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United States Environmental Protection Agency
EPA Docket Center, OECA-Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Via Regulations.gov: Docket ID No. EPA-HQ-OECA-2022-0981

RE: Public Comment on EPA's National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate and territorial water program managers who on a daily basis implement the water quality programs of the Clean Water Act (“CWA”), including the National Pollution Discharge Elimination System permitting program.

ACWA provides several important recommendations below intended to ensure the next phase of the reduction of the Significant Non-Compliance (SNC) National Enforcement and Compliance Initiative (NECI) remains a high priority for states and leads to important, positive environmental outcomes for the state and the nation. ACWA also provides recommendations for the potential PFAS Contamination NECI as described.

Background

EPA selects national initiatives every four years to focus resources on the most serious and widespread environmental problems. The primary objective of these initiatives is to protect human health and the environment by holding polluters accountable and compelling regulated entities to return to compliance as quickly as possible. While formal enforcement remains a key tool to address significant violations and serious environmental problems, as well as create general deterrence, EPA and states also use a variety of compliance assistance and compliance assurance tools to achieve this objective.

Of interest to ACWA and its members is this next phase of the “Reducing Significant Non-Compliance in the National Pollutant Discharge Elimination System (NPDES) Program” NECI initiative. EPA plans to continue this initiative for the next four years with a focus on assuring the worst effluent violators are addressed and on reducing the effluent violation component of the SNC rate. This initiative would be expanded to include municipal permittees covered under a general permit. It should be noted that approximately 30% of facilities with SNC-level effluent violations are located in communities with potential environmental justice concerns. In addition, this initiative proposes to seek remedies in enforcement actions to advance climate resiliency, where appropriate.

ACWA is also very interested in a potential new NECI intended to address PFAS contamination. EPA acknowledges that much of the effort initially would focus

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on identifying the extent of PFAS exposures that pose a threat to human health and the environment. Where appropriate, EPA would work with its state partners and seek to supplement PFAS enforcement work already performed by many state regulators. EPA also intends to focus enforcement efforts on PFAS manufacturers whose actions result in the release of significant amounts of PFAS into the environment, and on federal facilities that may be a significant source of PFAS contamination.

Recommendations – SNC NECI

ACWA and states support continued efforts to improve compliance and reduce the SNC rate nationally. The new NECI has raised some concerns with states that hopefully can be addressed in the final description of the NECI or in a memo to the regions further explaining scope and intent of the NECI.

Recommendation 1: EPA should reaffirm that relabeling of the NCIs to NECIs is not signaling that the agency intends to apply greater pressure on states to take enforcement actions, when/where the states determine formal enforcement might not be the best compliance tool available for returning specific facilities to compliance as quickly as possible.

Recommendation 2: EPA should provide states with time to evaluate data quality, especially for the expanded new universe of facilities being evaluated. EPA should also continue to work closely with states to determine where EPA could be most helpful in improving data quality and supporting state activities that are resulting in lower SNC rates.

Recommendation 3: EPA should plan to hold one or two national meetings during this NECI where states and EPA can meet in person to discuss challenges and successes associated with their efforts. EPA should continue to hold regular calls and establish workgroups as appropriate to support the work of the NECI.

Recommendation 4: Beyond environmental justice considerations, EPA should work closely with states to prioritize effluent violations based on a number of factors, including state specific priorities such as waterbody location, water body type, water body impairment, pollutant of record, facility type, discharge volume, toxicity of pollutant discharged, etc.

Recommendation 5: EPA should work with states early on to discuss baseline, consider the different ways to measure success, and identify metrics that may help to tell a similar story in a different way. While reducing the total number of effluents based SNC violations may be the simplest metric, there are other metrics that might lead to compelling ancillary benefits and resources being focused in different ways. For example, reducing the amount of total pollution entering waterways, reducing the amount of specific pollution being discharged into impaired waters, reducing specific pollutants such as nutrients or PFAS, reducing the number of violations impacting EJ communities, reducing discharge of the most toxic pollutants, or reducing the number

of effluent violations within specific industrial sectors all might be approaches for EPA to consider and discuss with states.

