



ECOS

Environmental Council of the States

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Ms. Michele McKeever
Acting Director, Planning, Measuring, & Oversight Division
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OECA-2022-0981

Dear Ms. McKeever:

The Environmental Council of the States (ECOS) is the national nonprofit, nonpartisan association of state and territorial environmental agency leaders. We are pleased to provide the following public comments to the U.S. Environmental Protection Agency (EPA) Office of Enforcement & Compliance Assurance (OECA) on the [National Enforcement & Compliance Initiatives](#) (NECIs) it proposes to undertake in fiscal years (FY) 2024-2027.

ECOS appreciates EPA's efforts to engage with the states as they have worked to develop national program priorities through the newly named NECIs. These nationally consistent NECIs advance EPA's Strategic Plan objective to improve compliance with our nation's environmental laws in partnership with states under authorized, delegated, and primacy (authorized) environmental programs, particularly in overburdened and vulnerable communities. ECOS recognizes that formal enforcement remains a key tool to addressing serious noncompliance, along with complementary efforts including informal enforcement, compliance monitoring, self-audits, compliance assistance tools, and a focus on issues that cross state lines, which are all needed to advance the NECIs.

States, territories (hereafter "states"), and EPA are co-regulators that share the responsibility of protecting human health and the environment. Through authorization, state regulators are responsible for the majority of federal environmental program implementation including inspections and enforcement.

I. EPA has proposed continuing the following four existing initiatives from FY2020-2023 into the FY 2024-2027 cycle.

1. *Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants.* EPA plans to continue this NECI with a focus on processes for which widespread noncompliance continues to be identified: flares, storage tanks, wastewater treatment, and incineration/combustion.
2. *Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.* EPA continues to find that regulated facilities are still not adequately managing risks.
3. *Reducing Significant Non-Compliance in the National Pollutant Discharge Elimination System (NPDES) Program.* EPA plans to continue this initiative for the FY 2024-2027 cycle, after initially focusing on data collection and management concerns. Now, EPA plans a focus on assuring the worst effluent violators are addressed and on reducing the effluent violation component of the SNC rate.
4. *Reducing Non-Compliance with Drinking Water Standards at Community Water Systems.* EPA plans to continue this initiative because while EPA, working with the

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states, has made considerable progress in improving Safe Drinking Water Act (SDWA) compliance, further improvement in compliance is needed.

II. EPA proposes the following two new NECIs:

1. *Mitigating Climate Change*. Through reduction of noncompliance with illegal import, production, use, and sale of HFC and excess emissions from sources within certain industrial sectors, including municipal solid waste landfills and oil and natural gas production facilities, as well as noncompliance with other requirements such as mobile source, fuels, and methane regulations.
2. *Addressing PFAS Contamination*. This measure would initially focus on identifying the extent of PFAS exposures that pose a threat to human health and the environment and pursuing responsible parties for those exposures. Where appropriate, EPA would work with its state partners on this initiative and seek to supplement PFAS enforcement work already performed by many state regulators. To the extent that PFAS cleanup efforts occur under the Comprehensive Environmental Response, Compensation, & Liability Act (CERCLA), EPA will develop a CERCLA enforcement discretion and contribution protection settlement policy regarding PFAS contamination.

III. EPA proposes two potential areas for further consideration for possible NECIs:

1. *Reducing exposure to lead*
2. *Addressing coal combustion residuals*

IV. EPA proposes to return the following two current initiatives to the standard “core” enforcement program:

1. *Reducing Toxic Air Emissions from Hazardous Waste Facilities (also referred to as Reducing Hazardous Air Emissions from Hazardous Waste Facilities)*. This initiative succeeded in significantly raising the visibility and awareness of the Resource Conservation & Recovery Act organic air emissions standards among regulators and the regulated community. EPA will continue efforts to build state capacity in this program.
2. *Stopping Aftermarket Defeat Devices for Vehicles and Engines*.

V. Feedback

1. General
 - If EPA expects states to implement programs in support of these NECIs, OECA’s proposed list of priorities may pose challenges for state agencies already experiencing heavy workload, limited resources, and competing regional priorities. States have commented in the past that a long list of NECIs creates a potentially larger workload burden and dilutes the impact of a focused effort.
 - ECOS underscores the importance of ongoing engagement with the states and proactive outreach to regulated entities affected by the NECIs throughout the NECI process. Continued co-regulator and stakeholder engagement and communication will enable the regulated community to more efficiently reach compliance.
 - States request the opportunity to work alongside EPA to develop plans for – and if appropriate, implement – the NECIs. ECOS can serve as an effective intermediary, providing the venue for discussion and collaboration and maintaining a strong state-federal relationship.

2. Current NECIs

- *Reducing Significant Non-Compliance in the NPDES Program.* While states and EPA have made progress to reduce Discharge Monitoring Report nonreceipts under this initiative, states note that many municipalities may have chronic effluent violations that will require resource investments, as opposed to enforcement actions, which smaller communities may not be able to afford. To move this initiative forward, OECA and states may need to identify creative ways to partner with communities to secure funding or address other challenges.
- *Reducing Noncompliance with Drinking Water Standards at Community Water Systems.* States have expressed concerns regarding some third-party operators of municipal water systems in rural/remote areas that may have overpromised to re-invest savings and underinvested in operation and maintenance, leading to noncompliance and a lack of resources to address the issues. States encourage OECA to work with individual states to review records and specific third-party operators that may work across state boundaries and provide appropriate enforcement resources to protect local communities. ECOS looks forward to EPA's efforts under the Compliance Learning Agenda, which aims to research the root causes of municipal drinking water noncompliance.

3. Proposed NECIs

- In each of the proposed NECIs, states seek clarity on how EPA will promote compliance and enforcement efforts in these areas in the absence of national or state standards.
 - *PFAS Contamination.* States are generally supportive of the CERCLA approach for PFAS cleanups, but some have expressed concerns around the liabilities created for innocent purchasers that take on cleanup efforts. ECOS also encourages EPA to create PFAS-specific programming to address PFAS in the broad waste stream. Proposed measures related to the NECI should be quantified and clearly tied to a regulation. With a lack of regulatory instruments currently in place, EPA should lay out which regulation, which media, and for which populations this measure will apply.

4. NECIs Under Consideration

- *Addressing Coal Combustion Residuals (CCR).* EPA notes that approximately 45% of CCR facilities nationwide are located in seven states (IA, IL, KY, MI, MO, NC, and TX), in four EPA regions. The narrow focus of this initiative, combined with the NECI criteria of national consistency, suggests this topic may be more appropriate for a forum like the ECOS Compliance Committee rather than the NECIs.

5. NECIs Returning to Core Program

- *Stopping Aftermarket Defeat Devices for Vehicles and Engines.* States note that while this initiative is sunseting, it could benefit from additional federal coordination, especially as the initiative relates to device installers rather than manufacturers and marketers. This is not a program area typically addressed at a state level. A recent [EPA Office of the Inspector General Report](#) also highlights that EPA is not on track to meet its metrics on this initiative.

ECOS appreciates the opportunity to provide input on this important initiative and urges EPA to continue its stakeholder engagement as these efforts move forward. ECOS looks forward to partnering with EPA throughout the development of strategies for NECI implementation, including helping to shape the associated methods and metrics for determining interim goals, outcomes, and initiative success.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Grumbles". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ben Grumbles
ECOS Executive Director