

## RESPONSE TO COMMENTS FY 2023-2024 NATIONAL PROGRAM GUIDANCE OFFICE OF LAND AND EMERGENCY MANAGEMENT

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<b>General Comments:</b>				
<p>Coordination with ASTSWMO is mentioned in a bullet point under Partnerships about promoting and enhancing State and Territory (State) involvement in the cleanup and reuse of federal facility NPL sites. There is no other mention of coordination with ASTSWMO. ASTSWMO has provided a coordination role historically and seeks to continue to assist EPA in their efforts around State involvement in other areas, such as the circular economy and coal combustion residuals.</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Page 10</p>	<p>OLEM values the longstanding partnership we’ve had with ASTSWMO, and we are committed to continuing that partnership. Throughout our guidance we refer often to coordinating with states. Although we do not refer to ASTSWMO by name, our collaboration with ASTSWMO is an important element of our coordination with states.</p> <p>We have added language regarding state coordination in the area of coal combustion residuals on page 28 for clarity. There appears to be sufficient reference to collaboration with states in the recycling/circular economy section on pages 31 to 32.</p>	<p>OLEM has revised the following two bullets on page 28 to read, as follows:</p> <p>For OLEM headquarters:          Continue to implement the WIIN Act <u>by supporting states in the development of state programs</u>, by reviewing and approving state programs; and, by establishing and beginning to implement a federal permit program on Indian lands and in non-participating states.</p> <p>For EPA regional offices:          Support OLEM <u>with supporting states in the</u></p>

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				<p><u>development of state programs and</u> in review and approval of state CCR permit programs.</p>
<p>Climate adaptation and environmental justice (EJ) are mentioned throughout the National Program Guidance, but this document is still only targeting high level incorporation / consideration. State and Territorial (State) waste and cleanup programs need definitive direction regarding what these considerations are for the various OLEM programs so that States can respond accordingly. These current EJ directions are being incorporated into FY23-24 State work plans now and there are still concerns around commitments without a clear understanding of expectations.</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Through-out</p>	<p>OLEM is in process of finalizing an OLEM specific EJ Action Plan and an implementation plan for OLEM related actions under Goal 2 of EPA’s FY 23 – 26 Strategic Plan. These plans will be completed by September 30, 2022 and will include specific actions that OLEM programs are currently or soon will be taking to integrate EJ considerations into their decision making processes and work in communities. Many of these actions require coordination with state partners. States may use these plans and the high level EJ guidance in the OLEM NPG to develop their FY 23 – 24 State work plans as well as guide other work efforts that may arise in FY 23.</p> <p>Through implementation of OLEM’s 2022 Climate Adaptation Implementation Plan, the effort will expand assessments for newly identified climate vulnerabilities with a focus on communities located near contaminated or waste management sites, municipal</p>	<p>OLEM has added the following activity on pages 36-37 concerning the Office of Underground Storage Tank program’s EJ Implementation Guidance:</p> <p>“EPA developed and shared a series of options for consideration when integrating EJ into program decisions.”</p>

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			waste management facilities or waste recycling facilities. The effort will place emphasis on communities with potential environmental justice concerns that may require additional engagement to evaluate and address climate vulnerabilities.	
<b>RCRA Permitting:</b>				
<p>First bullet item under Headquarters: ASTSWMO appreciates EPA’s plan to increase the number of updated permits. EPA should be mindful of the nature of RCRA Subtitle C permits and not place undue decision timeframes on these permits, as in prior to expiration date of the permits when applications are arriving 180 days prior to such date. Alternatively, EPA should consider clarifying the regulations to requiring renewals be provided at a much earlier date than 180 days prior to expiration.</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Pages 17-18</p>	<p>Updating RCRA permits is important to ensure that permitting decisions reflect the latest technology, standards, and policy, and that the permit remains protective under changing conditions, such as climate change. Updating permits also ensures communities have an opportunity to engage in the permitting process over time, particularly as communities also change over time. Under this goal, an updated permit means a permit not past permit expiration; however, the goal is 80% permits updated, not 100% and therefore, there is flexibility to meet the goal while still accounting for some permits past expiration. In fact, from EPA’s analysis, about half of the RCRA permits past expiration are actually two or more years past expiration. Therefore, it seems that just addressing the most</p>	<p>No revisions needed, at this time.</p>

