the definition of oversight in the SRF section; please clarify</p>	Region 4	-Additional clarification on the definition of oversight inspections added to the guidance.	Y	See pp.14-15; 26-29; & 52 for additional details.
<p>-Clarify definition of oversight inspections in the CWA oversight section of the guidance on p.25 by stating whether these are joint EPA/state inspections or federal inspections</p>	Region 5	-Additional clarification on the definition of oversight inspections added to the guidance.	Y	See pp. 26-27 for additional details.

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<p>-Recommend reviewing each state pretreatment program in conjunction with the scheduled SRF evaluation rather than reviewing each state program every year as indicated on p.27 in the CWA pretreatment section</p>	<p align="center">Region 5</p>	<p>-Do not concur; issue needs to be explored further with the Office of Water. -Pretreatment reviews are broader than the scope of SRF for pretreatment. -There may be OW program requirements that mandate these annual reviews.</p>	<p align="center">N</p>	<p align="center">N/A</p>
<p>-Clarify that the description of assessment or evaluation activities in the CAA program oversight section on p.50 applies regardless of whether the assessment or evaluation is for the purpose of an SRF review or CMS audit. -Clarify that the description also applies to routine, ongoing annual oversight activities.</p>	<p align="center">Region 8</p>	<p>-Additional clarification on the assessment/evaluation activities added to the guidance.</p>	<p align="center">Y</p>	<p>See p.53 for additional details.</p>

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<p>-Absence of info on ongoing annual state oversight activities might lead some state readers of the Guidance to believe that the SRF is the only mechanism to be used for state oversight.</p> <p>-Add acknowledgement of ongoing annual oversight activities</p> <p>-Insert the following words into last sentence of the first paragraph of this section: "Unless otherwise negotiated," on p. 19 in the EPA State Relations section of the guidance</p>	<p style="text-align: center;">Region 8</p>	<p>-Language identifying the need to consider other regional oversight activities into SRF planning added to document.</p> <p>-All ACS commitments are negotiated therefore it is not necessary to add the phrase "unless otherwise negotiated".</p>	<p style="text-align: center;">Y</p>	<p>See pp.19-20 for additional details.</p>
<p>-Acknowledge ongoing EPA oversight activities beyond SRF in the core NPDES, CAA, & RCRA sections of the guidance</p>	<p style="text-align: center;">Region 8</p>	<p>-Additional clarification on the assessment/evaluation activities added to the guidance.</p>	<p style="text-align: center;">Y</p>	<p>See pp. 27-29; 45; 48; & 53 for additional details.</p>

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Issue Area: Toxic Substances Control Act				
<p>-Appears to be an error on p. 40 in the definition box for ASB01 which indicates that the number of state inspections be provided in the comment field of TSCA05. This measure doesn't exist, and it is assumed that the number of state inspections should be listed in the comment field for ASB01. Please correct and/or clarify.</p>	<p>Region 4</p>	<p>Corrected.</p>	<p>Y</p>	<p>See p.43 for additional details.</p>
Issue Area: Tribal Priority				
<p>-Emphasize how OECA and Tribes work together under the Indian country national priority -Other national priorities tend to focus on media specific and program specific targeted areas and sources. -Tribal priority section appears to concentrate more on the problems of tribes have</p>	<p>Region 4, 10</p>	<p>-Additional clarification on EPA/tribal roles added to guidance. -Guidance revised to reflect dialogue with federal-recognized Indian tribes, including the Tribal Caucus of EPA's Tribal Operations Committee & the Regional Tribal Operations Committees.</p>	<p>Y</p>	<p>See pp. 78-81 for additional details.</p>

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-Emphasize how EPA & tribes work together under the tribal priority	Region 10	-Guidance revised to reflect dialogue with federal-recognized Indian tribes, including the Tribal Caucus of EPA's Tribal Operations Committee & the Regional Tribal Operations Committees.	Y	See pp. 78-81 for additional details.
-Reflect the change to the title of the tribal priority from tribal priority to the Indian country national priority	Region 10	-Agree; revised to state National Indian country priority	Y	See p.7 for additional details.
Issue Area: Water Quantity				
-Support existing set of national priorities, especially goal for clean water -Recommend that some energy/priority should be devoted to ensuring that people actually have water -Encourage focus on ensuring affordable water available in quantities needed to sustain public health and safety	Tennessee Division of Water Supply	-Will consider during the next national priority setting cycle -FY 2008-2010 priorities include protection of pollution and human health impacts associated with CSOs, SSOs, CAFOs, and stormwater	N	N/A

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Issue Area: Wetlands Enforcement				
<p>-Request additional guidance on p. 26 for identifying, targeting, inspecting, and otherwise responding to illegal activities for wetlands.</p> <p>-OECA may be able to serve in a coordinating role among the Regions on generating and consolidating ideas</p>	<p>Region 10</p>	<p>-Have not developed formal guidance on this subject</p> <p>-Some Regions target enforcement in specific geographic areas, target specific sectors, or target impaired watersheds.</p> <p>-Targeting can involve prioritizing staff resources, setting up MOAs with the Corps of Engineers or Fish and Wildlife Service, and partially funding other agency FTEs to get more wetlands enforcement presence in the field.</p> <p>-Remote sensing identifies possible enforcement targets too.</p> <p>-Off the shelf aerial photography can be used to determine where wetlands existed, and this can be compared to more recent aerial photography to see where wetlands loss occurs.</p> <p>-Aerial overflights with EPA staff are also used & partnerships with local/state law enforcement are other possibilities</p> <p>-Agree that, to the extent feasible, field level MOAs should be consistent</p>	<p>N</p>	<p>N/A</p>

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<p>-Not aware of National Enforcement Investigations Center (NEIC) support for wetland-related enforcement actions</p> <p>-Can you be more specific about what NEIC can provide in this program area?</p> <p>-Difficult to identify needs in advance when cases referred by other agencies</p> <p>-Are there any contingencies for accessing NEIC support that cannot be identified by the requested deadline?</p>	<p>Region 10</p>	<p>-Requests for NEIC services can begin at any time with a discussion with Gene Lubieniecki (303/462-9014) or with any NEIC employee</p> <p>-NEIC accepts requests throughout the year</p> <p>-Formulate basic plan for investigative and other services prior to the start of the fiscal year, but adapt and adjust plan throughout the year</p> <p>-In past, some regions included requests for "placeholders" for yet-to-be-identified services.</p> <p>-In addressing the specifics of a wetlands-enforcement request, this would be an opportunity for a discussion between Region 10 on available NEIC expertise/support</p>	<p>N</p>	<p>N/A</p>

