



FOUR FY19-20 EPA SNC NCI RELATED GUIDANCES

DANIEL PALMER AND JOSEPH THEIS

EPA-OECA

JAN 23, 2020



FOUR FY19-20 EPA SNC NCI RELATED GUIDANCES

- **FY2020- FY2023 NATIONAL COMPLIANCE INITIATIVES MEMORANDUM**
 - [HTTPS://WWW.EPA.GOV/ENFORCEMENT/FY2020-FY2023-NATIONAL-COMPLIANCE-INITIATIVES](https://www.epa.gov/enforcement/fy2020-fy2023-national-compliance-initiatives)
- **MEMO FOR ENHANCING EFFECTIVE PARTNERSHIPS BETWEEN THE EPA AND THE STATES IN CIVIL ENFORCEMENT AND COMPLIANCE ASSURANCE WORK**
 - [HTTPS://WWW.EPA.GOV/COMPLIANCE/MEMO-ENHANCING-EFFECTIVE-PARTNERSHIPS-BETWEEN-EPA-AND-STATES-CIVIL-ENFORCEMENT-AND](https://www.epa.gov/compliance/memo-enhancing-effective-partnerships-between-epa-and-states-civil-enforcement-and)
- **EPA MEMORANDUM: REGIONAL ROLE IN REDUCING THE NPDES RATE OF SIGNIFICANT NONCOMPLIANCE**
 - [HTTPS://WWW.EPA.GOV/ENFORCEMENT/MEMO-REGIONAL-ROLE-REDUCING-NPDES-RATE-SIGNIFICANT-NONCOMPLIANCE](https://www.epa.gov/enforcement/memo-regional-role-reducing-npdes-rate-significant-noncompliance)
- **SNC NCI IMPLEMENTATION STRATEGY (DRAFT)**



FY2020- FY2023 NATIONAL COMPLIANCE INITIATIVES MEMORANDUM

DANIEL PALMER

EPA-OECA OFFICE OF COMPLIANCE

JAN 23, 2020



FY2020- FY2023 NATIONAL COMPLIANCE INITIATIVES MEMORANDUM

- EPA FOCUSES ITS ENFORCEMENT AND COMPLIANCE RESOURCES ON THE MOST SERIOUS ENVIRONMENTAL VIOLATIONS BY SELECTING AND IMPLEMENTING NATIONAL PROGRAM PRIORITIES.
 - REFERRED TO AS “NATIONAL COMPLIANCE INITIATIVES” (PREVIOUSLY CALLED “NATIONAL ENFORCEMENT INITIATIVES”)
- REDUCING THE NPDES SNC RATE WAS SELECTED BY EPA AS ONE OF SIX NCI’S FOR THE FY 2020-2023 NCI CYCLE
- INVOLVED A ONE YEAR SELECTION PROCESS THAT INCLUDED INPUT FROM OTHER EPA OFFICES, STATES, STATE ORGANIZATIONS, TRIBES AND THE PUBLIC
- FY 2020-2023 NCI SELECTION MEMO: [HTTPS://WWW.EPA.GOV/ENFORCEMENT/FY2020-FY2023-NATIONAL-COMPLIANCE-INITIATIVES](https://www.epa.gov/enforcement/fy2020-fy2023-national-compliance-initiatives)



SIX FY 2020-2023 NATIONAL COMPLIANCE INITIATIVES (NCIs)

1. CREATING CLEANER AIR FOR COMMUNITIES BY REDUCING EXCESS EMISSIONS OF HARMFUL POLLUTANTS FROM STATIONARY SOURCES
2. REDUCING HAZARDOUS AIR EMISSIONS FROM HAZARDOUS WASTE FACILITIES
3. STOPPING AFTERMARKET DEFEAT DEVICES FOR VEHICLES AND ENGINES
4. **REDUCING SIGNIFICANT NONCOMPLIANCE WITH NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS**
5. REDUCING NONCOMPLIANCE WITH DRINKING WATER STANDARDS AT COMMUNITY WATER SYSTEMS
6. REDUCING RISKS OF ACCIDENTAL RELEASES AT INDUSTRIAL AND CHEMICAL FACILITIES



Enhancing Effective Partnerships Between EPA and the States in Civil Enforcement and Compliance Assurance Work

EPA-State SNC National Compliance Initiative
SYMPOSIUM 2



Partnership Policy

- Memorandum entitled: “Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work” was issued on July 11, 2019.
- Commonly referred to as “The Partnership Policy - supersedes Interim Guidance issued in January 2018.
- Also applicable to federally-recognized Indian tribes, territories, and local governments that implement federal programs.



