



U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## Evaluation Report

# EPA Has Initiated Strategic Planning for Priority Enforcement Areas, but Key Elements Still Needed

Report No. 08-P-0278

September 25, 2008



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**Abbreviations**

CSO	Combined Sewer Overflow
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
LDAR	Leak Detection and Repair
MACT	Maximum Achievable Control Technology
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
OMB	Office of Management and Budget

**Cover photos:** Examples of the three enforcement priority areas reviewed, clockwise from left: an industrial plant emitting air toxics; a combined sewer overflow outlet; and a cement plant engaged in mineral processing (EPA photos).



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

We undertook this review to determine how well the U.S. Environmental Protection Agency (EPA) planned to ensure success in its enforcement priority areas. We reviewed current priority area strategies for air toxics, combined sewer overflow, and mineral processing.

## Background

EPA's Office of Enforcement and Compliance Assurance (OECA) focuses on core program activities and a limited number of national priorities. Through the national priorities, OECA directs its resources to significant environmental problems where patterns of noncompliance have been established and where a direct federal role is needed.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:  
[www.epa.gov/oig/reports/2008/20080925-08-P-0278.pdf](http://www.epa.gov/oig/reports/2008/20080925-08-P-0278.pdf)

## ***EPA Has Initiated Strategic Planning for Priority Enforcement Areas, but Key Elements Still Needed***

### **What We Found**

OECA has instituted a process for strategic planning in its national enforcement priority areas. It has developed strategic planning guidance and a strategy template to facilitate continual review and improvement of the strategies. The Fiscal Years 2008-2010 strategic plans we reviewed, for air toxics, combined sewer overflows, and mineral processing, contain an overall goal, a problem statement, a description of the current status of the priority area, anticipated environmental benefits, the facilities to be addressed, the tools to be used, and OECA Headquarters and regional responsibilities.

However, each of the plans is missing key elements to monitor progress and accomplishments and efficiently utilize Agency resources. All three strategies lack a full range of measures to monitor progress and achievements. Two strategies lack detailed exit plans. Additionally, the combined sewer overflow strategy does not address the States' key roles in attaining the strategy's overall goal. The absence of these elements hinders OECA from monitoring progress and achieving desired results in a timely and efficient manner.

### **What We Recommend**

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance issue policy that requires strategy documents for the priority areas to include:

- a full range of performance measures;
- exit plans; and
- the States' roles, where needed.

We also recommend that the Assistant Administrator develop a cost-effective methodology for measuring resource inputs in the national priorities.

OECA concurred with the recommendation for making improvements in priority strategy documents, and indicated how it plans to address our concerns. However, OECA did not agree with our recommendation on developing a methodology for measuring resource inputs. OECA stated that the use of input measures is an Agency-level issue and should be addressed at that level. For reasons detailed in the report, we believe the recommendation is valid.



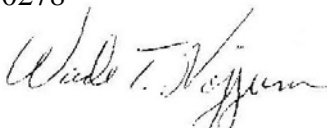
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
INSPECTOR GENERAL

September 25, 2008

**MEMORANDUM**

**SUBJECT:** EPA Has Initiated Strategic Planning for Priority Enforcement Areas,  
but Key Elements Still Needed  
Report No. 08-P-0278

**FROM:** Wade Najjum   
Assistant Inspector General, Office of Program Evaluation

**TO:** Granta Nakayama  
Assistant Administrator, Office of Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The estimated cost of this report – calculated by multiplying the project’s staff days by the applicable daily full cost billing rates in effect at the time – is \$544,912.

**Action Required**

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed upon actions, including milestone dates. We also ask that you reconsider your position not to accept the report’s second recommendation. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact me at (202) 566-0832 or [najjum.wade@epa.gov](mailto:najjum.wade@epa.gov); or Dan Engelberg, Director of Program Evaluation, Enforcement and Water Issues, at (202) 566-0830 or [engelberg.dan@epa.gov](mailto:engelberg.dan@epa.gov).

## Table of Contents

<b>Purpose</b> .....	1
<b>Background</b> .....	1
Air Toxics Priority Area .....	1
Combined Sewer Overflow Priority Area .....	2
Mineral Processing Priority Area .....	2
<b>Noteworthy Achievements</b> .....	3
<b>Scope and Methodology</b> .....	4
<b>Missing Strategy Elements Hinder Measuring Program Progress</b> .....	5
Strategies Do Not Contain Full Range of Measures .....	5
Two Strategies Do Not Include a Plan for Exiting the Priority Area .....	7
States' Roles in Accomplishing Overall CSO Strategy Goal Not Addressed .....	7
<b>Conclusions</b> .....	8
<b>Recommendations</b> .....	8
<b>Agency Comments and OIG Evaluation</b> .....	8
<b>Status of Recommendations and Potential Monetary Benefits</b> .....	9

## Appendices

<b>A</b> <b>OECA's Template for Developing a Performance-Based Strategy for National Compliance and Enforcement Priorities</b> .....	10
<b>B</b> <b>Prior Reports</b> .....	12
<b>C</b> <b>Agency Comments</b> .....	13
<b>D</b> <b>OIG's Evaluation of Agency Comments</b> .....	23
<b>E</b> <b>Distribution</b> .....	35

## Purpose

The U.S. Environmental Protection Agency's (EPA's) Office of Enforcement and Compliance Assurance (OECA) has prepared performance-based strategies for its national compliance and enforcement priority areas. EPA's focus on national priorities is important because it allows OECA to direct its resources to significant environmental problems where a pattern of noncompliance has been established and a direct federal role is needed. The Office of Inspector General (OIG) undertook this evaluation to determine how well EPA strategically planned to ensure progress and accomplishments in its national enforcement priority areas. We reviewed three priority area strategies: air toxics, combined sewer overflow (CSO), and mineral processing

## Background

OECA is responsible for maximizing compliance with 10 distinct federal environmental statutes dealing with prevention and control of air pollution, water pollution, hazardous waste, and toxic substances. OECA's national program is organized into two major components: (1) core program activities that implement the requirements of all environmental laws, and (2) a limited number of national priorities that focus on significant environmental risks and noncompliance patterns. OECA evaluates candidate priorities and selects final national priorities using three criteria: (1) significant environmental benefit, (2) pattern of noncompliance, and (3) appropriate EPA responsibility. OECA selected nine priority areas for Fiscal Year (FY) 2008-2010. The three we reviewed are emphasized in the following list:

- **Air Toxics**
- New Source Review/Prevention of Significant Deterioration
- Wet Weather – Concentrated Animal Feeding Operations
- **Wet Weather – CSOs**
- Wet Weather – Sanitary Sewer Overflows
- Wet Weather – Storm Water
- Financial Responsibility
- **Mineral Processing**
- Tribal Compliance Assurance

### ***Air Toxics Priority Area***

Air toxics are those air pollutants that are known or suspected to cause cancer or other serious health problems. Through the 1990 Clean Air Act amendments, Congress directed EPA to use a technology and performance-based approach to significantly reduce emissions of air toxics from major sources of air pollution. "Major" sources are defined as sources that emit 10 tons per year of any specific air toxics, or 25 tons per year of a mixture of air toxics. Under the technology-based approach, EPA develops standards for controlling the routine emissions from each major type of facility within an industry group. These standards, known as maximum achievable control technology (MACT) standards, are based on emissions levels that are already being achieved by the

better-controlled and lower-emitting sources in an industry. As of February 1, 2008, EPA had developed and published MACT standards for 96 major source categories.

OECA established air toxics as a priority area in 2000. The objective was to distribute the substantial MACT implementation workload between EPA Headquarters and the regions through a regional “Adopt-a-MACT” program. The focus of the air toxics priority shifted in April 2003 from primarily a compliance assistance and tool development effort to compliance monitoring and enforcement. For FY 2005-2007, EPA’s air toxics goal was to achieve an annual reduction of at least 36,000 pounds of air emissions regulated by the MACT standards. In April 2006, EPA set an even more aggressive goal of reducing 750,000 pounds of air emissions over the 3-year period. The FY 2008-2010 air toxics strategy focuses on three specific problem areas: leak detection and repair (LDAR), flares, and surface coating.

### ***Combined Sewer Overflow Priority Area***

CSO discharges are identified as a significant source of impairment to receiving waters. Contaminants discharged include bacteria, viruses, metals, nutrients, and oxygen-consuming compounds. A combined sewer system carries both storm water and sanitary sewage. Normally, its entire flow goes to a wastewater treatment facility. But, during a heavy storm, the volume of water may be so great as to cause overflows of untreated mixtures of storm water and sewage into receiving waters. According to a 2004 Report to Congress, annual CSO discharges are about 850 billion gallons. The systems serve approximately 46 million people, in over 700 communities, in 32 States, mostly in the Northeast and upper Midwest. In 1994, EPA established policy that laid out steps needed to eliminate or minimize the impacts of CSOs. This policy was codified by amendments to the Clean Water Act in 2000.

OECA established CSO as a priority area in 1998. Under the priority area, EPA strives to get communities with combined sewer systems, where required by the Clean Water Act, to establish and implement long-term control plans that have enforceable schedules. These schedules are important because of the high costs and the extensive time – as long as 20 years – that will be needed for the communities to complete the major infrastructure construction activities set out in their plans. For the FY 2008-2010 priority area strategy, EPA’s primary focus is to ensure that communities representing significant population centers are making appropriate progress towards addressing CSO problems and violations.

