



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2018-0843; FRL-9988-78-OECA]

Public Comment on EPA's National Compliance Initiatives for Fiscal Years 2020-2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on the National Compliance Initiatives (NCIs) to be undertaken in fiscal years 2020-2023. The EPA focuses enforcement and compliance resources on the most serious environmental violations by developing and implementing national program priorities, previously called National Enforcement Initiatives. The NCIs currently underway, as well as potential modifications to these NCIs under consideration, are described in the

SUPPLEMENTARY INFORMATION section of this document, with additional descriptions and data on the current NCIs available on our website:

<http://www.epa.gov/enforcement/national-compliance-initiatives>.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OECA-2018-0843; to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional

information on the notice process, see the “Written Comments” heading of the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Michele McKeever, Chief, National Planning and Measures Branch, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-3688; fax number: 202-564-0027; email address: mckeever.michele@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to the EPA.

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I. Written Comments.

Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2018-0843; at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What Are EPA's National Compliance Initiatives?

The EPA is soliciting public comment and recommendations on the NCIs to be undertaken by EPA over the four-year period of fiscal years 2020-2023. This notice is an agency planning document and does not impose any legally binding requirements on any outside parties.

The EPA focuses enforcement and compliance resources on the most serious environmental violations by developing and implementing national enforcement and compliance program priorities, previously called National Enforcement Initiatives (NEIs). As part of EPA's ongoing efforts to increase the environmental law compliance rate and reduce the average time from violation identification to correction, EPA recently has adjusted and renamed the NEIs program to the NCIs program to better convey the overarching goal of increased compliance and the use of not only enforcement actions, but the full range of compliance assurance tools. These tools include helping regulated entities understand their compliance obligations, helping facilities return to compliance through informal actions, building state capacity, supporting state actions, bringing Federal civil administrative actions, and bringing Federal civil or criminal judicial enforcement actions.

III. On What Is the EPA Requesting Comment?

The EPA's Office of Enforcement and Compliance Assurance is collecting comment on

which of the current national initiatives should continue, be modified, or returned to the standard (“core”) enforcement program. Current initiatives may be carried forward into the FY 2020-2023 NCI cycle, as is or modified, or an NCI may be concluded at the end of FY 2019. The public also is invited to propose other areas for consideration as an NCI, keeping in mind resource constraints.

For this upcoming NCI cycle, the EPA has provided new opportunities for early and meaningful input from the states and federally-recognized Indian tribes regarding the identification and development of the NCIs. In Fall 2018, EPA Regional offices solicited input from the states and federally-recognized Indian tribes. The EPA also reached out to a number of state and tribal associations for early input into the NCI program. EPA looks forward to considering the state and tribal input on the current initiatives – such as whether to continue, modify, or conclude them – as well as suggestions for new NCIs. The EPA welcomes active state and tribal participation in implementing the NCI if the state or tribe is authorized for the particular program.

IV. What Are the Current FY 2017-2019 National Compliance Initiatives?

The U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assurance, has seven initiatives underway from the FY 2017-2019 cycle (with modified implementation in FY 2019, described below).¹ These initiatives are:

1. Cutting Hazardous Air Pollutants (HAPs)
2. Reducing Toxic Air Emissions from Hazardous Waste Facilities
3. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities

¹ There were originally eight initiatives in the FY 2017-2019 cycle. The initiative to “Prevent Animal Waste from Contaminating Surface and Ground Water” was moved to the core program by the EPA Memorandum, “Transition from National Enforcement Initiatives to National Compliance Initiatives,” August 21, 2018.

4. Keeping Industrial Pollutants Out of the Nation's Waters
5. Ensuring Energy Extraction Activities Comply with Environmental Laws
6. Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters
7. Reducing Air Pollution from the Largest Sources

Additional descriptions and data on these initiatives are available online at:

<http://www.epa.gov/enforcement/national-compliance-initiatives>.

V. What Are the Potential Initiatives Under Consideration for FY 2020-2023?

For the seven active initiatives from the FY 2017-2019 cycle, EPA is soliciting input on whether we should continue, modify, or conclude the initiative and return it to the “core” or standard enforcement program. For all initiatives, EPA intends to focus on environmental and public health risks, not specific industry sectors.