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			backlogged of the backlogged permits would get to the 80% goal. Relatedly, EPA is considering, in its forthcoming Permitting Updates proposed rulemaking, whether to propose clarifying changes related to when RCRA renewal applications should be submitted.	
Third bullet item under Headquarters: EPA is encouraged to ensure consistencies in how EJ is implemented at Subtitle C permitted facilities across the country. We recommend this include clarity on the purpose and usage of EJ in making permit decisions where permit applications are technically adequate.	Association of State and Territorial Solid Waste Management Officials	Page 18	EPA’s <a href="#">Legal Tools to Advance Environmental Justice</a> provides clarity on the purpose and usage of EJ in making permit decisions. OLEM has updated this bullet to reflect this tool and to align with other Agency tools on EJ and climate change in permitting. We also note that under the OLEM EJ Action Plan, there are activities underway that we believe are contributing or will contribute to greater consistency and understanding of application of EJ principles within the RCRA permitting and corrective action programs.	OLEM has revised activities on pages 18-20 to read, as follows:  “Support and implement efforts to consider environmental justice, equity, and climate change in RCRA permitting <u>in alignment with agency guidance and tools, such as the EPA Legal Tools to Advance Environmental Justice.</u> ”
<b>RCRA Corrective Action (CA):</b>				
CA Goal 5: ASTSWMO appreciates EPA flexibility in adjusting the universe of facilities in the cleanup pipeline, and requests that careful consideration be given to consistency of doing so through the regions.	Association of State and Territorial Solid Waste Management Officials	Page 21	OLEM appreciates ASTSWMO’s and the states’ support for adjusting the universe and for all the Corrective Action 2030 Goals. Thank you for highlighting consistency across the regions, it is helpful for improving our implementation of the goals.	No revisions needed, at this time.

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<b>Implementation of the WIIN Act / CCR Disposal Rule:</b>				
There is no mention of regulatory action by Headquarters for the remaining Coal Combustion Residuals (CCR rules), yet there is mention of approving State programs and establishing / beginning to implement the federal permit program.	Association of State and Territorial Solid Waste Management Officials	Page 28	On page 27, the text notes that OLEM and ORCR will develop key, high priority rules and mentions the WIIN Act in that context, but we do not catalogue upcoming rules in the document – for CCR or for other areas of regulatory development.	No revisions needed, at this time.
We have concern that EPA's focus on "extensive reviews of compliance information found on a facility's publicly accessible CCR internet site" may not provide the complete picture of a site since the rule only requires specific information to be posted.	Association of State and Territorial Solid Waste Management Officials	Page 28	EPA looks beyond facility website data in assessing compliance. OLEM coordinates with EPA's Office of Enforcement and Compliance Assurance, whose role is to delve deeper into compliance issues when appropriate.	No revisions needed, at this time.
None of the bullet items charge Headquarters or Regions with supporting States in development of State CCR permit programs, or collaborating with ASTSWMO to assist with the information-sharing between Headquarters and States.	Association of State and Territorial Solid Waste Management Officials	Page 28	OLEM is committed to supporting the states on CCR. We have added language to two activities clarifying this support.	OLEM has revised the following two bullets on page 28 to read, as follows:  For OLEM headquarters: Continue to implement the WIIN Act <u>by supporting states in the development of state programs</u> , by reviewing and approving state programs; and, by establishing and

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				<p>beginning to implement a federal permit program on Indian lands and in non-participating states.</p> <p>For EPA regional offices: Support OLEM <u>with supporting states in the development of state programs and</u> in review and approval of state CCR permit programs.</p>
<b>Improving Recycling and Advancing a Circular Economy for Materials:</b>				
<p>The second paragraph mentions an EPA study assessing the social costs associated with waste, then a Headquarters bullet item states 'conduct a study' . Has this study been initiated? How does it relate to the study noted in (2) in the bullet item, "Finalize and release GAO reports and studies initiated in FY21, ..."?</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Page 30</p>	<p>The Social Cost of Waste study is in development. The study mentioned in the text, as well as in the fifth bullet, are the same study. It is also the same study that was part of the GAO's request for FY21.</p>	<p>No revisions needed, at this time.</p>

