

EPA Response to Public Comments Received

June 11, 2019

Approach to EPA Responses

The National Compliance Initiatives selected for fiscal years 2020-2023 advance the Agency's Strategic Plan 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. EPA conducted outreach to states and tribes and solicited public input through a Federal Register notice. [See 84 Fed. Reg. 2848 (Feb. 8, 2019)]. EPA modified several of the proposals based on the input we received. Most commenters supported the Agency's proposal to shift from a three-year to a four-year NCI cycle to better align with the Agency's Strategic Plan and the increased emphasis on collaboration with states and tribes. Several commenters specifically highlighted and supported the transition from National *Enforcement* Initiatives to National *Compliance* Initiatives (NCIs) (as described in this memorandum from the EPA Assistant Administrator for Enforcement), including the recognition that there are many tools which can be used to address non-compliance, including training, education and outreach.

Public Comments and EPA Responses

Initiative(s)	Proposed Action	Comment(s) Summary	EPA Response
<i>Reducing Air Pollution from the Largest Sources and Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters</i>	Return to core	In the draft proposal, the Office of Enforcement and Compliance Assurance (OECA) proposed that two existing NCIs be returned to the core or standard enforcement program: <i>Reducing Air Pollution from the Largest Sources and Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters</i> . Some commenters supported this transition while others suggested they should continue as NCIs.	Both programs have been NCIs for several cycles. EPA, in conjunction with state partners, has addressed a significant percentage of the facilities in non-compliance. 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 electricity generation has increased by 10 percent. The EPA has required controls or commenced air compliance investigations at 91 percent, 96 percent, and 90 percent of facilities in the glass, cement, and

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			<p>acid manufacturing sectors, respectively.</p> <p>Under the water initiative, EPA has taken actions to assure compliance at 97 percent of large combined sewer systems, 92 percent of large sanitary sewer systems, and 79 percent of Phase 1 municipal separate stormwater systems. Accordingly, the Agency believes that these two priorities should be returned to the core enforcement program.</p> <p>Though these initiatives will be returned to the core program, EPA will continue its compliance efforts through concluding on-going compliance actions; monitoring existing enforcement case settlements; adapting settlements as necessary to address changing circumstances or to take advantage of new technologies; and by initiating additional inspections, investigations, and enforcement as warranted.</p>
<p><i>Reducing Significant Non-compliance with National Pollutant Discharge Elimination System (NPDES) Permits</i></p>	<p>Modify from prior cycle</p>	<p><i>Keeping Industrial Pollutants Out of the Nation's Waters</i> was an FY 2017-2019 NCI. In the NCI Federal Register notice, the Agency sought comments on modifying this initiative to focus on all facilities in significant noncompliance (SNC) with their Clean Water Act NPDES permits.</p> <p>EPA received very few comments with respect to transitioning the Water NCI from a focus on Industrial Discharges to NPDES SNC reduction. One commenter noted that</p>	<p>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 SNC 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</p>

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		controlling industrial point source release of industrial wastewaters is critical to reducing the treatment burden placed on downstream drinking water treatment facilities and in maintain public confidence in the national environmental regulations. Another commenter supported the transition and the focus on overall NPDES non-compliance, not just sources of industrial pollutants.	that had SNC-level effluent violations discharged almost four billion pounds of pollutants above their permitted limits. The objective of this modified initiative will be to improve surface water quality and reduce potential impacts on drinking water by assuring that all NPDES permittees are complying with their permits, not just industrial contributors. The NCI will help improve national data accuracy and reduce NPDES monitoring, reporting, and effluent violations.
<i>Ensuring Energy Extraction Activities Comply with Environmental Laws</i>	Replace with new NCI	EPA received mixed comments on the proposal to transition <i>Energy Extraction</i> to a broader NCI not focused on a particular sector but on significant sources of volatile organic compounds that have a substantial impact on air quality. Some commenters noted that the sector approach has been a useful strategy in the past and that the oil and gas sector continues to be a major source of VOC emissions. One commenter suggested that <i>Energy Extraction</i> should be retained but focused on impacts to the subsurface and groundwater. Others supported the transition, provided that the new NCI be defined broadly enough to encompass both Hazardous Air Pollutants as well as VOCs which may not be strictly defined as HAPs.	VOC emissions can 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. People living in non-attainment areas or in communities that are near sources of HAPs may face significant risks to their health and environment. EPA will merge our efforts to address both hazardous air pollutants as well as major sources of VOCs that have a substantial impact on air quality into one NCI, <i>Creating Cleaner Air for Communities (CCAC)</i> – see next initiative for description.