### ***Mineral Processing Priority Area***

Environmental impacts caused by mineral processing and mining are significant. According to EPA, mineral processing and mining facilities generate more wastes that are corrosive or contain toxic metals than any other industrial sector. Many of these facilities have contaminated groundwater, surface water, and soil due to noncompliance with State or federal environmental requirements or legally permissible waste management practices. The United States has approximately 100 to 150 mineral

processing facilities and 300 to 500 active mining sites. Some facilities are located in close proximity to large populations, and the health risk to people living near these facilities is of significant concern to EPA.

In 2004, OECA developed a national strategy covering FY 2005-2007. The overall goal of this strategy was to ensure that high-risk facilities in mineral processing and mining were in compliance or on a path to compliance, or were otherwise working to reduce risk to human health and the environment through such measures as implementing best management practices. The strategy placed special emphasis on mineral processing facilities that produced phosphoric acid, but also focused on non-phosphoric acid facilities and mining facilities. The FY 2008-2010 strategy contains the same overall goal for mineral processing as the previous strategy, but the focus of the goal for mining facilities was changed from enforcement activities to compliance assistance.

Strategic planning is important because it:

- provides a roadmap and direction,
- sets priorities,
- allocates resources for maximum efficiency and effectiveness,
- establishes measures of success so that progress can be measured,
- gains commitment to the plan by involving the organization in its development, and
- coordinates actions of diverse parts of the organization into unified programs.

An important early step in strategic planning is developing a range of performance measures to indicate what is being accomplished and whether results are being achieved. According to Office of Management and Budget (OMB) guidance, performance measurement should include goals, annual and long-term outcome performance measures, and output performance measures. The guidance also states that output and outcome performance measures need to include a description of what is being measured, a target, and a timeframe to effectively measure performance. OMB also encourages input measures to determine cost efficiency and program effectiveness. According to OMB guidance, outcomes describe the specific intended result or consequence that will occur from carrying out the program. Outputs are the goods and services produced by the program that contribute toward achieving outcomes and goals. Inputs are resources, often measured in dollars or full-time equivalents, used to produce the outputs and outcomes. Input measures complement performance measures by providing information on how resources and efforts are being or should be allocated to ensure efficiency and effectiveness.

## **Noteworthy Achievements**

OECA has placed an increasing emphasis on strategic planning in recent years. To assist in this initiative, OECA formed teams for each priority area to plan and implement the work that needed to be done. Since 2003, OECA's teams have developed priority area strategies for all of their priority areas. These documents help communicate the vision of OECA Headquarters to the regions concerning work that needs to be completed in the nine priority areas. To correct deficiencies it identified in the FY 2003-2005 priority area strategies, OECA in 2004 issued internal guidance for priority strategies. According to OECA, *OECA's Template for Developing*



*a Performance-Based Strategy for National Compliance and Enforcement Priorities* (see Appendix A) was used as the standard against which the FY 2005-2007 strategies were reviewed. In March 2007, OECA issued a *Guide for Addressing Environmental Problems: Using an Integrated Strategic Approach*.

In the three priority area strategies for FY 2008-2010, the current status of the priority area is well defined. Each priority strategy has an overall goal, problem statement, the anticipated environmental benefits, the facilities to be addressed, the tools to be used, and OECA Headquarters and regional responsibilities. Additionally, the mineral processing strategy contains a detailed exit plan with steps to discontinue the priority area and return it to the core program, and a maintenance plan.

## Scope and Methodology

We conducted this performance evaluation from August 2007 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives.

We selected the air toxics, CSO, and mineral processing priorities for our review because they covered a broad range of media (air, water, and land) and represented a mix of newer and older priorities. We did not evaluate how EPA selected the priority areas.

We reviewed the FY 2008-2010 Performance-Based Strategies for the air toxics, CSO, and mineral processing priorities using a combination of criteria derived from several sources,<sup>1</sup> including OMB guidance. Based on those elements, we reviewed the extent to which the strategies addressed:

- the current status of the priority areas;
- the results EPA wants to achieve in its priority areas;
- how EPA, regions, and States will get to where EPA wants to be;
- the responsibilities of major stakeholders; and
- the progress and accomplishments of EPA's goals and performance measures for the selected priorities.

We interviewed staff in OECA, the Office of Air and Radiation, the Office of Water, and the Office of Solid Waste and Emergency Response. We also interviewed staff in EPA Regions 1 through 9. We reviewed those internal controls that were relevant to our objectives. We also considered findings in prior EPA OIG reports (see Appendix B).

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<sup>1</sup>Team-Based Strategic Planning: A Complete Guide to Structuring, Facilitating, and Implementing the Process. Fogg, C. Davis, 1994; Guide for Addressing Environmental Problems: Using an Integrated Approach. U.S. EPA, OECA, March 2007, EPA 305-R-07-001; and Performance Measurement Challenges and Strategies. OMB, June 18, 2003.

## Missing Strategy Elements Hinder Measuring Program Progress

The three priority area strategies reviewed are missing key elements to monitoring progress and accomplishments. They lack a full range of measures to monitor progress and achievements. Two of the strategies lack exit plans. Additionally, the CSO strategy does not address the States' key roles in accomplishing the strategy's overall goal. Adding these elements would help OECA monitor progress so that it can achieve results in a timely and efficient manner.

### ***Strategies Do Not Contain Full Range of Measures***

OECA's three priority area strategies do not contain a full range of performance and input measures (see Table 1). According to OMB, performance measurement should include goals, annual and long-term outcome performance measures, and output performance measures. The guidance also states that output and outcome performance measures need to include a description of what is being measured, a target, and a timeframe to effectively measure performance. OMB also encourages that input measures be used to determine cost efficiency and program effectiveness. None of the three strategies reviewed has annual outcome measures or input measures, and one does not contain a long-term outcome performance measure. OECA did set overall goals and had one output performance measure for each strategy in its Annual Commitment System. However, because the components of these measures are designed to work together, this incomplete suite of measures significantly limits the utility of the measurement structure.

**Table 1: FY 2008-2010 Priority Area Strategy Measures**

Goals and Measures	Air Toxics	CSOs	Mineral Processing
Overall Outcome Goal	Yes	Yes	Yes
Long-Term Outcome Performance Measures	Yes <sup>2</sup>	No	Yes <sup>2</sup>
Annual Outcome Performance Measures	No	No	No
Output Performance Measures	Yes	Yes	Yes
Input Measures	No	No	No

Source: OIG analysis of OECA's FY 2008-2010 strategies

### Air Toxic Performance Measures

The long-term outcome performance measure in the air toxics strategy measures the extent to which EPA has addressed facilities in the three problem areas. For example, EPA defines "addressing facilities" as issuing an administrative order or referring a case to the Department of Justice. While these activities will likely put

<sup>2</sup> The air toxics and mineral processing long-term outcome measures capture the extent to which EPA addressed facilities by certain activities such as enforcement actions. Although they are certainly correlated with outcomes, we believe OECA could develop better outcome measures that include such things as bringing facilities into compliance over a certain period of time.

facilities on the path to compliance and lead to outcomes, we also believe that OECA could develop outcome measures that include such things as bringing facilities into compliance over a certain period of time. It might be difficult to develop targets for this type of outcome performance measure because facilities often do not achieve full compliance for many years after an action is taken, and the OECA priority areas are of fixed duration. However, developing this type of measure is important because it would capture the strategy's results.

OECA needs to establish annual outcome performance measures for the air toxics strategy. Such measures would allow OECA to monitor annual progress toward achieving its long-term outcome performance measure and, if necessary, implement any changes needed to keep the program on track. Moreover, any annual outcome performance measures OECA uses should be associated with its annual output performance measure. Having long-term and annual outcome performance measures would help OECA monitor program effectiveness.

### CSO Performance Measures

The CSO strategy does not have long-term or annual outcome performance measures. It does include an overall goal focused on ensuring that communities representing significant population centers are making appropriate progress towards addressing CSO problems and violations. This overall goal could also be considered a long-term outcome measure if it had a timeframe associated with it. OECA managers told us the overall goal was not meant to be accomplished during the 3-year strategy cycle. Without outcome measures that contain targets and timeframes, OECA is not able to gauge whether the pace of progress is satisfactory.

### Mineral Processing Performance Measures

Like the air toxics strategy, the mineral processing strategy contains long-term outcome performance measures that gauge the extent to which OECA addressed facilities through activities such as enforcement actions. The points we raised with respect to the long-term outcome performance measure for the air toxics strategy also apply to the mineral processing strategy. Further, as with the other strategies, the mineral processing strategy does not have annual outcome performance measures. The strategy has outcome measures, but they lack targets and timeframes, so they are not performance measures. For example, one of the measures is the percentage of facilities in significant noncompliance that are returned to compliance; the measure does not have a target or a timeframe against which to assess performance. This measure could be written as an annual outcome performance measure by adding a target and timeframe. For example:

*Twenty-five percent of facilities in significant noncompliance will be brought back into compliance in FY 2008.*

This type of information would inform OECA of its annual progress toward achieving its goals and enable it to make needed changes.