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<p>This section differentiates between waste and recoverable materials, but limits its characterization of concerns over social costs to those associated with waste. Is this intentional or does EPA contemplate including the impacts of materials management activities like recycling and composting in environmental justice areas?</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Pages 30-31</p>	<p>The GAO report is specific to the social cost of disposal. EPA intends to include the impacts of materials management activities like recycling and composting in environmental justice areas in future reports developed as part of the implementation of the National Recycling Strategy.</p>	<p>No revisions needed, at this time.</p>
<p>There are several references in the opening section conducting studies and developing reports between the various legislative initiatives. How, if at all, are these studies related? Does EPA anticipate an element of connectivity between these reports or will each stand on its own?</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Pages 30-31</p>	<p>Each report will stand on its own, but as we release them, we will ensure to put them in the context of all our work including the Circular Economy Strategies work and the Bipartisan Infrastructure Law work.</p>	<p>No revisions needed, at this time.</p>
<p>General note: The status of many of the identified reports is framed in the present tense. Is there any publicly available information on those items?</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Pages 30-31</p>	<p>The status of all the reports is not yet available on our website, but we are working on it. However, if you sign up to stay connected <a href="#">here</a>, you will be notified as all the reports are released.</p>	<p>No revisions needed, at this time.</p>

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<p>Under Regions, there is a bullet item to support national solid waste management data collection efforts and activities. What does this look like? How does it play into EPA recommending (or requiring) a nationalized reporting standard for waste and recycling? Is the intent is to support States in data collection, or will it support a U.S. metrics system that is able to compare apples to apples?</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Page 31</p>	<p>We are currently developing what this will look like now. EPA is working to develop data needs for the two new Bipartisan Infrastructure Law grant programs as well as to support the National Recycling Goal and the Food Loss and Waste Goal. The goal will be to support a consistent U.S. metric as well as to support the states as we build more data capacity. We look forward to working with ASTSWMO and states as we move forward with the data collection efforts.</p>	<p>No revisions needed, at this time.</p>
<p>Materials management and life cycle analysis shows us that the larger impacts of the materials we manage occur upstream, during manufacture and production. This illustrates why reduction and reuse of materials, including packaging, has more environmental benefit than recycling. However, this national guidance focuses almost solely on recycling. We feel the guidance would be more powerful and effective if it included these more important and higher priority aspects of the waste management hierarchy – reduce and reuse. There is growing focus on</p>	<p>Environmental Council of the States</p>	<p>Pages 29-31 (Improving Recycling and Advancing the Circular Economy)</p>	<p>EPA is focused on the entire life-cycle of waste including the upstream elements, which is why we expanded the Recycling Strategy to be part of a Circular Economy Strategy. EPA is working with stakeholders to reduce upstream materials and understands that Congress is considering extended producer responsibility laws as a means of advancing a circular economy.</p>	<p>No revisions needed, at this time.</p>



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<p>reduction and reuse, on a variety of levels. This is an area where EPA funding and support could help immensely. EPA's scope should incorporate reduction and reuse into its funding and operational priorities and strategies. Producer responsibility: There are certainly changes needed in our recycling system, which have become very clear in the past few years. Many acknowledge that systemic changes are needed, to included producer engagement and responsibility. An increasing number of producers are calling for some form of producer responsibility in the recycling system. There are now three states with new laws in place setting up such a system, and bills have been introduced in more than a dozen other states. One producer organization, The Recycling Partnership, has estimated that \$17 billion of investments is needed to make all the needed changes to the recycling system. While the \$350 million in grants offered by EPA is historic and will</p>				