OVERVIEW

- Policy sets out expectations and procedures for enhancing effective partnerships in civil enforcement and compliance work between EPA and states, local, and tribal co-regulators.
- Three parts to the policy.



I. Periodic Joint Work Planning – The first part articulates expectations and best practices for joint work planning and communication.

II. Roles of the EPA and States in Implementing Authorized Programs – Second part acknowledges the primary role of states in implementing authorized programs, while noting EPA’s concurrent enforcement responsibilities and describing circumstances that may warrant direct federal action.

III. Process for Elevation of Issues



PERIODIC JOINT WORK PLANNING

- Calls for cooperative, periodic, and early joint planning
- Emphasizes “no surprises” principle
- Calls for Strategic planning element in joint planning
- Joint inspection planning
- Joint enforcement planning



ROLES OF EPA AND STATES IN IMPLEMENTING AUTHORIZED PROGRAMS

- The EPA will generally defer to a state as the primary implementer of inspections and enforcement in authorized programs.
- EPA, however, retains concurrent enforcement authority and so there are specific situations where EPA may choose to take direct.
- Examples of situations that could warrant EPA involvement include the following:



Situations Warranting EPA Involvement

- 1) Joint work planning or specific situations where the state requests that EPA take the lead**
- 2) Violations that are part of a National Compliance Initiative**
 - EPA is expected to take the lead in some of the specific enforcement actions identified as NCI actions to apply and maintain its expertise, to ensure consistency, and to promote a level playing field



3) Emergency situations or situations where there is substantial risk to human health or the environment. In consultation and coordination with the state, the EPA may take direct action or supplement state enforcement resources in these circumstances.

4) Situations where a state lacks adequate equipment, resources, or expertise.



5) Situations involving multi-state or multi-jurisdictional interests or interstate impacts.

- EPA should take the lead in cases addressing noncompliance at facilities owned or operated by the same entity in multiple states to ensure consistency and a level playing field.
- EPA may take the lead in enforcement actions addressing significant cross-boundary impacts affecting other states or nations to ensure that cross-boundary impacts from noncompliance are resolved equitably.



6) Significant violations that the state has not timely or appropriately addressed. The EPA may take an enforcement action where a state is not taking timely and appropriate action.

7) Serious violations for which the EPA 's criminal enforcement authorities may be needed.

8) State enforcement program review inspections.



9) Situations that involve enforcement at federal and state owned or operated facilities.

EPA may take the lead or assist a state in an enforcement action at a federally owned or operated facility.

EPA may also take the lead in an enforcement action against a state owned or operated facility where there are conflicts internal to the state that make state enforcement less effective.