None of the three priority strategies includes input measures to assess the resources needed and expended to accomplish OECA's goals. As a result, OECA cannot measure the efficiency of its resource utilization or plan, nor adjust for changing resource needs. There are two aspects to measuring inputs. The amount of resources needed to conduct priority area activities needs to be projected at the beginning of the planning period. Further, the amount of resources used for activities needs to be measured. Both measures can be used to assist the Agency in planning and assessing its performance. OMB has placed increasing emphasis on agencies measuring efficiency. Senior level OECA officials said that developing input measures could be difficult and costly. We agree additional resources would be needed, but without gauging resource utilization OECA is unable to assess the efficiency of its priority area work.

### ***Two Strategies Do Not Include a Plan for Exiting the Priority Area***

Two strategies – CSO and air toxics – do not include plans for leaving the priority area and transitioning to the core program. According to EPA's template (Appendix A), each strategy should include a plan for how EPA will exit its national compliance and enforcement focus in the priority area once the overall goal is achieved. The plan needs to address resource obligations, regulated facilities not addressed as part of the strategy, and actions to safeguard improvements achieved under the strategy. These steps should enable the priority area to transfer smoothly back to the core program when appropriate. The CSO strategy states an exit plan will be developed after regions have determined a more precise universe of CSO permittees needing Federal attention. The air toxics strategy includes a plan to exit the three national problem areas addressed in the FY 2008-2010 strategy, but does not address how OECA will discontinue priority treatment of air toxics as a whole.

The mineral processing strategy includes an exit plan. This plan lays out steps to discontinue the priority area, as well as the costs of on-going enforcement activities, the entities not addressed under the strategy, and activities required to maintain the emissions reductions achieved.

### ***States' Roles in Accomplishing Overall CSO Strategy Goal Not Addressed***

The CSO strategy does not address the States' roles in accomplishing the strategy's overall goal, and we believe doing so would be beneficial. The other two strategies do not address States' roles either, but their roles are not as critical as for the CSO strategy. According to EPA's template, a component of each strategy is to clearly assign roles and responsibilities. EPA's dependence on State actions and the lack of a discussion in the strategy create uncertainty on whether the overall CSO goal can be achieved.

We expect State permitting and enforcement actions to continue to significantly contribute to attaining the overall CSO goal. According to our analysis of OECA data,

28 percent of the systems serving large population centers have long-term control plans with enforceable schedules in place. One-quarter of these plans resulted from State enforcement actions.<sup>3</sup> We believe specific information on the States' roles in accomplishing the overall CSO goal needs to be included in the strategy, even though other EPA guidance documents lay out authorized State obligations under the Clean Water Act. While the strategy acknowledges State environmental agencies as having "important roles to play in the CSO strategy," it does not define those roles.

## Conclusions

OECA's strategic planning initiative for priority enforcement created a performance structure for strategic planning in the three priority areas we examined. This initiative helps EPA ensure compliance with environmental regulations and better protect human health and the environment. The three strategies we reviewed would be improved by adding input measures, a full range of performance measures, and detailed exit plans. The CSO strategy would also be improved by addressing the States' roles in accomplishing the overall goal of the strategy. The absence of these elements hinders OECA from monitoring progress, reporting efficiencies, and achieving desired results in a timely and efficient manner.

## Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Issue policy that requires strategy documents for the priority areas to include:
  - a full range of performance measures (output and outcome measures, and an overall outcome goal) with targets and timeframes;
  - exit plans, including steps to transition the priority area back to the core program; and
  - the States' roles for those areas where State involvement will be critical in accomplishing overall outcome goals.
2. Develop a cost-effective methodology for measuring resource inputs in the national priorities.

## Agency Comments and OIG Evaluation

OECA concurred with Recommendation 1 and indicated how it plans to address our concerns. OECA did not concur with Recommendation 2. OECA's detailed comments and OIG's evaluation of the comments are in Appendices C and D, respectively. The OIG has incorporated technical corrections and clarifications from OECA's comments into the final report as appropriate.

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<sup>3</sup> OECA continues to evaluate State permitting and enforcement actions in coordination with the Office of Water and the regions to determine whether such actions will result in enforceable and complete long-term control plans.

## **Status of Recommendations and Potential Monetary Benefits**

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	8	Issue policy that requires strategy documents for the priority areas to include: <ul style="list-style-type: none"> <li>• a full range of performance measures (output and outcome measures, and an overall outcome goal) with targets and timeframes;</li> <li>• exit plans, including steps to transition the priority area back to the core program; and</li> <li>• the States' roles for those areas where State involvement will be critical in accomplishing overall outcome goals.</li> </ul>	O	Assistant Administrator for Enforcement and Compliance Assurance	4/30/09		
2	8	Develop a cost-effective methodology for measuring resource inputs in the national priorities.	U	Assistant Administrator for Enforcement and Compliance Assurance			

<sup>1</sup> O = recommendation is open with agreed-to corrective actions pending;  
 C = recommendation is closed with all agreed-to actions completed;  
 U = recommendation is undecided with resolution efforts in progress

## Appendix A

## ***OECA's Template for Developing a Performance-Based Strategy for National Compliance and Enforcement Priorities***

### **I. Problem Statement**

- A. Define and characterize the environmental or non-compliance problem for the priority area
- B. Provide baseline information on the size of the priority universe, geographic distribution of the problem, level of compliance, and any environmental justice issues
- C. Address how the problem relates to each OECA criteria for priority selection
- D. Address how the problem affects Environmental Justice (all strategies) and Federal Facilities issues (where appropriate).
- E. Describe known or suspected causes of the problem
- F. Identify existing policies and guidance that address the priority; and past strategies or initiatives used to address the problem

### **II. Goals and Measures**

- A. Establish an outcome goal for the priority area
  - 1. The goal should address the priority area, be measurable, and reasonably achievable in the given time frame
  - 2. Achievement of the goal will serve as the end point for the priority
- B. Establish outcome and output measures for the priority area
  - 1. *Outcome Measures* should be directly linked to, and serve as the primary indicator of progress toward achieving the outcome goal
  - 2. *Output Measures* serve as indicators of progress toward implementing the components of the priority strategy, and will enable managers to track implementation milestones
  - 3. Measures should be developed for EJ (all strategies) and Federal Facilities (where appropriate)
- C. Establish baselines for all measures, or develop a plan for developing a baseline for each of the measures

### **III. Priority Strategy**

- A. Identify a mix of tools that will be used to address the priority area, and how they will result in achieving the outcome goal.
- B. Describe how the tools will be used in conjunction with each other to achieve the best results.
  - 1. Include the sequence in which tools will be used, targeting priorities, how long they will be used, implementation milestones, resource issues, and implementation roles (i.e., headquarters, regions, others)
  - 2. Include a description of how Environmental Justice (all strategies) and Federal Facility issues (where appropriate) will be addressed by the application of the tools
- C. Develop a plan for periodically reviewing progress and making adjustments to the strategy as needed.

- D. Develop internal and external communication strategies. The internal strategy should focus on providing managers information on strategy implementation and periodic performance measure updates to enable them to track progress and make needed corrections. The external strategy should inform the regulated community and stakeholders, help improve strategy effectiveness, and communicate results.
- E. Assign Roles and Responsibilities. Identify all of the parties that will play a role in developing and implementing the strategy, and assign responsibilities for all of the development and implementation tasks. Responsibilities should be broken out by headquarters, regions, and others.

#### **IV. Exit Strategy**

- A. Identify steps to discontinue formal priority treatment once the outcome goal has been met.
- B. Develop a maintenance plan to include:
  - 1. Significant resource obligations
  - 2. Whether and how to address regulated entities not addressed as part of the strategy
  - 3. Actions to safeguard to improvements achieved; including periodic monitoring, review and adjustment

#### **V. Workforce Deployment Strategy**

- A. The priority sector or problem area should be assessed to identify the skill sets needed to effectively address the priority and implement the priority strategy. This assessment should anticipate the different skills needed at different points in the strategy (e.g., compliance assistance early on, more enforcement towards the end).
- B. Taking into account the strategy's ultimate goal, time line, and exit strategy, responsible parties in headquarters and regions should estimate the activity levels needed to achieve strategy's ultimate goal in the given timeframe.
- C. Gap Analysis - headquarters and regions should identify workforce gaps that will impact achieving priority goals, including deficits in overall number of employees to address a problem area, and in particular skill sets.
- D. Workforce Deployment Recommendations - based on the gap analysis recommendations for making workforce adjustments within individual regions and headquarters, and between regions, and regions and headquarters should be identified to maximize strategy effectiveness.

#### **VI. Schedule**

Develop an overall schedule for addressing the priority area.