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<p>be very helpful to some governments, it is not near enough. These grants do not acknowledge the needed system change or the new partners (producers) who are increasing their role to address the recycling challenges in recycling. EPA’s scope should incorporate the growing role and need for producer responsibility in the recycling system.</p>				
<b>Reducing Food Loss and Waste:</b>				
<p>Will there be incentives for States to implement policies to aid in achieving the U.S. goal to reduce food loss and waste by 50% by 2030?</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Pages 32</p>	<p>The Bipartisan Infrastructure Law will provide EPA with funding for solid waste infrastructure grants – which includes food and organics as part of municipal solid waste management.</p> <p>Food is a valuable resource. Implementing policies to reduce food loss and waste provide tangible benefits, such as increasing food security, productivity, and economic efficiency; and addressing climate change and conserving energy and resources.</p>	<p>No revisions needed, at this time.</p>

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The first item under Headquarters indicates EPA will provide credible information and data on wasted food. Are any of these data developed and sharable beyond what is on the EPA website?	Association of State and Territorial Solid Waste Management Officials	Page 32	The <a href="#">material specific data for food</a> , 2018 Wasted Food Report and Wasted Food Measurement Methodology are the most recent data on wasted food available. EPA will continue to review, improve and update our data as often as possible.	No revisions needed, at this time.
What is the scope of the funding opportunities identified in the Headquarters portion of this section?	Association of State and Territorial Solid Waste Management Officials	Page 32	<p>EPA national and regional funding opportunities along with other applicable agency funding opportunities are posted when available on the <a href="#">Sustainable Management of Food Funding Opportunities</a> page and shared in the SMM newsletter.</p> <p>Recent national EPA grants were the Supporting <a href="#">Anaerobic Digestion in Communities funding opportunity</a>.</p> <p>EPA anticipates additional funding opportunities with the related Bipartisan Infrastructure Law waste prevention, reuse and recycling grant programs.</p>	No revisions needed, at this time.
<b>Streamlining Business Processes:</b>				
In evaluating business processes, it will be important for EPA to take a step back from what has always been done and evaluate if the processes are truly making a difference. For example, reducing	Arizona Department of Environmental Quality	Page 9	We agree that evaluating business processes is a good business practice. OLEM’s Federal Facilities Superfund program developed and released a document titled, <i>Best Management Practices for Reducing Durations at</i>	OLEM has added the following activity under Ensure Protective Remedies on page 8: “Implement an innovative real-time workflow module that provides the

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<p>the time it takes to investigate a site or to implement a remedy and to ultimately close a contaminated site are key metrics we measure at ADEQ. We implement countermeasures if we encounter barriers to achieving the mission and develop standard work to help sustain the improvements. I encourage EPA to think outside of the box whenever possible to accelerate cleanups...more mission good.</p>			<p><i>Federal Facility NPL Sites</i> in October of 2021. The document identifies issues and recommendations for progressing sites through the CERCLA pipeline more efficiently.</p> <p>In FY 2021, applying these initiatives at Federal Facilities Superfund sites has reduced cleanup durations program-wide by 9%.</p> <p>The program has met with and offered to partner with the other federal agencies (OFAs) in developing site-specific strategies to streamline investigation and/or remediation efforts. The program also is developing an innovative real-time module that will provide key information on site progress and enable the program to highlight accomplishments and delays of key milestones.</p> <p>Our draft guidance includes the following activity, related to evaluating business practices: Implement and improve program and resource data analytical tools that quantify interim progress towards site completion against investments</p>	<p>program with key information on the root cause of delays of key milestones and partner with OFAs, regional offices, and states to develop site-specific strategies to streamline program obstacles.”</p>