PROCESS FOR THE ELEVATION OF ISSUES

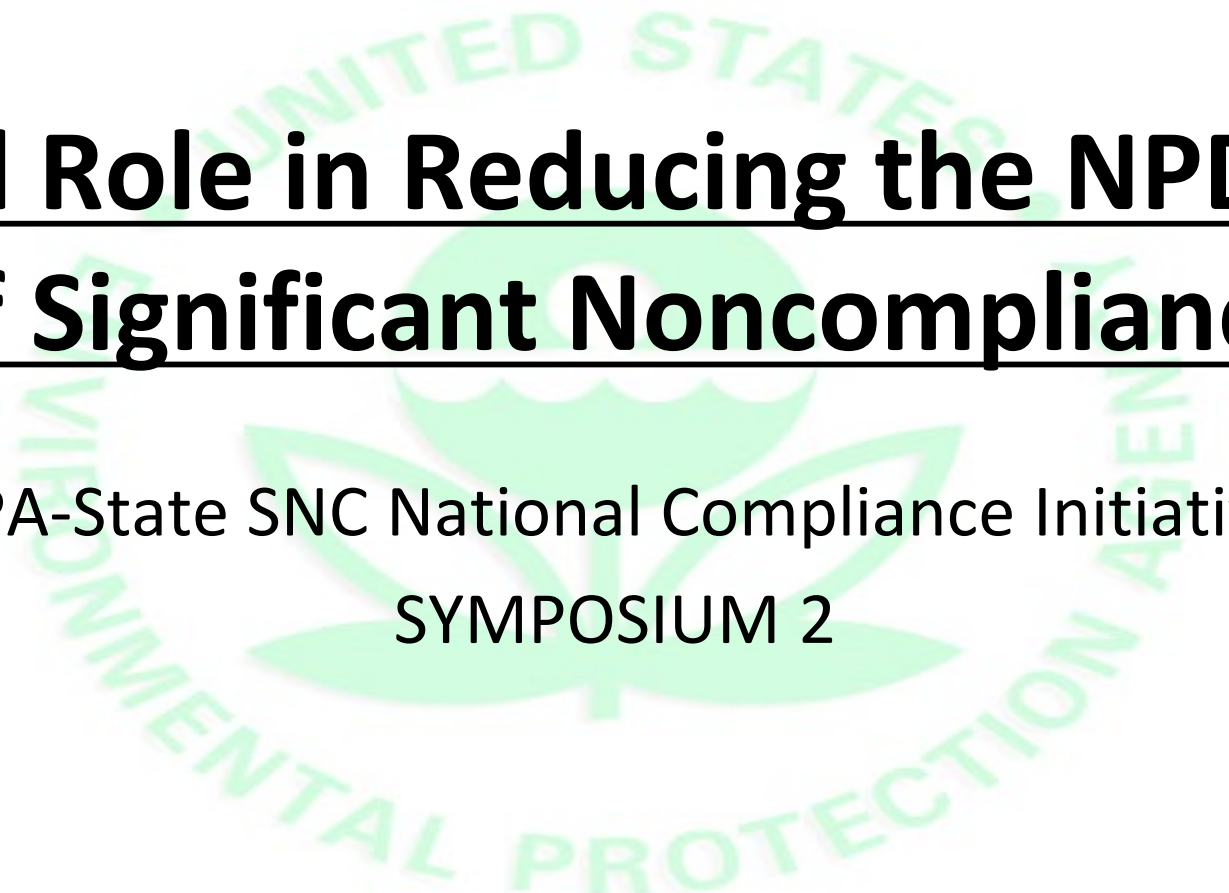
- 1) Issues should be resolved whenever possible at the EPA and state career management level.
- 2) If career management cannot resolve, the matter should be elevated within thirty days for resolution by regional and state senior management.
- 3) If following elevation within the region and the state there remains a dispute between the Regional Administrator and the State Secretary or Commissioner, the matter should be elevated within sixty days to the Assistant Administrator for OECA.



Partnership Policy

Questions?

Joe Theis
Associate Director
Water Enforcement Division
U.S. EPA
202-564-4053
Theis.Joseph@epa.gov



Regional Role in Reducing the NPDES Rate of Significant Noncompliance

EPA-State SNC National Compliance Initiative
SYMPOSIUM 2



Regional Role in Reducing the NPDES Rate of Significant Noncompliance

- The purpose of the memorandum is to communicate expectations for Regional implementation of the NPDES SNC NCI.
- The memorandum reiterates that the goal of this NCI is to reduce the NPDES significant non-compliance (SNC) baseline rate by 50% by the end of FY 2022, **while assuring that the worst SNC violators are timely and appropriately addressed.**
- Expectations is that since facilities in SNC are found across the country, all Regions will fully participate in this NCI.



Required Regional Actions

1. Begin meeting quarterly with each authorized state to discuss and review:

- a. The SNC rate in the state and the success of the state's and EPA's approach for reducing the SNC rate, and, when needed, new approaches for reducing and preventing SNC;
- b. The completeness and accuracy of NPDES compliance data and approaches for reducing incomplete and inaccurate data;
- c. Unresolved, high priority and new SNC/Category 1 noncompliance violations, including how and when SNCs will be addressed with a focus on SNCs of greatest concern (*i.e.*, a large number of SNC violations and/or a significant threat to human health or the environment).



Required Regional Actions (cont.)

2. Work with each authorized state that has incomplete or inaccurate compliance data to identify and fix these problems.
3. Discuss the best/most effective approaches for reducing the SNC rate with states that have an SNC rate above the goal for the fiscal year or are otherwise interested in improving their compliance program.
4. Examine the completeness of data and the SNC rate in jurisdictions where Regions are directly implementing the NPDES program in non-authorized state/territories or in Indian country and develop a written plan for reducing the SNC rate in direct implementation (DI) areas.



