



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

AUG 21 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Transition from National Enforcement Initiatives to National Compliance Initiatives

FROM: Susan Parker Bodine
Assistant Administrator

A handwritten signature in blue ink, which appears to read "Susan Parker Bodine", is written over the printed name and title.

TO: Regional Administrators

The EPA's FY 2018-2022 Strategic Plan includes enforcement-related strategic measures to increase the environmental law compliance rate and reduce the average time from violation identification to correction.¹ To accomplish these goals, the EPA recognizes that (1) joint governance and accountability is a key principle and (2) increased compliance requires a broad range of compliance assurance tools to be available for use.

Recognizing the need to focus resources to achieve environmental law compliance, the EPA identifies national priorities, currently called National Enforcement Initiatives (NEIs).² The EPA intends to evolve the National *Enforcement* Initiatives program into a National *Compliance* Initiatives (NCIs) program by providing states and tribes with additional opportunities for meaningful engagement, by developing and applying a broader set of compliance assurance tools, and by aligning the NCIs with the Agency Strategic Plan measures and priorities.

Background

For the past two decades, the EPA has strategically focused its enforcement and compliance resources on the most serious environmental violations at facilities across the country by developing and implementing national priorities (currently called NEIs). The EPA generally reviews the NEIs every three years to determine whether to conclude an NEI, or, where it is decided that an NEI should be continued, whether any changes are appropriate.³

The EPA's work has increased compliance and reduced pollution in the priority areas. For example, under the initiative to Keep Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters, 97% of large combined sewer systems, 92% of large sanitary sewer systems, and 70% of Phase 1 municipal separate stormwater systems are now either in compliance, or are on an agreed upon schedule to come into compliance. Under the initiative to Reduce Air Pollution from the Largest Sources, EPA enforcement actions addressing Clean Air Act violations have resulted in annual reductions of over 2.8 million tons of NO_x and SO₂ air pollution emissions.

¹ FY 2018-2022 U.S. EPA Strategic Plan, <https://www.epa.gov/planandbudget/strategicplan>.

² For about 10 years prior to FY 2011, NEI work was called "National Priorities," with other names used earlier.

³ For information on the eight NEIs currently in effect, see <https://www.epa.gov/enforcement/national-enforcement-initiatives>.

Transition to National Compliance Initiatives

NEIs have always focused on improving compliance and reducing pollution, and have often used not only enforcement actions but also other compliance assurance tools, such as compliance assistance and compliance alerts. To better convey the message that increased compliance is the goal, and enforcement actions are not the only tool for achieving this goal, the EPA will change the name of its priorities from National *Enforcement* Initiatives to National *Compliance* Initiatives.

In the transition to NCIs, we are making four important adjustments: (1) modifying our selection criteria for the FY 2020-2023 NCI cycle to better align with Agency Strategic Plan measures and priorities; (2) engaging more fully with states and tribes in the selection and development of the initiatives; (3) enhancing the EPA's use of the full range of compliance assurance tools in an NCI; and (4) extending the priorities cycle to four years to better align with the Agency's National Program Guide cycle.

1. NCI Selection Criteria for the FY 2020-2023 Cycle.

In selecting the NCIs for the FY 2020-2023 cycle, the EPA plans to consider the following factors:

- a) Alignment with the Agency Strategic Plan measures and priorities to address: nonattainment areas, impaired waters, public health threats posed by drinking water non-compliance, populations vulnerable to air toxics or chemical accidents, and children's exposure to lead. OECA will emphasize selecting new NCIs that advance our progress in meeting our Strategic Plan measures and priorities (see Box 1).
- b) Need for EPA expertise, authority, or resources – States or the EPA may determine that the EPA's expertise, authority, or resources are needed to improve compliance. Examples may include: remediating violations where states lack the authority or the expertise; sharing technologies; providing national compliance assistance tools; or, creating data analytic tools to identify serious environmental problems or disproportionate adverse impacts to public health.
- c) Need to address serious and widespread non-compliance across the country. While a non-compliance problem may not be present in every EPA region or state, it may be so common that a national focus is necessary to remedy the non-compliance to maintain certainty for regulated entities through a level playing field and a consistent level of environmental and public health protection across our country.

Box 1: Agency Strategic Plan Measures (SM) & Priorities Related to NCIs

SM-1: Reduce the number of nonattainment areas.

SM-2: Reduce the number of community water systems out of compliance with health-based standards [drinking water].

SM-4: Reduce the number of square miles of watershed with surface water not meeting standards [impaired waters].

SM-17: Reduce the average time from violation identification to correction.