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			expended and estimate investments needed to achieve timely completion of planned milestones.	
EPA has demonstrated the ability to work on innovative approaches to solving problems. An example of this is the development of the Triad approach for site investigations, particularly at hazardous waste site. Triad uses systematic planning, dynamic workplans, and real-time data collection systems to streamline site investigations. This approach focuses on the mission of quickly understanding impacts to human health and the environment, so actions to address those issues can be deployed as soon as possible. This type of innovation and thinking should be deployed as EPA looks to streamline business processes.	Arizona Department of Environmental Quality	Page 9	EPA’s Federal Facilities Superfund program is developing an innovative real-time module that will provide the program with key information on the root cause of delays of key milestones.	As noted in response to your previous comment, OLEM has added the following activity under Ensure Protective Remedies on page 8: “Implement an innovative real-time workflow module that provides the program with key information on the root cause of delays of key milestones and partner with OFAs, regional offices, and states to develop site-specific strategies to streamline program obstacles.”
Streamlining business processes will also be crucial as the nation deals with per- and polyfluoroalkyl substances – known as PFAS. ADEQ appreciates EPA’s efforts to develop a Maximum Contaminant	Arizona Department of Environmental Quality	Page 9	OLEM’s role in EPA’s commitment to partnering with states and regions in protecting human health and the environment from PFOA/PFAS is described on page 3 of the <a href="#">draft OLEM National Program Guidance</a> . EPA is	No revisions needed, at this time.

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<p>Level (MCL) for a few of the PFAS substances. The PFAS strategic roadmap states that the regulatory scope under OLEM is still seeking public comments. The linkage and measurable actions for each of its impacts is not clear on the NPG. This generic approach might create confusion to the regions and states and clarifying the PFAS area under streamlining the businesses might lead to the efforts accomplishing our shared goals.</p>			<p>partnering with other federal agencies, states, tribes, and local communities to assess the nature and extent of PFAS contamination and will coordinate with responsible parties and lead federal agencies to identify and use effective remediation approaches. To support the agency goal to further advance and expedite the implementation of EPA’s PFAS Strategic Roadmap, which includes a goal to “Broaden and accelerate the cleanup of PFAS contamination to protect human health and ecological systems,” OLEM is supporting EPA’s Council on PFAS and, as part of the agency’s PFAS Strategic Roadmap, proposing to designate PFOA and PFOS as CERCLA hazardous substances. Moreover, OLEM will also take steps to propose adding four PFAS chemicals as RCRA hazardous constituents and separately to clarify EPA’s authority to require investigation and cleanup for wastes that meet the statutory definition of hazardous waste.</p>	

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<p>The PFAS strategic roadmap states that the regulatory scope under OLEM is still seeking public comments. The linkage and measurable actions for each of its impacts is not clear in the NPG. This generic approach might create confusion to the regions and states and clarifying the PFAS area under streamlining the businesses might lead to the efforts accomplishing our shared goals.</p>	<p>Environmental Council of the States</p>	<p>Page 9</p>	<p>Please see previous comments from the Arizona Department of Environmental Quality and response.</p>	
<p>In summary, the national priorities of EPA need to be aligned and linked well with measurements in the streamlining business processes section in order to accelerate environmental protection at national, regional and state levels.</p>	<p>Arizona Department of Environmental Quality</p>	<p>Page 9</p>	<p>OLEM’s Federal Facilities Superfund program has internal goals to evaluate the Five-Year Review process. The program reviews all Five-Year Reviews to ensure national consistency and meets on a weekly basis to discuss issues, monitor performance, and track goals.</p> <p>The Federal Facilities Superfund program coordinates with regional offices to target, track and analyze key program measures of Decision Documents and Remedial Action Completions on an annual basis. The program carefully considers progress on these key metrics and works closely with the other federal agencies and EPA regional offices to progress sites through the cleanup</p>	<p>OLEM has revised its draft language on page 9, to read as follows: “Follow an internal review strategy to discuss issues, monitor performance, and track goals to ensure long-term remedy protectiveness by reviewing and identifying issues during statutory Five-Year Reviews.”</p> <p>OLEM also has added the following activity on page 9: “Coordinate with regional offices to target, track and analyze key program</p>