**Appendix B*****Prior Reports***

<b>EPA OIG Reports</b>		
<b>Title</b>	<b>Report No.</b>	<b>Date</b>
Improvements in Air Toxics Emissions Data Needed to Conduct Residual Risk Assessments	08-P-0020	October 31, 2007
Assessment of EPA's Projected Pollutant Reductions Resulting from Enforcement Actions and Settlements	2007-B-00002	July 24, 2007
Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs	E1GAE7-03-0045-8100244	September 25, 1998

<b>Other Notable Enforcement Reports/Policies</b>		
<b>Title</b>	<b>Report No.</b>	<b>Date</b>
Report to Congress: Impacts and Control of CSOs and SSOs, U.S. Environmental Protection Agency	EPA 833-R-04-001,	August 2004
Combined Sewer Overflow Control Policy, U.S. Environmental Protection Agency	59 Fed. Reg. 18688.	April 19, 1994
Report to Congress - Wastes from the Extraction and Beneficiation of Metallic Ores, Phosphate Rock, Asbestos, Overburden from Uranium Mining, and Oil Shale, U.S. Environmental Protection Agency	EPA/530-SW-85-033	December 1985

**Appendix C*****Agency Comments***

August 14, 2008

MEMORANDUM

**SUBJECT:** Response to the Office of the Inspector General Draft Evaluation Report, "EPA Needs to Improve Strategic Planning for Priority Enforcement Areas," Project Number 2007-00967, dated July 16, 2008

**FROM:** Catherine R. McCabe (signed)  
Principal Deputy Assistant Administrator

**TO:** Dan Engelberg  
Director of Water and Enforcement Issues  
Office of Inspector General

Thank you for the opportunity to review and comment on the draft evaluation report, "EPA Needs to Improve Strategic Planning for Priority Enforcement Areas," Project Number 2007- 00967, which focuses on improving strategic planning for priority enforcement areas. The Office of Enforcement and Compliance Assurance (OECA) has completed its review and would like to provide comments in response to this report. We also appreciate your consideration of comments this office made in response to the Office of Inspector General's (OIG) discussion draft released on April 17, 2008.

OECA agrees that the national priority strategies could be enhanced in a number of ways suggested by the IG. OECA will revise its guidance regarding development of the strategies to require that output and outcome measures with targets and associated timeframes, as appropriate, goals, milestone schedules, exit strategies and the role of states, if any, be explicitly identified in the documents.

We continue to have concerns about the utility and need for input measures tracked by national priority. As we discussed at a meeting regarding this draft report, the use of input measures is an Agency-level issue and should be addressed at that level.

As we have discussed, OECA believes that the title of this report is overly negative given the findings of the report. We would suggest that the title focus more on potential enhancements to strategic planning documents for the priority areas.

OECA would like to request your consideration of a number of remaining comments which we believe could be incorporated into the final report that will more accurately describe the use of the performance measures and exit strategies in the national priority strategies. We ask

that you review our attached comments and consider incorporating these comments into the final report.

Within 90 days of the date of the final report, OECA will issue a policy memo directing the Strategy Implementation Teams to clearly identify output and outcome measures with targets and associated timeframes, as appropriate, goals, milestone schedules, exit strategies and the role of states, if any, in the strategy documents. These elements will be reflected in the revised strategies by April 30, 2009.

Again, we appreciate the opportunity to review and comment on this draft report. Should you have any questions or concerns regarding this response, please contact OECA's Audit Liaison, Gwendolyn Spriggs on 202-564-2439.

Attachment

**OECA Response to OIG Draft Report**  
***EPA Needs to Improve Strategic Planning for Priority Enforcement Areas***  
***(Project No. 2007-000967)***

This draft report evaluates three OECA compliance and enforcement priority strategies [Air Toxics, Combined Sewer Overflows (CSOs) and Mineral Processing]. The draft report raises a number of issues with each strategy. Our response to the recommendations is provided below:

**I. OECA Response to Draft Report Recommendations**

OECA agrees that the national priority strategies could be enhanced in a number of ways suggested by the IG. Within 90 days from the date of the final OIG report, a memorandum from the Assistant Administrator or the Principal Deputy Assistant Administrator will be issued to OECA headquarters and regional managers and staff involved in the management and implementation of the national compliance and enforcement strategies. The memo will require that the national priority strategy documents clearly identify output and outcome measures with targets and associated timeframes as appropriate, goals, milestone schedules and exit strategies.

The policy will state that the revisions suggested by the OIG and accepted by OECA will be incorporated as part of the regularly-scheduled review of the strategies scheduled for the end of the first year that the strategy has been in effect. The revisions will be reflected in the strategies by April 30, 2009.

The policy will state that the strategy documents will address output and outcome measures, and an overall outcome goal since OECA believes that these measures are most important in ensuring the effectiveness of the strategies. While OECA believes that most of the strategies include milestones and exit strategies, the policy will direct the Strategy Implementation Teams to develop clearer milestone schedules and more explicit exit strategies where needed.

OECA views its state oversight responsibilities as a core program function and is addressed by the State Review Framework (SRF). Given that state oversight responsibilities apply to the national compliance and enforcement program as a whole (rather than the priorities) and that the priority strategies deal with initiatives that are almost exclusively the responsibility of EPA/OECA, we do not think it is appropriate to address oversight responsibilities in the strategies. However, the policy to be issued by OECA will direct the SITs to address the role of states (if any) in the implementation of the strategies by describing the explicit responsibilities states will be asked to undertake.

Please note that the Office of Water (OW), rather than OECA, is responsible for oversight of state permitting programs. Therefore, if a large number of combined sewer systems are addressed through state permits, state oversight of those systems is the responsibility of the Office of Water (OW).

OECA is not convinced of the value of input measures in determining the effectiveness of the national priority strategies. The problems selected for national priorities are such that federal

efforts are necessary to address them, thus input measures are less relevant to their success than the outcome measures for each strategy. In previous discussions with the IG about this draft report concerning input measures, the IG agreed that this is an Agency-level issue, and that it needs to be raised and addressed at that level.

OECA does set targets, and uses outcome measures in monitoring progress of all of the strategies, although some of these are through other mechanisms rather than stated explicitly in the strategies. As such, OECA believes that the title of this report is overly negative in stating that OECA needs to improve its strategic planning, and respectfully requests that the title be revised to suggest that the strategy documents be made more explicit.

## II. OECA's Specific Comments and Corrections on Text of the Report

### At a Glance

*Revise* draft report, as follows: “All three strategies lack some of the ~~full range of~~ measures recommended by OMB and ....”

### Table of Contents

*Revise* draft report, as follows: Delete reference to “Appendix C, FY 2008 – 2010 Exit Strategy for Mineral Processing.”

### Background

*Revise* draft report at page 1, as follows: “OECA evaluates candidate priorities and selects final national priorities using three criteria: (1) significant environmental benefit, (2) pattern of noncompliance, and (3) appropriate ~~EPA responsibility~~ federal involvement.”

#### Air Toxics Priority Area

*Revise* draft report at page 2 as follows: “The FY 2008-2010 air toxics strategy focuses on three specific problem areas: leak detection and repair or LDAR, flares, and surface coating.

#### Combined Sewer Overflows Priority Area

*Revise* draft report at page 2, as follows: “. . . Under the priority area, EPA strives to get combined sewer systems, where required by the Clean Water Act, to establish and fully implement long-term control plans (LTCPs) that have enforceable schedules.

#### Mineral Processing Priority Area

*Revise* draft report at page 3, as follows: “. . . The FY 2008-2010 strategy contains the same overall goal as the previous strategy and includes a compliance assistance focus for mining but has dropped the focus on mining. ”

### Subheading Missing

*Revise* draft report at page 3, as follows: Insert subheading titled “Strategic Planning.”

### Noteworthy Achievements

*Revise* draft report at page 4, as follows: “In March 2007, OECA . . . Both of these documents were used in the development of the 2008 – 2010 strategies.”

### Strategies Do Not Contain Full Range of Measures

*OECA Response* to page 5 including Table 1.1: The proposed edits below reflect that the final Air Toxics strategy does have outcome goals and outcome and output measures, the CSO strategy does have an outcome goal (additional discussion at “Performance Measures” below) as well as annual outcome performance measures [i.e., Annual Commitment System (ACS) process], and the Mineral Processing Strategy does include annual outcome performance measures (i.e., ACS process).

*Revise* draft report at page 5, as follows: “None of the three strategies reviewed has ~~annual outcome measures or input measures, and two are missing long-term outcome performance measures.~~”

*Revise* draft report at Table 1 page 5, as indicated below.

<b>Table 1.1: FY 2008 - 2010 Priority Area Strategy Measures</b>			
	Air Toxics	CSOs	Mineral Processing
Overall Outcome Goal	Yes	Yes	Yes
Long Term Outcome Performance Measures	<del>No</del> Yes	<del>No</del> Yes	Yes
Annual Outcome Performance Measures	<del>No</del> Yes	<del>No</del> Yes	<del>No</del> Yes
Output Performance Measures	Yes	Yes	Yes
Input Measures	No	No	No

### Air Toxics Performance Measures

*OECA Response* to pages 5 and 6: The July 16, 2008 draft report indicates that the FY 2008-2010 Air Toxics Strategy lacks long term and annual outcome performance measures, as well as input measures and an overall exit strategy. We believe we have responded to these comments in a previous response to your office in May 2008.

As we stated previously, the Air Toxics Strategy includes a specific, measurable long-term performance measure that will allow OECA to determine the performance of the Air Toxics Strategy over time. The goal of the FY 08-10 Air Toxics Strategy is for each EPA Region to address facilities in the regionally selected MACT universe(s) within the National Problem Areas of LDAR, flares and surface coating. We believe this measure serves as both a strategy goal and a long term measure.