QUARTERLY SNC MEETINGS WITH STATES

- The memorandum emphasizes that holding quarterly EPA-state SNC meetings to discuss progress in reducing the SNC rate as well as addressing unresolved, high priority and new SNC/Category 1 violations “is the most important request being made of the Regions for the SNC initiative.”
- Recognition that some Regions were already meeting regularly with their states to discuss NPDES enforcement and compliance matters, but request that such meetings be modified to meet the objectives of the initiative (*e.g.*, to include discussion of both major and minor facilities in SNC).



QUARTERLY SNC MEETINGS (cont.)

- Expectation is that meetings should include a review of permittees (both major and minor) in SNC, with a particular focus on a list of “high priority” SNCs (where it is not be feasible to discuss the entire SNC list at each quarterly meeting).
- “High priority” SNCs should be identified based on evidence of the seriousness of the violations and harm to the environment or human health, or where permittees have proven recalcitrant and are not already on an appropriate pathway to compliance.



QUARTERLY SNC MEETINGS (cont.)

- Expectation is that quarterly SNC meetings will focus on identification of specific activities to prevent, deter, and promptly address SNC, and include a review of at least the “highest priority” facilities currently in SNC with decisions about how to timely and appropriately address them (including determining whether the state or EPA will address the SNC), and tracking those SNC to resolution.
- Expectation is that resolution of SNC will be tracked by the Regions and discussed at succeeding quarterly meetings until the permittee is returned to compliance.



Regional and State Role in Reducing SNC

Questions?

Joe Theis
Associate Director
Water Enforcement Division
U.S. EPA
202-564-4053
Theis.Joseph@epa.gov



SNC NCI IMPLEMENTATION STRATEGY

DAN PALMER, DEPUTY DIRECTOR

EPA HQ/OFFICE OF COMPLIANCE/PLANNING, MEASURES, AND
OVERSIGHT DIVISION



OBJECTIVES

- **SNC NCI IMPLEMENTATION STRATEGY**
 - WHAT IS THE SNC NCI STRATEGY?
 - GOALS
 - KEY MEASURES AND DELIVERABLES
 - CHALLENGES
 - REPORTING ON PROGRESS
 - WHEN WILL WE CONSIDER THE SNC NCI DONE?



WHAT IS THE SNC NCI STRATEGY?

- GUIDANCE DOCUMENT FOR THE WORKGROUP
- OUTLINES THE GOALS, MEASURES, AND DELIVERABLES FOR THE NCI
 - INCLUDES REPORTING DEFINITIONS
- BRIEFLY DISCUSSES:
 - THE SCOPE OF THE NCI AND APPROACHES TO MAKE AN IMPACT
 - ENGAGEMENT WITH THE STATES
 - OVERLAP WITH SIMILAR EPA EFFORTS AND PROGRAMS



WHAT IS THE SNC NCI STRATEGY?

- HOW IS IT BEING DEVELOPED?
 - MEMBERS FROM STEERING COMMITTEE WERE MAIN AUTHORS
 - REVIEWED BY FEDERAL MEMBERS ON WORKGROUP, OECA SENIOR LEADERS, REGIONAL ENFORCEMENT DIRECTORS
 - STATES ON WORKGROUP WILL BE ABLE TO REVIEW VIA SHAREPOINT
- WHERE IS IT IN THE PROCESS?
 - INCORPORATING COMMENTS FROM OECA ASSISTANT ADMINISTRATOR AND REGIONAL ENFORCEMENT DIRECTORS
 - INTEND TO HAVE POSTED ON SHAREPOINT SITE FOR REVIEW/COMMENT BY STATE WORKGROUP MEMBERS BY MID-FEBRUARY



WHAT IS THE SNC NCI STRATEGY?

- WORKGROUP WILL BE RESPONSIBLE FOR IMPLEMENTING THE STRATEGY
 - OVERALL SNC NCI WORKGROUP
 - SUBWORKGROUPS
 - DATA QUALITY AND DMR NON-RECEIPT
 - EFFLUENT
 - DATA SUB-SUBWORKGROUP
 - OUTREACH AND COMMUNICATIONS/POLICY
 - SNC NCI GUIDANCE FOR MINORS SUB-SUBGROUP
 - FEDERAL FACILITIES



IMPLEMENTATION STRATEGY GOALS

- **GOAL 1:** REDUCE THE NATIONAL SNC RATE BY 50% BY THE END OF FY2022
- **GOAL 2:** ASSURE THAT THE HIGH PRIORITY SNC FACILITIES WITH THE MOST SIGNIFICANT VIOLATIONS ARE TIMELY AND APPROPRIATELY ADDRESSED
- **GOAL 3:** PROVIDE COMPLIANCE AND TECHNICAL ASSISTANCE AS A TOOL FOR REDUCING THE SNC RATE.



