



Environmental Council of the States

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September 24, 2020

U.S. Environmental Protection Agency
Office of Enforcement Compliance and Assistance
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Re: Early Engagement on FY 2022 – FY 2023 National Program Guidance

To the Office of Enforcement and Compliance Assurance,

ECOS members appreciate the opportunity to provide early input on the OECA FY 2022 – FY 2023 National Program Guidance (NPG). EPA's efforts to engage with states in enhancing planning and communication in enforcement and compliance assurance work will lead to improvements in our collective ability to protect human health and the environment.

In recent discussions with EPA senior leadership and with Office of Management and Budget, ECOS has identified four priority issues: adequate funding, flexibility, E-Enterprise for the Environment, and technology infrastructure. These priorities will be reflected in much of the input we provide for your consideration in developing the NPG.

Federal funding makes up about 27% of average state environmental agency budgets, and overall STAG funding has been flat for 18 years. Budget impacts from the COVID-19 pandemic stand to impose further challenges. Adequate federal funding and flexibility in the use of funds and in program implementation will be important to continued success in delivering results.

Joint governance under E-Enterprise for the Environment is a key tool for driving program modernization and coordinating needed investments in information systems. Support for technology infrastructure and the latitude for state pilot projects will accelerate the adoption of new more efficient tools to meet our shared goals.

What other priorities or areas of focus, beyond the EPA Strategic Plan priorities and NCIs, should OECA identify in the FY 2022 – FY 2023 National Program Guidance and why?

ECOS supports the new National Compliance Initiative (NCI) framework, which better reflects all efforts to improve compliance, as well as the four-year cycle, which is consistent with EPA's Strategic Plan.

A suggested additional area of focus for the up-coming national program guidance is to emphasize compliance efforts in environmental justice and low-income communities. While the NCIs are holistic in that they select NCIs in each media program, they are managed separately without consideration of the number of cross media considerations that have cumulative impacts on communities.

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Many states are working to address PFAS contamination. States are aware of and excited to use OECA's PFAS Analytic Tool and as EPA's offices move forward with the PFAS Action Plan, OECA will have the opportunity to be more involved with states in PFAS efforts (e.g. enforcing action levels based on the regulatory determination for PFOA/PFAS; action on PFAS under CRCLA, RCRA).

What assistance do state, territory, local, and tribal co-regulators need from EPA to accomplish the shared compliance and enforcement goals and priorities in EPA's Strategic Plan and NCIs?

Adequate federal funding and flexibility are the primary types of assistance that EPA can provide to states to accomplish our shared goals. For instance, when working to reduce Significant Non-Compliance (SNC) with NPDES permits, states often face problems with POTW's in small communities that are unable to afford the expensive upgrades needed to return to compliance. Additional funding and support for innovative technologies in these communities is required to achieve this goal.

States also urge continued investment in data systems to improve the interoperability between state and federal databases. Better integration of the data systems can improve reporting and reduce the number of SNC listings that are the result of inaccurate data. EPA should afford the opportunity for states to work with regions to gather information on how states currently track timelines for violations and how that data can be used to track changes in trends and reported to EPA.

States are working to use new tools to be as efficient as possible with limited staff and resources. States appreciate EPA's partnership with ECOS to pilot the use of remote video tools for compliance evaluations. Where shown to be effective, these evaluations can be a resource multiplier that can expand our compliance monitoring coverage. Technical and legal guidance for the use of drones, as well as the ability to employ grant funding for their use, is another opportunity to bring new tools to bear in pursuit of improved compliance.

States also support EPA's efforts to build on existing training programs and provide training that can be completed virtually. Resources such as the industry sector notebooks used by state solid waste offices provide for more comprehensive inspections and assistance with pursuing enforcement cases. Updates to these resources, including summaries of established industry standards in the case of the sector notebooks, help ensure inspectors are equipped with the current information needed to pursue cases in the fullest.

Effective consultation and coordination with the states, consistent with Assistant Administrator Susan Bodine's [July 11, 2019 memorandum](#), when federal inspections or enforcement actions are planned, will assure the best use of limited compliance resources, minimize friction, and reduce duplication of effort. States encourage EPA to involve states as partners in rulemaking rather than just stakeholders. Additionally, EPA could assist the states by facilitating coordination in compliance actions that involve multiple federal agencies. For instance, ensuring or accelerating the completion of criminal cases referred to the U.S. Department of Justice or U.S. Attorney.

What are additional ways we should measure our effectiveness or define success?

States feel that the current measures might be improved by creating a stronger tie between the measures and the NCI's, and a better focus on environmental outcomes rather than the number of inspections/evaluations.

Measures should provide attributes for calculating the average time of violation identification to correction, acknowledging that return to compliance dates can change as a case progresses from an inspection to a penalty action. EPA should clarify between violations and cases.

Measures that track compliance rates should take into account that new rules and changes to existing rules will affect the overall trend of compliance rates as agencies and regulated entities adjust.

Additional possible metrics:

- Improved compliance in environmental justice communities.
- Support given to state programs, such as the investment in information technology systems.
- Amount of time to completion of federal inspections.
- Measure of SNC reduction by formal enforcement action, informal action, or data cleanup.
- Number of facilities that return to compliance one year after a non-compliance inspection.
- Number of facilities that remain in compliance for three years or more years after the initial return to compliance.

Do states, tribes and associations have any other comments on the existing [FY 2020-2021 Office of Enforcement and Compliance Assurance \(OECA\) National Program Guidance](#) for OECA to consider when drafting revisions for FY 2022 – FY 2023?

Many states have concerns about additional federal inspections and enforcement in the drinking water program. The provision of technical, managerial, and financial training will likely result in greater improvement in compliance than an added layer of enforcement. The measure of inspections conducted in authorized states may add little to actual improvements in compliance, while creating the impression of deficiency in the state program. Additional federal inspections and enforcement may be warranted where deficiencies exist, but may be unnecessary where they do not. The metric currently used does not distinguish between the two.

EPA should continue to leverage ongoing work through the state capacity development programs, which take proactive and preventative actions to reduce or prevent non-compliance. Encouraging partnerships and consolidation are a way states can work to reduce non-compliance and are proactive measures to prevent non-compliance. EPA should continue to promote water system partnerships and develop tools for water systems and states to increase the implementation of partnerships and consolidation.

States encourage EPA to continue to expand the area-wide optimization program (AWOP's) scope and restore the funding of EPA staff and contractors to help facilitate the development of new AWOP tools at the national level.

It would be helpful if EPA could identify, collect, and publish to states where alternative compliance monitoring strategies (ACMS) are in use, in what media, and what is included in the ACMS. This would

allow other states to be aware of where EPA has approved various approaches and the number of states pursuing such in air, water, and waste programs.

States often use different terminology for letters to companies with violations, such as Notice of Violation, or Notice of Non-Compliance. EPA might clarify whether such terms are equivalent or create standard definitions for how actions should be entered in EPA databases. Significant variability in what violations states historically reported to EPA has created or misrepresented the baseline metrics and we encourage EPA to complete a re-baselining of state reporting of violations to ensure the strategic measure is accurate and consistent.

Thank you again for the opportunity to provide comments.

A handwritten signature in blue ink that reads "Donald L. Welsh". The signature is written in a cursive, slightly slanted style.

Donald Welsh
ECOS Executive Director