Regarding annual performance measures, the Air Toxics Strategy requires each region to submit annual milestones and a schedule for attainment of the goal. As part of this process, each region has established annual commitments for compliance evaluations and facilities addressed within their regionally selected universes. These milestones and schedules have been reviewed and approved by the Strategy Implementation Team. OECA is also developing a tracking system on the OTIS data system to assist both headquarters and the regions in tracking progress towards attaining the goal. In addition, outcomes from this strategy will be reported annually under the Government Performance and Results Act (GPRA).

In addition, the final Air Toxics Strategy includes the following primary measures of progress, as well as outcomes and outputs. The primary measures of progress for the FY08-10 Air Toxics Strategy will be: 1) number of sources evaluated within each focus area; and 2) percent of facilities addressed.

### **CSO Performance Measures**

OECA Response to page 6: The CSO Strategy does have long-term outcome measures which are reflected in Goal 1 of the Strategy. The Strategy does not explicitly state the calendar dates by which the long-term outcome measures will be met because insufficient data is available upon which to determine baselines and benchmarks.

Goal 2 is focused on ensuring that the Regions coordinate with their authorized States to determine which of the smaller CSO communities are appropriate for Federal enforcement in accordance with an April 10, 2005 memo signed by then ECOS President and then Assistant Administrator for OECA. The Strategy states that the Regions have until the end of FY08 to develop this list with their states, as follows: "By the end of FY2008, EPA Regions will provide a list of appropriate Federal enforcement targets to OECA and discuss setting appropriate goals for addressing them during the remainder of the FY08 -FY10 cycle. Numeric goals and commitments for this universe will be developed at that time."

Revise draft report at page 6, as follows. We recommend deleting the paragraph: "The CSO strategy does not..." and replacing it with language that will reflect these points:

The CSO strategy does have long-term outcome measures which are reflected in Goal 1 of the Strategy. The Strategy's overall goal is focused on ensuring that communities representing significant population centers are making appropriate progress toward addressing CSO problems and violations. However, the Strategy does not explicitly state

the calendar dates by which the long-term outcome measures will be met because insufficient data is available upon which to base valid baselines and benchmarks. States and EPA have until very recently been unable to report the needed data into PCS, the former database of record. A modernized system, ICIS-NPDES, now allows entry of this data. EPA is taking steps to require the data through the rulemaking process. In the meantime, OECA has begun collecting the data manually from the regions. OECA is, on an ongoing basis, monitoring the Regions' progress in meeting this goal through the ACS process, and through semi-annual data submission by the Regions to the Office of Compliance.

While Goal 2 of the Strategy does not presently have an overall outcome goal, the language in the Strategy suggests that one will be developed prior to the end of the FY08-10 cycle.

### **Mineral Processing Performance Measures**

*OECA Response* to page 6: While OECA has set annual targets for numbers of inspections, it is not possible to determine the length of time necessary after an inspection to develop an enforcement case and bring it to resolution. A number of factors make the timing of case conclusions wholly unpredictable, most notably the cooperativeness of the defendant in sharing information and negotiating an agreement. If a case goes into litigation, case conclusion will depend on the schedule set by the court, which often results in a multi-year process. This means that it is also not possible to develop annual targets for numbers of enforcement actions, consent agreements or final orders.

We recommend deleting the two paragraphs on page 6 beginning with "Like the other strategies, mineral processing..." and ending with "... enable it to make needed changes" and replacing them with language that makes the following points:

While OECA has not set annual targets, except for inspections, it fully expects to address the universe of facilities in the priority by FY 2010. For this priority, EPA defines "facilities addressed" as facilities in compliance, on the path to compliance, and/or implementing measures to address existing harm and reduce risks of potential harm. Due to the variable length of time necessary to develop an enforcement case and bring it to resolution, it is more realistic to set 3-year goals rather than set annual targets. A number of factors make the timing of case conclusions wholly unpredictable, most notably the cooperativeness of the defendant in sharing information and negotiating an agreement. If a case goes into litigation, case conclusion will depend on the schedule set by the court, which often results in a multi-year process. This means that it is also not possible to develop annual targets for numbers of enforcement actions, consent agreements or final orders.

OECA does monitor annual performance in terms of inspections, concluded cases, percentage of universe brought into compliance, and pollutant reductions across the regions and headquarters for their contributions to meeting the overall goal of the Strategy by FY 2010. Further, the aggregated results provide the SIT the information



they need to determine whether and when the priority can be returned to the core program.

### **Subheading Missing**

Revise draft report at page 6, as follows: Insert subheading titled “Input Measures.”

OECA Response to page 6: OECA is not convinced of the value of incorporating input measures to determine the effectiveness of the national priority strategies. The problems selected for national priorities are such that federal efforts are necessary to address them, thus input measures are less relevant to their success than the outcome measures for each strategy. OECA agrees with comments made by the OIG in meetings concerning this report that input measures are an Agency-wide issue and should be dealt with at that level.

### **Two Strategies Do Not Include a Plan for Exiting the Priority Area**

OECA Response to page 7: The July 16, 2008 draft stated that the Air Toxics Strategy includes a plan to exit the three national problem areas but does not address how to discontinue priority treatment of air toxics as a whole. As indicated in the draft report, the current exit strategy addresses the three national problem areas, which constitute the entire scope of the FY 08-10 strategy. Since the current strategy does not cover the air toxics program *as a whole*, it would be inappropriate to include an exit strategy for the entire air toxics program. The air toxics program includes numerous regulations and it is possible that it will continue to be an enforcement priority in the future with new national problem areas on which to focus.

As stated in the CSO strategy, OECA believes it is premature to develop an exit strategy due to: 1) the current lack of adequate information related to the CSO permittees with populations under 50,000 that are appropriate for Federal enforcement; and 2) the need for additional information from the Regions and the Office of Water regarding the current status of enforceable long-term remedial measures for numerous systems with populations over 50,000. OECA expects significant progress through enforcement actions in addressing CSOs by the end of FY 2010. However, without the necessary information on each system, the CSO SIT cannot develop an appropriate final exit strategy. The CSO SIT continues to work with the Regions to collect accurate information on the status of these systems. This information is not available in ICIS, nor are States required to report this information to EPA. As a result, the CSO SIT developed a database to collect and track this information. This requires manual reporting from the Regions and detailed review and management of this information by the SIT. The CSO SIT intends to continue to manage this information, monitor progress to determine when CSO compliance and enforcement can be returned to the “core” NPDES program, and will develop an exit strategy as soon as sufficient information is available.

### **States' Roles in Accomplishing Overall CSO Strategy Goal Not Addressed**

OECA Response to page 7: The draft report states that the Strategy does not address the states' roles in accomplishing the Strategy's overall goal. In fact, the Strategy references an April 10, 2005 memo signed by then ECOS President and then Assistant Administrator for OECA which

provides specific detail about the roles and responsibilities of states and EPA, and what roles the states may play in accomplishing the outcome performance measure. Additionally, the “Roles and Responsibilities” section of the Strategy references the regional role in working with states to ensure that appropriate progress is made towards addressing the CSO permittees. The Strategy is clear as to what is an appropriate action to address a CSO system. Regions are expected to ensure that they are reviewing the enforcement actions by their authorized states to meet these criteria.

As we noted in comments on an earlier draft of the report, OECA submitted an updated spreadsheet reflecting OECA’s ongoing evaluation of 14 New York state enforcement actions as well as 25 state permits. This information should be reflected in the report.

Please *revise* the draft report at page 7, as follows: “We expect State permitting and enforcement actions to continue to significantly contribute to attaining the overall CSO goal. According to our analysis of OECA and regional data, about half of the systems serving large population centers have LTCPs with enforceable schedules in place. Of these, about one-third resulted from State enforcement actions. ..

## Recommendations

1. Issue a policy that requires strategy documents for the priority areas to include
  - a. Output and outcome measures, and overall outcome goals with targets and timeframes.

*OECA Response:* Within 90 days from the date of the final report, OECA will issue a policy memorandum requiring agreed-to revisions to be incorporated as part of the regularly-scheduled review of the strategies scheduled for the end of the first year that the strategy has been in effect. The revisions will be completed by April 30, 2009.

The policy will state that the strategies should include output and outcome measures with targets and associated timeframes, as appropriate, and an overall outcome goal, since OECA believes that these measures are most important in ensuring the effectiveness of the strategies. As noted above, annual targets for enforcement cases are not appropriate, but other annual indicators can be used to help monitor and assess progress toward a multi-year end goal.

- b. Exit plans, including steps to transition the priority area back to the core program

*OECA Response:* While OECA believes that most of the strategies include milestones and exit strategies, the policy will instruct the SITs to develop clearer milestone schedules and more explicit exit strategies where needed.

- c. States' roles for those areas where state involvement will be critical in accomplishing overall outcome goals

*OECA Response:* The policy to be issued by OECA will instruct the SITs to address the role of states (if any) in the implementation of the strategies by describing the explicit responsibilities states will be asked to undertake.

2. Develop a cost-effective methodology for measuring resource inputs in the national priorities.

*OECA Response:* OECA does not agree with this.