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<p><i>Cutting Hazardous Air Pollutants</i> (modified to <i>Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources</i> for this cycle)</p>	<p>Continue with modifications</p>	<p>In the NCI Federal Register notice, OECA proposed to continue the existing initiative on <i>Cutting Hazardous Air Pollutants</i>. OECA also proposed replacing the <i>Ensuring Energy Extraction Activities Comply with Environmental Laws</i> 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 majority of commenters were supportive of continuing the initiative on HAPs.</p>	<p>As noted above, EPA will merge our efforts to address both hazardous air pollutants as well as major sources of VOCs that have a substantial impact on air quality into one NCI, <i>Creating Cleaner Air for Communities (CCAC)</i>. 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 <i>Cutting Hazardous Air Pollutants</i>.</p> <p>By merging these approaches, we can concentrate on air pollution that has a significant impact on air quality and health in communities and address emissions contributing to non-attainment.</p>
<p><i>Reducing Hazardous Air Emissions from Hazardous Waste Facilities</i></p>	<p>Continue initiative</p>	<p>With respect to <i>Reducing Hazardous Air Emissions from Hazardous Waste Facilities</i>, one commenter suggested that this initiative should be returned to core with ongoing support of states to implement the</p>	<p>The Agency has found that air emission violations associated with the improper management of hazardous waste remains widespread. The Resource Conservation and Recovery Act (RCRA) requires effective control and monitoring of organic air emissions from</p>

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		<p>requirements. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) suggested that a focus on proper implementation of waste analysis plans at Treatment Storage and Disposal Facilities would be a preferred initiative.</p>	<p>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.</p> <p>EPA is interested in the suggestion that compliance with hazardous waste analysis plans should be an area of focus. EPA will engage with ASTSWMO on this suggestion.</p>
<p><i>Reducing Risks of Accidental Releases at Industrial and Chemical Facilities</i></p>	<p>Continue initiative</p>	<p>EPA proposed to continue the NCI <i>Reducing Risks of Accidental Releases at Industrial and Chemical Facilities</i>. One commenter supported continuation of the initiative and another suggested expanding the initiative to releases to groundwater. The American Fuel and Petroleum Manufacturers (AFPM) commented that its industries have the lowest injury and illness rates among major industrial sectors. It suggests that EPA rationale for the continuation of this NCI does not apply to its members. Further, AFPM notes that EPA is in the process of</p>	<p>While EPA acknowledges and applauds the low injury and illness rates cited, this NCI addresses the <u>risk</u> posed by actual and potential releases of extremely hazardous substances, regardless of whether those releases resulted in workplace injuries. This distinction is important. It is possible to have a chemical release which causes minimal injuries, but which nevertheless has a significant effect on the surrounding community. 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). EPA also acknowledges that the Risk Management</p>

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		rulemaking resulting in regulatory uncertainty for AFPM members.	Program regulation is in the process of a new rulemaking, posing some uncertainty. The NCI will be updated as necessary to incorporate any new or modified requirements when the rulemaking is completed. 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, designing and maintaining a safe facility, taking such steps as are necessary to prevent releases, and minimizing the consequences of those accidental releases that do occur.
<i>Increasing Compliance with Drinking Water Standards at Community Water Systems</i>	New initiative	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.	OECA is selecting <i>Reducing Noncompliance with Drinking Water Standards at Community Water Systems</i> as a new NCI for the next cycle. EPA will take the comments into account as we move forward to implement this new NCI.
<i>Reducing Children's Exposure to Lead</i>	New initiative	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, but 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

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			<p>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 (RRP) 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.</p>
<p><i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i></p>	<p>New initiative suggested by commenters</p>	<p>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.</p>	<p>EPA appreciates the suggestion and will add <i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i> as a new NCI in the next cycle. This NCI will focus on stopping the manufacture, sale, and installation of these defeat devices.</p>