A. Extensions of Initiatives

The EPA is seeking comment on plans to extend the following three current initiatives into the FY 2020-2023 cycle:

Cutting Hazardous Air Pollutants. Leaks, flares, and excess emissions from refineries, chemical plants and other industries emit hazardous air pollutants (HAPs), or air toxics, that are known or suspected to cause cancer, birth defects, and seriously impact the environment. Recent monitoring shows that facilities still often emit more HAP emissions than they actually report. Leaking equipment and improperly operated flares remain some of the largest sources of HAP emissions from petroleum refineries and chemical manufacturing facilities. Improper operation of an industrial flare can result in hundreds of tons of excess HAP emissions. The EPA has worked to identify and address illegal and excess emissions of toxic air pollutants from leaks and flares at facilities that have a significant impact on air quality and health in communities since

this initiative began in 2004. The Agency believes that continuing this NCI will help to achieve EPA Strategic Plan objectives of addressing vulnerable populations, addressing Clean Air Act (CAA) non-attainment areas. The Agency also believes that EPA expertise will help improve compliance and facilitate a timely return to compliance where noncompliance is found.

Reducing Toxic Air Emissions from Hazardous Waste Facilities. EPA has found that air emission violations associated with the improper management of hazardous waste remain widespread. The Resource Conservation and Recovery Act requires effective monitoring to identify and repair leaks from certain hazardous waste storage tanks, containers, pipes, valves, and other equipment. Releases from hazardous waste facilities can include releases of constituents known or suspected to cause cancer, birth defects, or that seriously impact the environment. The Agency began this initiative in 2017 and believes that continuing this initiative will help to achieve EPA Strategic Plan objectives of addressing vulnerable populations and reducing non-attainment areas. The Agency also believes that its expertise will help improve compliance rates and facilitate a timely return to compliance where noncompliance is found. Accordingly, we plan to continue our work, including efforts to build state capacity in this program.

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities. Thousands of facilities nationwide, many of which are in low income or minority 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 harm to human health and the environment. EPA regulates these facilities under section 112(r) of the CAA and through the Chemical Accident Prevention regulations, also known as the Risk Management Program (RMP). 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 CAA section 112(r)(1), the General Duty Clause (GDC), applies to all stationary sources with regulated substances or other extremely hazardous substances, regardless of the quantity of chemical involved. This has been an NCI since 2016, and EPA has found that many regulated facilities are not adequately managing the risks they pose or ensuring the safety of their facilities to protect surrounding communities. Therefore, the EPA plans to continue this NCI with a focus on the most serious situations of non-compliance and attention to the EPA Strategic Plan objective of addressing vulnerable populations. The Agency believes that its expertise will help improve compliance rates and facilitate a timely return to compliance where noncompliance is found. The EPA also plans to enhance the use of compliance assistance and expedited settlement agreements to address smaller sources.

B. Modifications of Initiatives

The EPA is seeking comment on plans to transition two current initiatives into new initiatives for FY 2020-2023. A brief description of the proposed changes is provided below. Transitioning “Keeping Industrial Pollutants Out of the Nation’s Waters” NCI to “National Pollutant Discharge Elimination System (NPDES) Significant Non-Compliance (SNC) Reduction”: In FY 2018, the EPA initiated a new NCI focused on achieving the goal established in EPA’s FY 2018-2022 Strategic Plan: “By September 30, 2022, increase the environmental law compliance rate.” As described in the Strategic Plan, this concept is first being piloted by focusing, through the new NCI, on reducing the rate of significant noncompliance in the Clean Water Act (CWA) NPDES program by 50 percent by the end of FY 2022. The NCI has incorporated the existing “Industrial Pollutants” NCI with a broader focus of increasing the percentage of all NPDES permittees in compliance with their permit (as measured by reducing

the rate of permittees in SNC). This effort could establish a model for improving environmental program compliance rates that could be used in other programs. EPA is seeking comment on how to best pursue and achieve this goal of reducing NPDES SNC in the FY 2020-2023 NCI cycle.

Transitioning the “Ensuring Energy Extraction Activities Comply with Environmental Laws”:

Beginning in 2011, this initiative focused on one industrial sector, natural gas extraction, implying that the EPA considers all problems in this sector - large or small - to be a priority. Rather than focus on any single sector, the EPA proposes to focus on significant public health and environmental problems without regard to sector. Specifically, for the FY 2020-2023 NCI cycle the EPA is proposing to transition this NCI to an initiative that will focus on significant sources of volatile organic compounds (VOCs) that have a substantial impact on air quality (without regard to sector), and that may adversely affect vulnerable populations or an area’s CAA attainment status. We also will evaluate the idea of merging this work into the “Cutting Hazardous Air Pollutants” NCI.

