



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

JUN 7 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: FY2020–FY2023 National Compliance Initiatives

FROM: Susan Parker Bodine

A handwritten signature in blue ink that reads "Susan Parker Bodine".

TO: Regional Administrators

I am writing to let you know that for FY2020–FY2023, the national enforcement and compliance assurance program will be focusing on seven priority areas. We have selected six of these areas as National Compliance Initiatives (NCIs) for which the enforcement program will have the lead for the Agency. For the seventh priority area, the enforcement program will be contributing to but not leading the Agency's goal of reducing childhood lead exposures and associated health impacts. Identifying specific problems as national priorities helps the Agency focus enforcement and compliance assurance resources where they can be most impactful. I want to thank your Regional Enforcement and Compliance Assurance Division (ECAD) Directors and Regional Counsels for their assistance in making these selections.

The selection of the NCIs is the culmination of a process that began with my August 21, 2018, memorandum, which announced the transition of the National Enforcement Initiatives to National Compliance Initiatives. In that memorandum, I committed to aligning the NCIs with the FY2018–FY2022 Agency Strategic Plan, providing states and tribes with additional opportunities for meaningful engagement, and enhancing the use of our full range of compliance assurance tools. Today's announcement fulfills those commitments.

These NCIs advance the Agency Strategic Plan's objectives to improve air quality, provide for clean and safe water, ensure chemical safety, and improve compliance with our nation's environmental laws while enhancing shared accountability between the EPA and states and tribes with authorized environmental programs. We conducted outreach to states and tribes and solicited public input through a Federal Register notice. *See* 84 Fed. Reg. 2848 (Feb. 8, 2019). We modified several of the proposals based on the input we received. In addition, OECA headquarters and regions will be developing implementation frameworks for each NCI and working with states and tribes with authorized programs that want to participate. These implementation frameworks will include approaches using our full range of compliance assurance tools, including compliance assistance, self-audits, and informal and formal enforcement actions to achieve the goals of each NCI. While compliance assistance will be a component of each implementation framework, formal enforcement will remain an important tool in the NCIs to address serious noncompliance and create general deterrence.

IMPROVING AIR QUALITY

1. **Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources (modified from prior cycle)**

OECA is selecting an NCI on *Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources (CCAC)*. This NCI will focus on reducing emissions of both volatile organic compounds (VOCs) and hazardous air pollutants (HAPs). For VOC emissions, the NCI will focus on significant sources of VOCs that have a substantial impact on air quality and: (1) may adversely affect an area's attainment of National Ambient Air Quality Standards (NAAQS); or (2) may adversely affect vulnerable populations. For HAPs, this NCI will focus on sources that have a significant impact on air quality and health in communities, consistent with the existing NCI on *Cutting Hazardous Air Pollutants*. In the NCI Federal Register notice, OECA proposed to continue the existing initiative on *Cutting Hazardous Air Pollutants*. OECA also proposed replacing the *Ensuring Energy Extraction Activities Comply with Environmental Laws* initiative with one that focuses on significant sources of VOCs that have a substantial impact on air quality and that may adversely affect vulnerable populations or an area's attainment status. The Agency also suggested that the VOC and HAP initiatives could be merged. That is what we have now done.

People living in non-attainment areas or in communities that are near sources of HAPs may face significant risks to their health and environment. This initiative will focus on significant sources of VOCs contributing to non-attainment with the NAAQS or that may adversely affect the attainment status of an area. VOCs are a key component in the formation of ground-level ozone (a constituent of photochemical smog) and secondary organic aerosols, both of which may impact ecosystems and can cause adverse health effects like respiratory ailments. Many individual VOCs also are known to be harmful to human health. This initiative will also focus on HAPs, which are pollutants that are known or suspected to cause cancer or other serious health effects. In some instances, small amounts of these chemicals inhaled or ingested can cause serious illness. There are over 180 chemicals that the EPA has identified as HAPs, including mercury, benzene, dioxin, and lead compounds.

By focusing on VOCs and HAPs, this NCI will address the adverse health and environmental effects from exceedances of the NAAQS to which sources of VOCs contribute, as well as VOC- and HAP-related health impacts on communities.

2. **Reducing Hazardous Air Emissions from Hazardous Waste Facilities (continued from prior cycle)**

This NCI is being selected to continue in the next cycle. In the NCI Federal Register notice, we proposed to continue this initiative for another cycle. The Agency has found that air emission violations associated with the improper management of hazardous waste remains widespread.