## Appendix D

***OIG's Evaluation of Agency Comments***

<b>No.</b>	<b>Agency Comments (see Appendix C)</b>	<b>OIG Evaluation</b>
1	<p data-bbox="272 470 716 531"><b>I. OECA Response to Draft Report Recommendations</b></p> <p data-bbox="272 569 932 999">OECA agrees that the national priority strategies could be enhanced in a number of ways suggested by the IG. Within 90 days from the date of the final OIG report, a memorandum from the Assistant Administrator or the Principal Deputy Assistant Administrator will be issued to OECA headquarters and regional managers and staff involved in the management and implementation of the national compliance and enforcement strategies. The memo will require that the national priority strategy documents clearly identify output and outcome measures with targets and associated timeframes as appropriate, goals, milestone schedules and exit strategies.</p> <p data-bbox="272 1037 940 1236">The policy will state that the revisions suggested by the OIG and accepted by OECA will be incorporated as part of the regularly-scheduled review of the strategies scheduled for the end of the first year that the strategy has been in effect. The revisions will be reflected in the strategies by April 30, 2009.</p> <p data-bbox="272 1274 932 1568">The policy will state that the strategy documents will address output and outcome measures, and overall outcome goal since OECA believes that these measures are most important in ensuring the effectiveness of the strategies. While OECA believes that most of the strategies include milestones and exit strategies, the policy will direct the Strategy Implementation Teams to develop clearer milestone schedules and more explicit exit strategies where needed.</p>	<p data-bbox="966 470 1443 531">We agree with the actions OECA proposes to address Recommendation 1.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
2	<p>OECA views its state oversight responsibilities as a core program function and is addressed by the State Review Framework (SRF). Given that state oversight responsibilities apply to the national compliance and enforcement program as a whole (rather than the priorities) and that the priority strategies deal with initiatives that are almost exclusively the responsibility of EPA/OECA, we do not think it is appropriate to address oversight responsibilities in the strategies. However, the policy to be issued by OECA will direct the SITs (strategy implementation teams) to address the role of states (if any) in the implementation of the strategies by describing the explicit responsibilities states will be asked to undertake.</p> <p>Please note that the Office of Water (OW), rather than OECA, is responsible for oversight of state permitting programs. Therefore, if a large number of combined sewer systems are addressed through state permits, state oversight of those systems is the responsibility of the Office of Water (OW).</p>	<p>We do not state in the draft report that EPA should address its oversight responsibilities in the strategies. We believe that State responsibilities need to be addressed in the strategies if their work is critical to a strategy’s overall goal, as it is in the CSO strategy. For example, State actions are key to EPA meeting its overall CSO priority strategy goal since only about 28 percent of facilities serving large population centers have long-term control plans in place and about 25 percent of those resulted from State actions. Effective planning for this priority would therefore necessarily factor in the ability of States to support the goals of the priority. As was stated in the draft report, “EPA’s dependence on State actions and the lack of a discussion in the strategy create uncertainty on whether the overall CSO goal can be achieved.”</p> <p>We agree with OECA’s proposed actions of directing the strategy implementation teams to address the role of States in the implementation of the strategies.</p>
3	<p>OECA is not convinced of the value of input measures in determining the effectiveness of the national priority strategies. The problems selected for national priorities are such that federal efforts are necessary to address them, thus input measures are less relevant to their success than the outcome measures for each strategy. In previous discussions with the IG about this draft report concerning input measures, the IG agreed that this is an Agency-level issue, and that it needs to be raised and addressed at that level.</p>	<p>We disagree. OECA cannot measure the efficiency of its resource utilization or adjust for changing resource needs without input measures. The fact that “federal efforts are necessary” for these activities does not distinguish them from others engaged in by EPA. Even though the problems selected for national priorities require federal effort, management still needs to know what resources they are trading-off between the core programs and the selected priorities to ensure program effectiveness.</p> <p>Further, the fact that this is an Agency-wide problem does not excuse OECA from a responsibility to address it. OECA has been proactive in other aspects of strategic planning; it can do so on this topic as well.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
4	OECA does set targets, and uses outcome measures in monitoring progress of all of the strategies, although some of these are through other mechanisms rather than stated explicitly in the strategies. As such, OECA believes that the title of this report is overly negative in stating that OECA needs to improve its strategic planning, and respectfully requests that the title be revised to suggest that the strategy documents be made more explicit.	We changed the title to: <i>EPA Has Initiated Strategic Planning for Priority Enforcement Areas, but Key Elements Still Needed.</i>
5	<p><b>II. OECA's Specific Comments and Corrections on Text of the Report</b></p> <p><b>At a Glance</b></p> <p><i>Revise</i> draft report, as follows: "All three strategies lack <u>some of the full range of</u> measures recommended by OMB and . ..."</p>	<p>We do not believe these changes are warranted. See analysis below.</p> <p>No change.</p>
6	<p><b>Table of Contents</b></p> <p><i>Revise</i> draft report, as follows: Delete reference to "Appendix C, FY 2008 - 2010 Exit Strategy for Mineral Processing."</p>	We will delete the reference.
7	<p><b>Background</b></p> <p><i>Revise</i> draft report at page 1, as follows: "OECA evaluates candidate priorities and selects final national priorities using three criteria: (1) significant environmental benefit, (2) pattern of noncompliance, and (3) appropriate <del>EPA responsibility</del> <u>federal involvement</u>."</p>	<p>We do not have support for this change. The OECA Web site: <a href="http://www.epa.gov/compliance/data/planning/priorities/index.html">http://www.epa.gov/compliance/data/planning/priorities/index.html</a> uses the same three elements mentioned in our draft report.</p> <p>No change.</p>
8	<p><b>Air Toxics Priority Area</b></p> <p><i>Revise</i> draft report at page 2 as follows: "The FY 2008-2010 air toxics strategy focuses on three specific problem areas: leak detection and repair <u>or LDAR</u>, flares, and surface coating."</p>	We will add in the abbreviation "LDAR."

No.	Agency Comments (see Appendix C)	OIG Evaluation
9	<p><b>Combined Sewer Overflows Priority Area</b>  <i>Revise</i> draft report at page 2, as follows: ". . . Under the priority area, EPA strives to get combined sewer systems, <u>where required by the Clean Water Act</u>, to establish <u>and fully implement</u> long-term control plans (LTCPs) that have enforceable schedules.</p>	<p>We agree to add "where required by the Clean Water Act."</p> <p>We also agree to add in the word "implement," even though that is what is also implied by "enforceable schedules." Because the long-term control plans will take years (even decades) to implement, we do not support adding "fully" as a modifier in front of "implement." Most municipalities will be continuing to implement their long-term control plan long after OECA discontinues CSOs as a priority area.</p>
10	<p><b>Mineral Processing Priority Area</b>  <i>Revise</i> draft report at page 3, as follows: ". . . The FY 2008-2010 strategy contains the same overall goal as the previous strategy <u>and includes a compliance assistance focus for mining</u> <del>but has dropped the focus on mining.</del></p>	<p>We will rewrite the sentence as follows: <i>The FY 2008-2010 strategy generally contains the same overall goal for mineral processing facilities as the previous strategy, but for mining facilities the focus of the strategy changed from enforcement activities to compliance assistance.</i></p>
11	<p><b>Subheading Missing</b>  <i>Revise</i> draft report at page 3, as follows: Insert subheading titled "Strategic Planning."</p>	<p>The priority area titles are indented to show that they are separate sections of the background. The main background starts again with "Strategic planning is important..."</p> <p>No change.</p>
12	<p><b>Noteworthy Achievements</b>  <i>Revise</i> draft report at page 4, as follows: "In March 2007, OECA . . . <u>Both of these documents were used in the development of the 2008 - 2010 strategies.</u>"</p>	<p>We do not have support for OECA's proposed revision. During our entrance conference, we were told by OECA staff that the March 2007 document was not used in the development of the FY 2008-2010 strategies because it was tool-based not problem-based.</p> <p>No change.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation																												
13	<p><b>Strategies Do Not Contain Full Range of Measures</b>  <i>OECA Response</i> to page 5 including Table 1.1: The proposed edits below reflect that the final Air Toxics strategy does have outcome goals and outcome and output measures, the CSO strategy does have an outcome goal (additional discussion at "Performance Measures" below) as well as annual outcome performance measures [i.e., Annual Commitment System (ACS) process], and the Mineral Processing Strategy does include annual outcome performance measures (i.e., ACS process).</p> <p><i>Revise</i> draft report at page 5, as follows: "<del>None of the three strategies reviewed has annual outcome measures or input measures, and two are missing long term outcome performance measures.</del>"</p> <p><i>Revise</i> draft report at Table 1 page 5, as indicated below.</p> <table border="1" data-bbox="293 867 930 1566"> <thead> <tr> <th colspan="4">Table 1.1: FY 2008 - 2010 Priority Area Strategy Measures</th> </tr> <tr> <th></th> <th>Air Toxics</th> <th>CSOs</th> <th>Mineral Processing</th> </tr> </thead> <tbody> <tr> <td>Overall Outcome Goal</td> <td>Yes</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>Long Term Outcome Performance Measures</td> <td><del>No</del>Yes</td> <td><del>No</del>Yes</td> <td>Yes</td> </tr> <tr> <td>Annual Outcome Performance Measures</td> <td><del>No</del>Yes</td> <td><del>No</del>Yes</td> <td><del>No</del>Yes</td> </tr> <tr> <td>Output Performance Measures</td> <td>Yes</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>Input Measures</td> <td>No</td> <td>No</td> <td>No</td> </tr> </tbody> </table>	Table 1.1: FY 2008 - 2010 Priority Area Strategy Measures					Air Toxics	CSOs	Mineral Processing	Overall Outcome Goal	Yes	Yes	Yes	Long Term Outcome Performance Measures	<del>No</del> Yes	<del>No</del> Yes	Yes	Annual Outcome Performance Measures	<del>No</del> Yes	<del>No</del> Yes	<del>No</del> Yes	Output Performance Measures	Yes	Yes	Yes	Input Measures	No	No	No	<p>We disagree with almost all of the proposed revisions to the report and Table 1. We do agree to change our response for the long-term outcome performance measure for air toxics to "Yes." See explanations below under Air Toxics, CSO, and Mineral Processing performance measures.</p>
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	Air Toxics	CSOs	Mineral Processing																											
Overall Outcome Goal	Yes	Yes	Yes																											
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Input Measures	No	No	No																											