SM-18: Increase the environmental law compliance rate.

Strategic Plan: "With our partners, we will pay particular attention to vulnerable populations." (p. 7)

2. NCI Co-Regulator and Stakeholder Input.

The EPA will provide new opportunities for early and meaningful input from states and tribes at several key points in the process. The EPA looks forward to receiving state and tribal input on the current NEIs - such as whether to continue, modify, or conclude them - and suggestions for new

NCIs. Opportunities for state and tribal engagement in the identification and development of the FY 2020-2023 NCIs will follow the schedule in Attachment 1. In addition to getting input from states and tribes, the EPA will continue its practice of seeking public comments through the publication of a Federal Register notice.

For example, the EPA has begun exploring the possibility of adding drinking water as an NCI in the FY 2020-2023 cycle to support the EPA's Strategic Plan goal to increase compliance with drinking water standards. The Agency is interested in state and tribal input and engagement on this topic, and has already begun discussions with the Association of State Drinking Water Administrators on the value of this possible NCI.

3. Enhanced use of the full range of compliance assurance tools.

After the EPA selects NCIs for the FY 2020-2023 cycle, the EPA will develop an implementation strategy for each NCI. The NCI implementation strategies will include options for remedying the most significant non-compliance problems and improving overall compliance in the timeliest manner.

The implementation strategies will identify the most appropriate tools for achieving the goals described in the strategy. During strategy development, the EPA will seek the views of states and tribes on which compliance assurance tools would be most effective for the implementation of each NCI. Compliance assurance tools could range from general compliance assistance to inspections to informal and formal enforcement actions.

Consistent with the January 2018 *Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States* (hereinafter, January 2018 *Interim OECA Guidance*), the EPA welcomes active state and tribal participation in implementing the NCI if the state or tribe is authorized for the particular program.⁴ This participation, which is voluntary, may include state action in lieu of EPA action where the result is a return to compliance consistent with national expectations to maintain a level playing field.

The EPA will continue to pursue and publicize NCI enforcement actions. Enforcement actions will continue to be a critical tool for addressing serious violators and deterring violations. Publicizing enforcement actions, both to the public and the regulated community, also is a critically important tool for deterring violations and ensuring a level playing field. In addition, the EPA will strive to make the public more aware of our use of other tools to achieve compliance.

Measurable goals for each NCI will need to be developed and included in each specific NCI strategy. Historically, the lack of reliable national information on compliance rates has been a challenge, especially when the regulated universe being addressed by an NEI was large. The EPA will seek state input in developing these goals and piloting new ways to measure progress and success.

4. Extending the NCI cycle from three years to four years to better align with the Agency's National Program Guide cycle.

States and others have requested that we align the NEI cycle with the National Program Guidance cycle (formerly "National Program Managers Guidance"). The National Program Guidance is

⁴ January 2018, *Interim OECA Guidance*, <https://www.epa.gov/compliance/interim-oeca-guidance-enhancing-regional-state-planning-and-communication-compliance>.

revised every two years; in most cases however an NCI cannot be completed in a single two-year cycle. OECA believes that the better approach would be to extend the NCI cycle from three to four years to facilitate this alignment.

Modified Implementation of NEIs to NCIs in FY 2019

For FY 2019, the EPA will modify its implementation of the existing NEIs to evolve them into NCIs, guided by the Agency Strategic Plan measures and priorities, as follows:

1. Keeping Industrial Pollutants Out of the Nation's Waters.
The EPA has started to engage with authorized states, initially with the Association of Clean Water Administrators, as we transition this NEI to become the NPDES Significant Non-Compliance (SNC) NCI. This new NCI would have a broad focus on increasing the percentage of NPDES permittees in compliance with their permit limits (as measured by reducing the rate of permittees in SNC). The new NCI supports the EPA's five-year Strategic Plan measure and two-year Agency Priority Goal to increase the environmental law compliance rate. This change would redeploy EPA resources from the current NEI to the broader NCI Clean Water Act SNC rate reduction effort, and could establish a model for improving compliance rates that could be used in other programs.
2. Prevent Animal Waste from Contaminating Surface and Ground Water.
Starting in FY 2019, OECA intends to return this NEI to our core program rather than keep it as a national priority. As part of the core program, in collaboration with authorized state programs, regions will continue to conduct inspections and enforcement actions to address serious violations in this area, focusing on the Strategic Plan goal to address water quality impairments.
3. Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters.
The EPA has almost completed this NCI, obtaining significant improvement in compliance and major reductions in water pollution. Work in FY 2019 will be focused on completing ongoing enforcement cases and monitoring compliance with existing enforcement settlements. In collaboration with authorized state programs, work in these areas will continue as part of core program in FY 2020, especially with a focus on addressing impaired waters.
4. Reducing Air Pollution from the Largest Sources.
The EPA has almost completed this NCI, obtaining significant improvement in compliance and major reductions in air pollution. Work in FY 2019 will be focused on completing ongoing enforcement cases and monitoring compliance with existing enforcement settlements. In collaboration with authorized state programs, work in these areas will continue as part of the core program in FY 2020, especially with a focus on addressing clean air non-attainment areas.
5. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.
This NCI is still in its first cycle. It will continue to focus on the most serious situations of non-compliance, with a focus on the Strategic Plan objectives of addressing vulnerable populations and achieving a timely return to compliance. The EPA will enhance our use of compliance assistance and expedited settlement agreements to address the numerous smaller sources in urban areas.
6. Cutting Hazardous Air Pollutants (HAPs).
This NCI will continue to focus on addressing the most significant sources of hazardous air pollution, with a focus on the Strategic Plan objectives of addressing vulnerable populations, addressing clean air non-attainment areas, and achieving a timely return to compliance.