The Resource Conservation and Recovery Act requires effective control and monitoring of organic air emissions from Treatment, Storage, and Disposal Facilities (TSDFs) and Large Quantity Generators (LQGs). Releases from hazardous waste facilities can include releases of constituents known or suspected to cause cancer or birth defects. In addition, leaks from these facilities can contribute to non-attainment with the NAAQS. After initiating this NCI in the last cycle, inspections revealed significant noncompliance and an ongoing need for additional training for both industry and regulators.

This NCI will focus on improving compliance by hazardous waste TSDFs and LQGs with regulations that control organic air emissions from certain hazardous waste management activities. The prior cycle revealed widespread noncompliance related to leaking or open pressure relief valves and tank closure devices, monitoring, recordkeeping, and numerous other requirements.

3. Stopping Aftermarket Defeat Devices for Vehicles and Engines (new)

OECA is selecting *Stopping Aftermarket Defeat Devices for Vehicles and Engines* as a new NCI for the next cycle. In the NCI Federal Register notice, we invited the public to propose areas for consideration as NCIs. Some commenters strongly recommended an initiative focused on mobile sources of air pollution. They stressed that mobile sources are a significant contributor to air pollution and that the EPA, through its direct implementation authority, can play a critical role in addressing these important pollutant sources.

Title II of the Clean Air Act (CAA) authorizes the EPA to set standards applicable to emissions from a variety of vehicles and engines. Required emission controls often include filters and catalysts installed in the vehicle's or engine's exhaust system, as well as calibrations that manage fueling strategy and other operations in the engine itself. The CAA prohibits tampering with emissions controls, as well as manufacturing, selling, and installing aftermarket devices intended to defeat those controls. The EPA has found numerous companies and individuals that have manufactured and sold both hardware and software specifically designed to defeat required emissions controls on vehicles and engines used on public roads as well as on nonroad vehicles and engines. Illegally-modified vehicles and engines contribute substantial excess pollution that harms public health and impedes efforts by the EPA, tribes, states, and local agencies to plan for and attain air quality standards.

This NCI will focus on stopping the manufacture, sale, and installation of these defeat devices.

ENSURING CLEAN AND SAFE WATER

4. Reducing Significant Noncompliance with National Pollutant Discharge Elimination System Permits (modified from prior cycle)

OECA is selecting *Reducing Significant Noncompliance with National Pollutant Discharge Elimination System (NPDES) Permits* as an NCI that incorporates the existing *Industrial Pollutants* NCI and focuses on increasing the percentage of all NPDES permittees in compliance with their permit (as measured by reducing the rate of permittees in significant noncompliance (SNC)). In the prior cycle, we implemented *Keeping Industrial Pollutants Out of the Nation's Waters*. In the NCI Federal Register notice, the Agency sought comments on modifying this initiative to focus on all facilities in significant noncompliance with their Clean Water Act NPDES permits.

Compliance with NPDES permits is critical to protecting our nation's waters. There are approximately 40,000 major and minor individually NPDES-permitted facilities in the country. Over 29 percent of these facilities are currently in significant noncompliance with their permits. Violations range from failure to submit reports, which can mask serious deficiencies, to significant exceedances of effluent limits, which can cause harm to human health and the environment. In FY2018, the approximately 11,000 permittees that had SNC-level effluent violations discharged almost four billion pounds of pollutants above their permitted limits.

This effort furthers the FY2018–FY2022 Agency Strategic Plan, which calls for measurable efforts to increase the environmental law compliance rate. The goal is to reduce by half the national SNC baseline rate of 29.4 percent by the end of FY2022, while assuring that the worst SNC violators are timely and appropriately addressed. The NCI will focus on all facilities in significant noncompliance with their permits, not just industrial contributors. The NCI will help improve national data accuracy and reduce monitoring, reporting, and effluent violations.

5. Reducing Noncompliance with Drinking Water Standards at Community Water Systems (new)

OECA is selecting *Reducing Noncompliance with Drinking Water Standards at Community Water Systems* as a new NCI for the next cycle. In the NCI Federal Register notice, we sought input on selecting an NCI to increase compliance with drinking water standards. Numerous commenters supported this concept with varying suggestions on the scope of the effort.

There are approximately 50,000 regulated drinking water systems that serve water to the same people year-round, referred to as Community Water Systems (CWSs). In FY2018, 40 percent of the nation's CWSs violated at least one drinking water standard. In addition, there were monitoring and reporting violations at more than 30 percent of CWSs, and health-based violations at seven percent of CWSs.