No.	Agency Comments (see Appendix C)	OIG Evaluation
14	<p><b>Air Toxics Performance Measures</b>  OECA Response to pages 5 and 6: The July 16, 2008 draft report indicates that the FY 2008-2010 Air Toxics Strategy lacks long term and annual outcome performance measures, as well as input measures and an overall exit strategy. We believe we have responded to these comments in a previous response to your office in May 2008.</p> <p>As we stated previously, the Air Toxics Strategy includes a specific, measurable long-term performance measure that will allow OECA to determine the performance of the Air Toxics Strategy over time. The goal of the FY 08-10 Air Toxics Strategy is for each EPA Region to address in the regionally selected MACT universe(s) within the National Problem Areas of LDAR, flares and surface coating. We believe this measure serves as both a strategy goal and a long term measure.</p> <p>Regarding annual performance measures, the Air Toxics Strategy requires each region to submit annual milestones and a schedule for attainment of the goal. As part of this process, each region has established annual commitments for compliance evaluations and facilities addressed within their regionally selected universes. These milestones and schedules have been reviewed and approved by the Strategy Implementation Team. OECA is also developing a tracking system on the OTIS data system to assist both headquarters and the regions in tracking progress towards attaining the goal. In addition, outcomes from this strategy will be reported annually under the Government Performance and Results Act (GPRA).</p> <ul style="list-style-type: none"> <li>In addition, the final Air Toxics Strategy includes the following primary measures of progress, as well as outcomes and outputs. The primary measures of progress for the FY08-10 Air Toxics Strategy will be: 1) number of sources evaluated within each focus area; and 2) percent of facilities addressed.</li> </ul>	<p>The long-term outcome performance measure in the air toxics strategy measures the extent to which EPA has addressed facilities in the three problem areas. While these activities will put facilities on the path to compliance and lead to outcomes, we also believe that OECA could develop outcome measures that include such things as bringing facilities into compliance over a certain period of time. It might be difficult to develop targets for this type of outcome performance measure because facilities often do not achieve full compliance for many years after an action is taken, and OECA priority areas are of fixed duration. For the purposes of Table 1, we will count it as a long-term outcome measure.</p> <p>We disagree that air toxics has annual outcome performance measures. The annual commitments made by the Regions are the number of compliance evaluations for LDAR, flares, or surface coating. Each region's commitment number is an output not an outcome. OECA needs to establish annual outcome performance measures for the air toxics strategy. Such measures would allow OECA to monitor annual progress toward achieving its long-term outcome performance measure and, if necessary, implement any changes needed to keep the program on track.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
15	<p><b>CSO Performance Measures</b></p> <p><i>OECA Response</i> to page 6: The CSO Strategy does have long-term outcome measures which are reflected in Goal 1 of the Strategy. The Strategy does not explicitly state the calendar dates by which the long-term outcome measures will be met because insufficient data is available upon which to determine baselines and benchmarks.</p> <p>Goal 2 is focused on ensuring that the Regions coordinate with their authorized States to determine which of the smaller CSO communities are appropriate for Federal enforcement in accordance with an April 10, 2005 memo signed by then ECOS President and then Assistant Administrator for OECA. The Strategy states that the Regions have until the end of FY08 to develop this list with their states, as follows: "By the end of FY2008, EPA Regions will provide a list of appropriate Federal enforcement targets to OECA and discuss setting appropriate goals for addressing them during the remainder of the FY08 -FY10 cycle. Numeric goals and commitments for this universe will be developed at that time."</p> <p>Revise draft report at page 6, as follows. We recommend deleting the paragraph: "The CSO strategy does not ..." and replacing it with language that will reflect these points:</p> <p>The CSO strategy does have long-term outcome measures which are reflected in Goal 1 of the Strategy. The Strategy's overall goal is focused on ensuring that communities representing significant population centers are making appropriate progress toward addressing CSO problems and violations. However, the Strategy does not explicitly state the calendar dates by which the long-term outcome measures will be met because insufficient data is available upon which to base valid baselines and benchmarks. States and EPA have until very recently been unable to report the needed data into PCS, the former database of record. A modernized system, ICIS-NPDES, now allows entry of this data. EPA is taking steps to require the data through the rulemaking process. In the meantime, OECA has begun collecting the data manually from the regions. OECA is, on an ongoing basis, monitoring the Regions' progress in meeting this goal through the ACS process, and through semi-annual data submission by the Regions to the Office of Compliance. While Goal 2 of the Strategy does not presently have an overall outcome goal, the language in the Strategy suggests that one will be developed prior to the end of the FY08-10 cycle.</p>	<p>Goal 1 of the CSO strategy does contain long-term outcome measures. However, without baselines and benchmarks, these are not <i>performance</i> measures. The opening sentence of the paragraph will be changed to include "performance" as is implied by the subsection header and as is included in the opening sentence of the paragraphs for the other two priority areas: "The CSO strategy does not have any long-term or annual outcome performance measures."</p> <p>We understand the focus of Goal 2 in ensuring that the regions coordinate with the States to determine which smaller CSO communities are appropriate for federal enforcement action. However, as written, Goal 2 is an annual output measure and not an annual outcome performance measure.</p> <p>We did not include an evaluation of ICIS (Integrated Compliance Information System) and PCS (Permit Compliance System) in our field work. Therefore we are not in a position to include the database issues in our report. We recognize OECA's ability to track progress is hampered because of these database issues. However, OECA has taken steps to collect this data manually throughout the last priority area cycle (FY 2005-2007). Therefore, the effort has been underway longer than implied by the language OECA has requested ("OECA has begun collecting the data manually from the regions."). This effort has been ongoing for long enough that it is our opinion that baseline information should be well established.</p> <p>No change.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
16	<p><b>Mineral Processing Performance Measures</b></p> <p><i>OECA Response</i> to page 6: While OECA has set annual targets for numbers of inspections, it is not possible to determine the length of time necessary after an inspection to develop an enforcement case and bring it to resolution. A number of factors make the timing of case conclusions wholly unpredictable, most notably the cooperativeness of the defendant in sharing information and negotiating an agreement. If a case goes into litigation, case conclusion will depend on the schedule set by the court, which often results in a multi-year process. This means that it is also not possible to develop annual targets for numbers of enforcement actions, consent agreements or final orders.</p> <p>We recommend deleting the two paragraphs on page 6 beginning with "Like the other strategies, mineral processing ..." and ending with "... enable it to make needed changes" and replacing them with language that makes the following points:</p> <p>While OECA has not set annual targets, except for inspections, it fully expects to address the universe of facilities in the priority by FY 2010. For this priority, EPA defines "facilities addressed" as facilities in compliance, on the path to compliance, and/or implementing measures to address existing harm and reduce risks of potential harm. Due to the variable length of time necessary to develop an enforcement case and bring it to resolution, it is more realistic to set 3-year goals rather than set annual targets. A number of factors make the timing of case conclusions wholly unpredictable, most notably the cooperativeness of the defendant in sharing information and negotiating an agreement. If a case goes into litigation, case conclusion will depend on the schedule set by the court, which often results in a multi-year process. This means that it is also not possible to develop annual targets for numbers of enforcement actions, consent agreements or final orders. OECA does monitor annual performance in terms of inspections, concluded cases, percentage of universe brought into compliance, and pollutant reductions across the regions and headquarters for their contributions to meeting the overall goal of the Strategy by FY 2010. Further, the aggregated results provide the SIT the information they need to determine whether and when the priority can be returned to the core program.</p>	<p>We agree that it can be difficult to set annual targets. However, OECA's own policy requires that appropriate enforcement response be completed within specific timeframes (see Hazardous Waste Civil Enforcement Response Policy, December 2003). For example, significant noncompliance must be addressed with a formal enforcement response that mandates compliance and <u>initiates</u> either an administrative or civil action (see page 9). The policy provides response time guidelines which can be used to set targets for issuing unilateral or initial compliance orders, Department of Justice referrals, or final or consent orders (see pages 10-12). It seems that these types of enforcement actions would occur prior to any efforts to negotiate a settlement and the timeframe could be estimated for when these actions would occur.</p> <p>We agree that targets cannot be readily set for settlement negotiations with Department of Justice or case conclusions, as these may take years to accomplish.</p> <p>Currently, OECA only sets targets for inspections. OECA could also set targets using its existing Annual Commitment System process for initial enforcement actions for the ensuing fiscal year based on the results of these inspections. Further, OECA could establish 3-year goals for case conclusions.</p> <p>No change.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
17	<p><b>Subheading Missing</b>  <i>Revise</i> draft report at page 6, as follows: Insert subheading titled "Input Measures."</p>	<p>The discussion on input measures, where the Agency suggested we insert a heading, applies to all of the priority areas. Therefore, this text is indented only once. Input measures fall under the subsection heading on page 5, "Strategies Do Not Contain Full Range of Measures."</p> <p>No change.</p>
18	<p><i>OECA Response</i> to page 6: OECA is not convinced of the value of incorporating input measures to determine the effectiveness of the national priority strategies. The problems selected for national priorities are such that federal efforts are necessary to address them, thus input measures are less relevant to their success than the outcome measures for each strategy. OECA agrees with comments made by the OIG in meetings concerning this report that input measures are an Agency-wide issue and should be dealt with at that level.</p>	<p>See response No. 3.</p>
19	<p><b>Two Strategies Do Not Include a Plan for Exiting the Priority Area</b>  <i>OECA Response</i> to page 7: The July 16, 2008 draft stated that the Air Toxics Strategy includes a plan to exit the three national problem areas but does not address how to discontinue priority treatment of air toxics as a whole. As indicated in the draft report, the current exit strategy addresses the three national problem areas, which constitute the entire scope of the FY 08-10 strategy. Since the current strategy does not cover the <i>air toxics</i> program <i>as a whole</i>, it would be inappropriate to include an exit strategy for the entire <i>air toxics</i> program. The air toxics program includes numerous regulations and it is possible that it will continue to be an enforcement priority in the future with new national problem areas on which to focus.</p>	<p>OECA chose air toxics as its FY 2008-2010 priority area and is choosing to address it by focusing on three problem areas. This decision does not negate OECA's responsibility to disclose its plans for the air toxics area as a whole. We understand that it may be premature to indicate with specificity at this time when the air toxics priority area will be completed. However, the priority area strategy does not even indicate in broad, general terms what factors will be considered when deciding to exit the whole priority area. As time goes on, more specificity can be added, but as stated in the report, some thought should be given to this so as to allow the priority area to transfer smoothly back to the core program when the time comes.</p>