KEY MEASURES AND DELIVERABLES

- **GOAL 1 - REDUCE THE NATIONAL SNC RATE BY 50%**
- **KEY MEASURES:**
 - 4 QUARTER SNC RATE TARGET WITH 50% REDUCTION GOAL
 - FY2020 EOY NATIONWIDE TARGET: 22.1%
 - EPA DI NATIONWIDE TARGET: 20.4%
 - FY2022 EOY NATIONWIDE TARGET: 14.7%
 - INCREASES IN PERMIT AND DMR DATA COMPLETENESS
 - ONGOING WORK TO SUPPORT:
 - **ALL OF OUR WORK!**



KEY MEASURES AND DELIVERABLES (CONT.)

- **GOAL 2 - TIMELY AND APPROPRIATE RESPONSE TO SNC**
- **KEY MEASURES:**
 - EPA-STATE QUARTERLY SNC MEETINGS
 - ASSURE THE WORST SNC VIOLATIONS ARE RESOLVED
- **ONGOING WORK TO SUPPORT:**
 - GUIDANCE TO RESOLVE SNC AT NPDES MINORS
 - QUARTERLY LISTS FOR REGIONS AND STATES DISCUSSIONS
 - TRAINING ON HOW TO USE THE SNC TRACKER AND REGION 2 TOOL
 - MULTI-FACILITY, MULTIREGIONAL CASES FOR CORPORATE COMPLIANCE CHANGE
 - EPA DI ENFORCEMENT (INCLUDING ON TRIBAL LANDS)



KEY MEASURES AND DELIVERABLES (CONT.)

- **GOAL 3 - PROVIDE COMPLIANCE AND TECHNICAL ASSISTANCE**
- **KEY MEASURES:**
 - WEBINARS, COMPLIANCE ADVISORIES, AND CIRCUIT RIDER EFFORTS
 - ONGOING WORK TO SUPPORT:
 - WEBINARS
 - TECHNICAL ASSISTANCE FOR SMALL SYSTEMS, BEST PRACTICES, WHAT IS SNC?
 - COMPLIANCE ADVISORIES
 - 4 PLANNED FOR FY 2020
 - CIRCUIT RIDER EFFORTS



SNC NCI CHALLENGES

- CHANGING THE LONGSTANDING STATUS QUO
- USING ALL OF THE TOOLS IN THE COMPLIANCE ASSURANCE TOOLBOX
- DATA QUALITY
- SMALL UNDER-SOURCED WASTEWATER SYSTEMS
- RESOURCES



REPORTING TO MANAGEMENT ON PROGRESS

- MONTHLY PROGRESS BRIEFINGS FOR EPA OECA ASSISTANT ADMINISTRATOR AND REGIONAL ADMINISTRATORS
- SEMIANNUAL PROGRESS REPORT FOR NCI WORKGROUP AND EPA REGIONS TO COMPLETE
 - SNC RATES, FEDERAL COMPLIANCE AND ENFORCEMENT ACTIVITIES, DI ACTIVITY, # OF SNCS DISCUSSED, COMPLIANCE ASSISTANCE ACTIVITIES (WEBINARS, ALERTS, OTHER ACTIVITIES)
- SEMIANNUAL IN-DEPTH PROGRESS BRIEFING FOR NCI EXECUTIVE BOARD, THEN FOR THE EPA/OECA ASSISTANT ADMINISTRATOR



WHEN WILL WE CONSIDER THE SNC NCI DONE?

- WHEN THE 50% RATE REDUCTION IS ACHIEVED!
 - PROPOSED MEASURES AND DELIVERABLES USE TARGET END DATE OF FY2022
 - FY2023 A BUFFER YEAR TO ACHIEVE OR MAINTAIN GOALS
- SNC WORKGROUP WILL DEVELOP PROPOSAL ABOUT WHETHER TO CONTINUE INTO ANOTHER NCI CYCLE (2024-2027) OR NOT
 - IS THE ACHIEVED SNC RATE SUSTAINABLE?
 - ARE THE WORST SNC VIOLATIONS BEING TIMELY AND APPROPRIATELY RESOLVED?
 - WHAT'S THE LEVEL OF PROGRESS?
 - DO OTHER CWA COMPLIANCE & ENFORCEMENT PROGRAMS NEED NCI LEVEL ATTENTION?



QUESTIONS?