This effort supports the FY2018–FY2022 Agency Strategic Plan, which calls for a 25 percent reduction by the end of FY2022 in the number of CWSs that are out of compliance with health-based standards. An initial focus of this NCI is to work with the EPA's Office of Water to increase capacity in states, tribes, and the EPA to address drinking water violations.

REDUCING RISK FROM HAZARDOUS CHEMICALS

6. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (continued from prior cycle)

OECA is selecting *Reducing Risks of Accidental Releases at Industrial and Chemical Facilities* as an NCI to continue in the next cycle. This NCI was introduced in the last cycle and the NCI Federal Register notice proposed to extend this NCI. We found that many regulated facilities are neither managing adequately the risks they pose nor ensuring the safety of their facilities to protect surrounding communities as required under CAA Section 112(r).

Thousands of facilities nationwide, many of which are in environmental justice communities, make, use, and store extremely hazardous substances. Catastrophic accidents at these facilities—historically about 150 each year—can result in fatalities and serious injuries, evacuations, and other harm to human health and the environment. These facilities are regulated under CAA Section 112(r) through the chemical accident prevention regulations, also known as the Risk Management Program. The regulations apply to stationary sources that have a listed chemical in a process at or above an established threshold quantity. A broader statutory obligation under the CAA Section 112(r) General Duty Clause (GDC) applies to all stationary sources with regulated substances or other extremely hazardous substances, regardless of the quantity of chemical involved. The GDC requires facilities to identify hazards that may result from accidental releases by using appropriate hazard assessment techniques, design and maintain a safe facility, take such steps as are necessary to prevent releases, and minimize the consequences of those accidental releases that do occur.

The goal of this NCI is to reduce the risk to human health and the environment by decreasing the likelihood of chemical accidents. Facilities regulated under CAA Section 112(r) are found in every state.

LEAD ACTION PLAN

In the NCI Federal Register notice, we sought input on selecting an NCI to address children's exposure to lead. Several commenters supported that idea. We agree that reducing lead exposure is a high priority. However, rather than develop a separate, enforcement program-led NCI, we believe it is more appropriate to participate in the Agency-wide lead initiative. The President's Task Force on Environmental Health Risks and Safety Risks to Children released its Lead Action Plan in December

2018. The enforcement and compliance assurance program will contribute to the Agency's overall efforts to address lead exposure as outlined in the Lead Action Plan. These Agency-wide efforts may include: (1) increasing compliance with—and awareness of the importance of—lead-safe renovations under the Renovation, Repair, and Painting rule; (2) developing a mapping tool to identify communities with elevated lead exposures; (3) conducting targeted geographic initiatives; and (4) undertaking public awareness campaigns on lead issues.

REGIONAL COORDINATION AND IMPLEMENTATION

The NCIs were selected in coordination with the regions, including discussions with the ECAD Directors. Regions will continue to participate in the development and implementation of strategies as we move forward with these NCIs. For example, a regional representative will help lead each of the six NCI Strategy Implementation Teams and a regional senior manager will serve as a member of the NCI Executive Board.

The regions also perform key functions in allocating resources among competing priorities and ensuring meaningful engagement with states and tribes. The regions will be submitting Regional Strategic Plans for FY2020 on August 1, 2019. These documents will outline each region's plan for resource investment, including the level of investment anticipated for each of the NCIs. I look forward to discussing those Regional Strategic Plans with regional leadership in the fall.

STATE AND TRIBAL COORDINATION

These NCIs include programs for which many states are authorized as well as programs for which the EPA has direct implementation responsibilities. The EPA and the states should discuss work-sharing and how to make the best collective use of EPA and state resources and expertise to achieve the goals of the NCIs, consistent with the January 22, 2018, *Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States*, or successor guidance. Currently, the EPA has direct implementation authority in Indian country for almost all these NCIs. Where the EPA has direct implementation authority for enforcement in Indian country, we will follow the Agency's 1984 and 2001 Indian Policy and OECA's Tribal Enforcement Guidance as we implement these NCIs.

Thank you for your attention to these important activities. If you or your staff have any questions, please contact our NCI Executive Board members: Rosemarie Kelley, Director of the Office of Civil Enforcement, David Hindin, Director of the Office of Compliance, and Dave Cozad, Region 7 Regional Counsel.

cc: Regional Counsels
ECAD Directors
NCI Executive Board