Recommendation 6: EPA is proposing to expand the initiative to reduce SNC in NPDES permits to “include municipal permittees that are covered under a general permit.” This raises multiple concerns for states as general permits cover a wide range of facilities and activities, in most states the municipalities are not the majority of the permittees covered by general permits, noncompliance under a general permit does not always equate to SNC level of impact, and there may be other types of violations of higher importance to individual states. EPA should specify/confirm: 1) exactly what type of general permits would be included in the initiative; 2) whether private utilities/POTWs covered under general permit would be included in this effort; 3) why other businesses/industries/sectors should be excluded from the initiative; 4) how SNC would be determined for permittees without monitoring or limit requirements under a general permit; and 5) that municipal stormwater is not part of this initiative.

Recommendation 7: Expanding this initiative to include “municipal permittees that are covered under a general permit” is a qualitative description not a quantitative one. ACWA and states are not sure how many new municipalities this would add to the SNC reduction effort. EPA should provide preliminary numbers so states can better understand the national and state implications, such that states can provide a more thoughtful response on their inclusion.

Recommendation 8: EPA should expand upon the environmental justice statement in its discussion of the initiative to reduce SNC in NPDES permits. EPA indicates that there are SNC level effluent violations in communities with potential environmental justice concerns, but there is no indication of priority for these violations or communities, and no explanation of how SNC might be addressed in communities with potential environmental justice concerns. EPA should specify how SNC might be addressed and/or prioritized in communities with potential environmental justice concerns.

Recommendations – Potential PFAS NECI

Like EPA, ACWA and states have also prioritized PFAS as a pollutant of concern. Within the water program, states and EPA are still working through the best approaches for gathering data, reducing contributions, and developing WQS and NPDES permit limits that are protective of human health and the environment. Where appropriate, state water programs want to support EPA efforts to identify the extent of PFAS exposure. But this NECI is not very clear how the water program might fit in as part of this initiative.

Recommendation 1: EPA should further consider whether the water program will be part of this initial PFAS NECI. If so, EPA should meet with state water program staff early on in the NECI to better understand where states are in their programs and to explain short term and long-term goals for the water program under this initiative. States are also interested in how EPA recommends states take enforcement actions without enforceable standards/limits in place.

Recommendation 2: As an example, EPA indicates the agency plans to focus on PFAS manufacturers that release a significant amount of PFAS in the environment. EPA should explain how this initiative could change, if at all, the current relationship between states and EPA when it comes to water pollutant discharges from PFAS manufacturers.

Recommendation 3: As an example, EPA indicates the agency plans to focus on federal facilities that may be a significant source of PFAS. Where states are authorized to permit and can take action against federal facilities, EPA should explain how this initiative could change, if at all, the current relationship between states and EPA when it comes to pollutant discharges from federal facilities. States may welcome cooperative efforts to work with EPA on addressing PFAS from federal facilities, but states that are delegated the authority to regulate federal facilities should be able to make decisions on how to involve EPA.

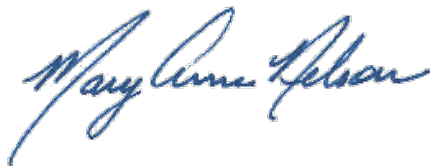
Recommendation 4: Consolidation and concentration of PFAS at POTWs in biosolids is garnering national attention. Biosolids can move PFAS onto farms and then up into the food supply or as nonpoint source runoff into water supplies. If EPA intends to pursue actions and activities associated with the POTWs or the recipients of biosolids, states would be very interested in discussing these activities early in the NECI process. Likewise, states would be interested in better understanding ways EPA intends to prioritize compliance with pretreatment requirements as a means to reduce PFAS in biosolids.

Recommendation 5: There are some states that believe EPA should focus on facilities discharging landfill leachate as a possible source of a significant amount of PFAS into the environment.

Conclusion

While ACWA's process to develop comments is comprehensive and intended to capture the diverse perspectives of states that implement these programs, EPA should also seriously consider the recommendations that come directly from individual states, interstates, and territories. Thank you again for the opportunity to provide comments on the proposed FY2024-2027 National Enforcement and Compliance Initiatives. Please contact ACWA's Executive Director and General Counsel at janastasio@acwa-us.org (202) 756-0600 with any questions regarding ACWA's comments.

Sincerely,

A handwritten signature in blue ink that reads "Mary Anne Nelson". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary Anne Nelson
ACWA President