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			process.	measures and progress of Decision Documents and Remedial Action Completions on an annual basis and partner with the OFAs and regions to progress sites through the cleanup process.”
In summary, the national priorities of EPA to be aligned and linked well with measurements in the streamlining business processes section in order to accelerate environmental protection at national, regional and state levels.	Environmental Council of the States	Page 9	Please see previous comment from Arizona Department of Environmental Quality and response.	
In that context, we see an opportunity for EPA to focus on "streamlining the business processes (page 9 of the NPG document)" and expand it for TSCA and PFAS as well. That clarity on actions and measurements on business processes would provide guidance to the regional offices, states, manufacturers, suppliers, customers and other involved stakeholders in those processes.	Environmental Council of the States	Pages 9, 24-25	OLEM is committed to continuous process improvement, and we will continue to look for opportunities to streamline. At EPA, OLEM reviews and approves PCB cleanup, storage, and disposal activities. EPA’s Office of Chemical Safety and Pollution Prevention (OCSPP) manages the process for assessing and managing chemicals under TSCA.  Our colleagues in OCSPP provided the	No revisions needed, at this time.



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<p>For example, there are more than 43,000 active chemicals in the market and EPA processes approximately 500 chemicals every year. However, the NPG document mentions only PCB material regulated under TSCA (Page 24-25). The need to address the plan to streamline that investigation, risk assessment, and stakeholder communication process for other active chemicals that pose high risk is critical in this emerging contaminants trend.</p>			<p>following information concerning risk management for PFAS under TSCA: “EPA provides publicly accessible information on its website  <a href="https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-and-polyfluoroalkyl-substances-pfas">https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-and-polyfluoroalkyl-substances-pfas</a>”</p>	
<p>Outside of the additional PFAS substances, we know there are more chemicals out there that will require evaluation. In fact, there are more than 43,000 active chemicals in the market today. However, the NPG document mentions only PCB material regulated under the Toxic Substance Control Act (Page 24-25). The need to address the plan to streamline that investigation, risk assessment, and stakeholder communication process for other active chemicals that pose high risk is critical in these emerging</p>	<p>Arizona Department of Environmental Quality</p>	<p>Pages 24-25</p>	<p>Please see previous comment from the Environmental Council of the States and response.</p>	

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<p>contaminants trend. That clarity on actions and measurements on business processes would provide guidance to the regional offices, states, manufacturers, suppliers, customers and other involved stakeholders in those processes.</p>				
<p>Many FY23 target metrics are missing. Are these intentionally blank, or are numbers still to come?</p> <p>Was this list developed based on consultation with the programs in the States and filtered up to the list, so States should know if their programs have goals on this list already?</p> <p>If there are specific sites on the list, can those be substituted for others going forward as conditions on the ground change?</p> <p>States should be made aware of impacts to their programs should goals not be met.</p>	<p>Association of State and Territorial Solid Waste Management Officials</p>	<p>Pages 46-47</p>	<p>The OLEM NPG includes measures supporting the FY 2022-2026 EPA Strategic Plan, FY 2023 Congressional Justification and Annual Performance Plan and additional measures important to program management. The agency's headquarters and regional commitment-setting process for these measures, and for other internally-tracked measures, occurs each year in the fall. National targets for additional measures not included in the agency's strategic plan or budget will be determined as part of this process.</p>	<p>No revisions needed, at this time.</p>

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<b>Tribal Issues:</b>				
The Navajo Nation strongly recommends a cross-agency approach to the Navajo Abandoned Uranium Mine Sites.	The Navajo Nation	Pages 10-12	The Ten-Year Plan on Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation is a cross-agency approach in responding to Navajo AUM sites, within statutory and budgetary limitations. EPA will continue to work with the Navajo Nation EPA to explore cross-agency approaches to the Navajo Nation Abandoned Uranium mine sites.	OLEM has revised its draft activity language on page 11, to read as follows: “ <u>Continue to</u> strengthen tribal relationships by establishing local field offices <u>enabling cross-agency efforts</u> at or near the abandoned uranium mine sites on Navajo Nation lands.”
The Navajo Nation Environmental Protection Agency requires funding to help the agency respond to emergencies.	The Navajo Nation	Pages 10-12	EPA does not have dedicated funding for this purpose but will continue to provide technical assistance and outreach to tribes and other stakeholders as part of our effort to ensure national safety and security for chemical and oil responses. EPA also will continue to respond to emergency cleanups as necessary on tribal lands.	No revisions needed, at this time.