C. Return of Initiatives to the Core Program

The EPA expects to return the following two current initiatives to the standard “core” enforcement program having largely achieved EPA’s goals for these NCIs:

Reducing Air Pollution from the Largest Sources. The New Source Review (NSR) and Prevention of Significant Deterioration (PSD) requirements of the CAA require certain large industrial facilities to install state-of-the-art air pollution controls when they build new facilities or make significant modifications to existing facilities. The EPA began this initiative as it relates to the power sector in 1998, after EPA investigations revealed that many facilities had failed to install pollution controls after modifications, causing them to emit pollutants that can impact air

quality and public health. The EPA and state regulatory approaches and enforcement efforts in this sector have resulted in a 90 percent reduction in sulfur dioxide emissions and an 83 percent reduction in nitrogen oxide emissions since 1997, while gross generation has increased by 10 percent. The EPA has required controls or commenced investigations at 91 percent, 96 percent, and 90 percent of facilities in the glass, cement, and acid manufacturing sectors, respectively. Accordingly, the Agency believes that this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide. The EPA proposes to return work in these areas to the core program in FY 2020. EPA will continue to monitor the progress of existing settlement agreements to ensure actions required under those settlements are implemented and air pollution reduction targets are met.

Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters. Since this NCI began in 2000, the EPA, in conjunction with state co-plaintiffs, has taken enforcement actions at the largest municipal sewer systems with CWA violations to reduce pollution and to reduce unlawful discharges of raw sewage that degrade water quality in communities. The EPA has obtained significant improvement in compliance and major reductions in water pollution. Under this initiative, 97 percent of large combined sewer systems, 92 percent of large sanitary sewer systems and 79 percent of Phase 1 municipal separate stormwater systems are now either in compliance or are on an agreed-upon schedule to come into compliance. Accordingly, the Agency believes that this NCI no longer presents a significant opportunity to correct water quality impairment nationwide. The EPA proposes to return work in this area to the core program in FY 2020. EPA and states will continue to monitor implementation of these long-term agreements, and to adapt them to changing circumstances and new information, such as the increasing commitment of cities to implement green infrastructure, changes in financial

capability, or technological advances.

D. New NCIs

The EPA specifically invites comment on two new NCIs under consideration:

- a. NCI to increase compliance with drinking water standards. Each year thousands of community water systems (CWSs) violate one or more health-based drinking water standards promulgated under the Safe Drinking Water Act (SDWA), which exposes millions of people to potential health risks. Thousands more CWSs repeatedly fail to collect water samples or report test results making difficult to know if the drinking water is safe. CWSs exceeding action levels or other regulatory triggers may not complete required follow-up actions. In addition to these known violations, significant deficiencies in the design, operation or maintenance of the CWS may go unreported and uncorrected. Recent events at a few large CWSs indicate that current practices and use of existing data, tools, and policies have not always proved sufficient to prevent CWSs from moving toward serious noncompliance that may threaten human health. This potential NCI would focus on EPA working jointly with states to identify how we can collaborate to use our resources more effectively and efficiently to focus efforts where they can make the biggest difference as we work together to increase compliance with primary drinking water standards thus improving public health protection at CWSs most at risk. This NCI would support the Agency's Strategic Plan objective to reduce the number of community water systems out of compliance with health-based standards.
- b. NCI to reduce children's exposure to lead. A potential lead NCI would support

various agency efforts to tackle lead contamination in all environmental media and could present an opportunity to use consumer education to increase compliance. This NCI would support the Agency's Strategic Plan focus on vulnerable populations, as well as the interagency Federal Lead Action Plan.

Finally, the public is invited to propose any other areas for consideration as new NCIs.

E. Public Comments

The EPA will consider all comments to these proposals as it moves forward in the decision-making process. NCIs will be incorporated into the EPA Office of Enforcement and Compliance Assurance FY 2020 - 2021 National Program Guidance (NPG) that provides national program direction for all EPA regional offices. Information in support of this Notice of Public Comment is available online at: <http://www.epa.gov/enforcement/national-compliance-initiatives>

VI. Can the Deadline for Comments Be Extended?

The EPA will include NCIs in the Office of Enforcement and Compliance Assurance (OECA) draft NPG that will be released for public comment to allow the EPA regions, as well as states and federally-recognized tribes with approved programs, to consider the guidance fully in their annual planning processes that direct the use of resources according to the fiscal calendar. As a result, EPA must receive public comments on potential NCIs by **[Insert date 30 days after date of publication in the Federal Register]** in order to complete consideration of NCIs before the NPG is released for public comment. However, the public will have a second opportunity to provide comments on the NCIs when commenting on OECA's draft NPG.

Dated: December 20, 2018.

Susan Parker Bodine,

Assistant Administrator,

Office of Enforcement and Compliance Assurance.

[FR Doc. 2019-01548 Filed: 2/7/2019 8:45 am; Publication Date: 2/8/2019]