<b>No.</b>	<b>Agency Comments (see Appendix C)</b>	<b>OIG Evaluation</b>
<b>20</b>	<p>As stated in the CSO strategy, OECA believes it is premature to develop an exit strategy due to: 1) the current lack of adequate information related to the CSO permittees with populations under 50,000 that are appropriate for Federal enforcement; and 2) the need for additional information from the Regions and the Office of Water regarding the current status of enforceable long-term remedial measures for numerous systems with populations over 50,000. OECA expects significant progress through enforcement actions in addressing CSOs by the end of FY 2010. However, without the necessary information on each system, the CSO SIT cannot develop an appropriate final exit strategy. The CSO SIT continues to work with the Regions to collect accurate information on the status of these systems. This information is not available in ICIS, nor are States required to report this information to EPA. As a result, the CSO SIT developed a database to collect and track this information. This requires manual reporting from the Regions and detailed review and management of this information by the SIT. The CSO SIT intends to continue to manage this information, monitor progress to determine when CSO compliance and enforcement can be returned to the "core" NPDES program, and will develop an exit strategy as soon as sufficient information is available.</p>	<p>We understand that OECA lacks information it needs to completely formulate a detailed exit plan for the CSO strategy. The strategy lays out a time frame for obtaining the information related to defining the universe of CSO permittees where federal involvement will be appropriate. The strategy also lays out the responsibility of the CSO strategy implementation team to work with Office of Water to reconcile and coordinate on information management. The Region's responsibilities to collect and report results for the key measures are also outlined in the strategy. If this information gathering plan is implemented, the CSO strategy implementation team should be able to add an exit plan to the priority strategy. That said, OECA established CSO as a priority area in 1998. We fail to understand why, after 10 years, OECA still struggles with baseline information in this priority area. Milestones need to be set and monitored in order for OECA to solve these long-lived data management issues.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
21	<p><b>States' Roles in Accomplishing Overall CSO Strategy Goal Not Addressed</b></p> <p><i>OECA Response</i> to page 7: The draft report states that the Strategy does not address the states' roles in accomplishing the Strategy's overall goal. In fact, the Strategy references an April 10, 2005 memo signed by then ECOS President and then Assistant Administrator for OECA which provides specific detail about the roles and responsibilities of states and EPA, and what roles the states may play in accomplishing the outcome performance measure. Additionally, the "Roles and Responsibilities" section of the Strategy references the regional role in working with states to ensure that appropriate progress is made towards addressing the CSO permittees. The Strategy is clear as to what is an appropriate action to address a CSO system. Regions are expected to ensure that they are reviewing the enforcement actions by their authorized states to meet these criteria. As we noted in comments on an earlier draft of the report, OECA submitted an updated spreadsheet reflecting OECA's ongoing evaluation of 14 New York state enforcement actions as well as 25 state permits. This information should be reflected in the report.</p> <p>Please <i>revise</i> the draft report at page 7, as follows: "We expect State permitting and enforcement actions to continue to significantly contribute to attaining the overall CSO goal. According to our analysis of OECA and regional data, about half of the systems serving large population centers have LTCPs with enforceable schedules in place. Of these, about one-third resulted from State enforcement actions. ..</p>	<p>Guidelines for Federal Enforcement in CSO/SSO (Sanitary Sewer Overflow) Cases is the subject of the April 10, 2005, memo cited in OECA's response and in the CSO strategy. The memo includes a purpose statement: "to present guidelines developed by the CSO/SSO Workgroup on federal enforcement in authorized states." The focus of this memo is on federal roles, not on State roles.</p> <p>The strategy, under a section titled "Roles and Responsibilities," states: "EPA Headquarters and Regional Offices and State environmental agencies all have important roles to play in the CSO strategy. The specific responsibilities of each party are described below." However, the strategy does not include a description of the specific responsibilities of the State environmental agencies.</p> <p>Moreover, we analyzed the updated spreadsheet OECA provided us. Because the spreadsheet is OECA's interpretation of the data provided to it by the regions, we chose to label this spreadsheet as "OECA data," not "OECA and regional data."</p> <p>The spreadsheet tracks 202 permits. Of these, 56 are indicated as having been addressed per Goal 1. This is 28 percent. We will change the text to be more specific (28 percent) rather than "less than one-third."</p> <p>Of the 56 permits listed as being addressed per Goal 1, 14 are listed as resulting from State enforcement actions. This is 25 percent, as indicated in the draft report.</p>

No.	Agency Comments (see Appendix C)	OIG Evaluation
22	<p><b>Recommendations</b></p> <p>1. Issue a policy that requires strategy documents for the priority areas to include</p> <p>a. Output and outcome measures, and overall outcome goals with targets and timeframes.</p> <p><i>OECA Response:</i> Within 90 days from the date of the final report, OECA will issue a policy memorandum requiring agreed-to revisions to be incorporated as part of the regularly-scheduled review of the strategies scheduled for the end of the first year that the strategy has been in effect. The revisions will be completed by April 30, 2009.</p> <p>The policy will state that the strategies should include output and outcome measures with targets and associated timeframes, as appropriate, and an overall outcome goal, since OECA believes that these measures are most important in ensuring the effectiveness of the strategies. As noted above, annual targets for enforcement cases are not appropriate, but other annual indicators can be used to help monitor and assess progress toward a multi-year end goal.</p>	<p>We agree with OECA's response to this part of the recommendation.</p>
23	<p>b. Exit plans, including steps to transition the priority area back to the core program</p> <p><i>OECA Response:</i> While OECA believes that most of the strategies include milestones and exit strategies, the policy will instruct the SITs to develop clearer milestone schedules and more explicit exit strategies where needed.</p>	<p>We disagree that air toxics and CSO strategies include milestones and exit strategies for their priority areas. We agree for the need for strategy implementation teams to develop clearer milestone schedules and explicit exit strategies for the air toxics and CSOs priority areas.</p>
24	<p>c. States' roles for those areas where state involvement will be critical in accomplishing overall outcome goals</p> <p><i>OECA Response:</i> The policy to be issued by OECA will instruct the SITs to address the role of states (if any) in the implementation of the strategies by describing the explicit responsibilities states will be asked to undertake.</p>	<p>We agree with the proposed actions in OECA's response. We would add that OECA needs to ensure that the CSO priority area is revised to include a description of States' roles.</p>
25	<p>2. Develop a cost-effective methodology for measuring resource inputs in the national priorities.</p> <p><i>OECA Response:</i> OECA does not agree with this recommendation.</p>	<p>See Response #3.</p>

**Appendix E**

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