

Early Input from States, Tribes and Associations for OECA's FY 2018-2019 National Program Managers Guidance

This document summarizes the process used by the Office of Enforcement and Compliance Assurance (OECA) and EPA regions to solicit early input from states, tribes and state and tribal associations for the Fiscal Year (FY) 2018-2019 National Program Managers Guidance, and the early input received from them.

OECA's Process for Soliciting Early Input

OECA and the EPA regional offices sought early input from states, tribes and state and tribal associations for OECA's FY 2018-2019 National Program Managers (NPM) Guidance. OECA solicited early input, via electronic mail, from media specific trade associations and state and tribal associations, including the: Environmental Council of the States (ECOS), National Association of State Departments of Agriculture (NASDA), Association of American Pesticide Control Officials (AAPCO), National Tribal Caucus, Association of State and Territorial Solid Waste Management Officials (ASTSWMO), Association of State Drinking Water Administrators (ASDWA), Association of Clean Water Administrators (ACWA), National Association of Clean Air Agencies (NACAA), Association of Air Pollution Control Agencies (AAPCA), State FIFRA Issues, Research and Evaluation Group (SFIREG), National Tribal Caucus (NTC), National Tribal Water Council (NTWC), National Tribal Air Association (NTAA), Tribal Pesticide Program Council (TPPC) and the Tribal Waste and Response Assistance Program Steering Committee (TWRAP). OECA coordinated with EPA program offices who support media specific tribal partnership groups to solicit early input from tribal partnership groups.

The invitations for early input included a list of OECA's national areas of focus in the FY 2016-2017 NPM Guidance, background information on Next Generation Compliance and the EJ 2020 Action Agenda, an optional template for providing input, and five questions in which OECA was particularly interested: 1) What other priorities should EPA's enforcement and compliance assurance program identify in the FY 2018-2019 NPM Guidance and why?; 2) Does your state, tribe, or association have any other comments on the existing FY 2016-2017 NPM Guidance for EPA to consider when drafting the FY 2018-2019 Guidance?; 3) What are some areas where EPA and stakeholders can work together to develop, test or evaluate Next Generation Compliance-related projects or pilots?; 4) How should EPA's FY 2018-2019 NPM Guidance support implementation of the compliance and enforcement strategies and action in EJ 2020?; 5) What should EPA include in the FY 2018-2019 NPM Guidance to ensure more productive working relationships with co-regulators that will include the setting of shared expectations, sharing of best practices, and joint planning as contemplated by EJ 2020, as we pursue compliance and enforcement activities in the nation's most overburdened communities?

In addition, the ten EPA regions sent requests for early input to each to the states and tribes in their region, using standard language from OECA.

Highlights of Early Input from States, Tribes and Associations

As of November 15, 2016, OECA received 14 sets of comments and early input for the FY 2018-2019 NPM Guidance (NPMG) from: the Environmental Council of States (ECOS), Local Government Advisory Council (LGAC), National Tribal Toxics Council (NTTC), Association of State Drinking Water Administrators (ASDWA), Individual Members of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), and the states of Indiana, Utah, New Hampshire, Colorado, Washington, South Dakota, Maine, Georgia, and Connecticut.

The early input submitted by states, tribes and associations focuses primarily on the following topics:

- 1. Suggested Priorities/Areas of Focus:** Include, but are not limited to, Assuring Safe Drinking Water, Compliance and Enforcement in Indian Country, E-waste Industry Compliance, Abandoned Mine Dischargers, and Instream Monitoring at CAFOs. (See above for full list.)
- 2. Funding Challenges to Implementation of EPA Areas of Focus:** Additional Funding for Tribes to implement OECA focus areas; as federal funding for state environmental programs declines, a state requests that EPA adjust expectations to meet current state resources or increase resources to match expectations.
- 3. Safe Drinking Water Act (SDWA) and Maintaining Current Focus:** Support for continuing the Safe Drinking Water Act (SDWA) enforcement approach, including use of the Enforcement Targeting Tool (ETT). Probably appropriate to strengthen oversight of state performance, but want emphasis on providing adequate guidance first.
- 4. Strengthening State Performance and Oversight/State Review Framework:** Requests that EPA clearly articulate expectations for state program performance and evaluate the states in a fair, consistent, and equitable manner; work with states to accurately interpret SRF data to be used for future planning. States ask EPA to use the SRF only for its intended purpose of ensuring fair and consistent enforcement and compliance across the country, and state their belief in the value of on-going collaboration.
- 5. Compliance Monitoring Strategies (CMSs) and Use of Alternative CMSs (ACMSs):** Requests that EPA continue to streamline the process for states to gain approval of ACMS plans that include allowances for different inspection frequencies and alternative monitoring approaches and to explicitly recognize in the NPMG opportunities for states to use ACMSs.
- 6. Improving Agency Collaboration/Coordination with States:** Ensuring more productive working relationships with co-regulators should be overarching theme of the NPM Guidance; support state initiatives and work collaboratively on joint initiatives.

- 7. Next Generation Compliance/E-reporting/Innovative Targeting Approaches:** Request for more recognition of opportunities for collaboration between EPA and states to develop and use innovative compliance monitoring and enforcement approaches related to Next Generation Compliance; essential that states have a clear understanding of e-reporting process development and implementation before it is made a requirement; ensure that states have the resources to implement innovations and utilize new tools.
- 8. Environmental Justice (EJ)/EJ 2020 Action Agenda:** States and EPA should consider a suite of possible approaches for small disadvantaged communities (beyond enforcement) such as low cost loans and grants to upgrade infrastructure, technical assistant to operate and maintain existing facilities, and consider partnerships with surrounding communities. EJ issues are of great concern to the Native American community.
- 9. EPA's Enforcement and Compliance History Online (ECHO):** Important that EPA offices such as the Office of Air and Radiation and Office of Water work closely with OECA and states to ensure information from other EPA and state reporting systems is displayed appropriately and accurately in ECHO; concern expressed about the use of the ECHO data tool considering its history of data errors.
- 10. Civil Enforcement/Cases and Penalty Concerns:** Need for a cooperative and collaborative approach in which EPA and states work together to adopt the most appropriate actions for enforcement cases. Revise Clean Air Act civil penalties guidelines in several ways, including providing states with a specific framework for protocols regarding emissions and pollution penalties.
- 11. National Enforcement Initiatives (NEIs):** EPA should consider a 4-year period for the next cycle of NEIs to better accommodate the two-year cycle of the NPM Guidance.
- 12. NPM Guidance Format/Structure and Provisions for Flexibility:** EPA should include language in the NPM Guidance that takes into account resource constraints and promotes further flexibility; NPM Guidance structure should place more emphasis on state projects that apply to more than one environmental statute/media.
- 13. TSCA/FIFRA Regulated Chemicals/Products and EPA Enforcement and Compliance Monitoring:** Request for more information about TSCA regulated chemicals, exposure for Tribal members and EPA compliance monitoring; concern expressed regarding excluded manufacturing processes and PCB products; emerging public health pesticide issues as a result of false, misleading, and unsupported labeling claims on products, especially including 25(b) products, must be pursued by the Agency.
- 14. RCRA Subtitle C Program:** Request that EPA develop a tool for states and hazardous waste generators to look up "verified" recyclers/reclamation facilities.
- 15. Consistency in State Water Quality Standards:** EPA should continually update standards to improve water quality and guarantee that state standards are consistent.

Next Steps:

OECA and the EPA regions will consider the early input received from states, tribes and state and tribal associations prior to developing the FY 2018-2019 NPM Guidance. OECA's compilation of early input comments received from states, tribes and associations for the draft FY 2018-2019 NPM Guidance are available upon request.