7. Ensuring Energy Extraction Activities Comply with Environmental Laws.

This initiative historically focused on one industrial sector, implying that the EPA considers all problems in this sector – large or small – to be a priority. For FY 2019, the EPA is clarifying that work under this NCI will focus on significant public health and environmental problems: exposure to significant releases of volatile organic compounds, reducing non-attainment, and reducing water quality impairment. When we consider the FY 2020-2023 NCI cycle, we will evaluate the idea of merging this work into the “Cutting Hazardous Air Pollutants” NCI or focusing this NCI on significant sources of VOCs that have a substantial impact on air quality (without regard to sector), including the potential to adversely affect an area’s attainment status, and returning other work in this sector to the core program and Regional priorities.

8. Reducing Toxic Air Emissions from Hazardous Waste Facilities.

This NCI is in its first cycle and will continue to focus on addressing the most serious situations of non-compliance, prioritizing our work based on the Strategic Plan objectives of addressing vulnerable populations, reducing non-attainment areas, and achieving a timely return to compliance. We will also continue our work to build state capacity in this program.

As noted above, we plan to rename the NEIs in FY 2019 as NCIs to highlight the focus on compliance as the goal, the broader use of compliance assurance tools, and the opportunity for enhanced state engagement per the January 2018 *Interim OECA Guidance*.

We look forward to working with the regional compliance and enforcement programs and our state partners as we move forward with these changes.

Attachment

cc: Assistant Administrators
Regional Enforcement Directors and Program Division Directors
Regional Counsels
Enforcement Coordinators
OECA Office Directors
OC and OCE Division Directors

Attachment 1 Schedule for FY 2020-2023 NCI Selection with State and Tribal Engagement	
1. Early September thru October 2018	OECA will share this memo with the state and tribal associations and solicit input from them, specifically: • ECOS • ACWA, NACAA and APCA, ASTSWMO, ASDWA, SFIREG and APCO • National Tribal Water Council, National Tribal Toxics Council, and the Tribal Waste and Response Assistance Program • National Tribal Air Association and National Tribal Pesticides Council OECA will offer conference calls with the associations to solicit their input. Input need not be consensus.
2. Mid-September to October 2018	Regions will solicit early input from all their states and tribes. OECA will provide the regions with a framework for these discussions. These meetings would solicit input on current NEIs (continue/modify/return-to-core) and ideas for new NCIs.
3. November 2018	OECA reviews state, tribal, and media association comments and development of a Federal Register notice that solicits public comments on the next round of NCIs. This may include ideas for possible new NCIs as well as plans for continuing, modifying or concluding existing NEIs.
4. December 2018	OECA solicits public input via Federal Register notice, and then compile public input.
5. February 2019	OECA evaluates input received from public with state and tribal engagement using ECOS, the National Tribal Caucus, and the state and tribal media associations. • Input sought on narrowing proposed NCIs, as well as potential strategies and range of compliance assurance tools best suited to each strategy.
6. Early March 2019	OECA will discuss with ECOS specific options for the FY 2020/2023 NCIs.
7. Early April 2019	OECA Assistant Administrator makes selection of the FY 2020-2023 NCIs.
8. April 22, 2019	OCFO publishes FY 2020-2021 NP Guidance including the newly selected NCIs.
9. April 2019 – September 2019	OECA develops strategies for implementing NCIs, with engagement of states and tribes that want to collaborate with EPA on specific strategies.