



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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

August 17, 2023

MEMORANDUM

SUBJECT: FY 2024 – 2027 National Enforcement and Compliance Initiatives

FROM: David M. Uhlmann

A blue ink signature of David M. Uhlmann, written in a cursive style, is positioned to the right of the "FROM:" line.

TO: Regional Administrators
Enforcement and Compliance Assurance Division Directors and Deputies
Superfund and Emergency Management Division Directors and Deputies
Regional Counsel and Deputies

For over 25 years, EPA has established national enforcement and compliance initiatives to address the most serious and widespread environmental problems facing the United States. These national initiatives, developed in a non-partisan way across administrations, have allowed EPA and its state partners to meet many of the goals of our environmental laws: healthier air, cleaner water, and reduced exposure to hazardous waste and toxic chemicals.

As the current initiative cycle draws to a close, during another summer of record heat, deadly wildfires, and catastrophic flooding, the United States faces new environmental challenges that demand an enforcement response: the existential threat of climate change, the scourge of PFAS contamination, and the reality that, for too long, the worst effects of pollution have plagued overburdened communities.

To meet these 21st century environmental challenges, the Office of Enforcement and Compliance Assurance (OECA) has selected six priority areas as National Enforcement and Compliance Initiatives (NECIs) for Fiscal Years 2024-2027. For the first time, we will focus enforcement and compliance resources on mitigating climate change, addressing exposure to PFAS, and protecting communities from carcinogenic coal ash contamination. We will strengthen our efforts to address hazardous air pollution in overburdened communities and continue existing initiatives focused on providing safe drinking water and reducing the risk of deadly chemical accidents.

Each of these initiatives addresses urgent environmental and public health challenges that would be difficult for EPA and its state partners to tackle without additional resources and concerted effort. All of the initiatives incorporate environmental justice considerations to ensure that the benefits of our Nation's environmental laws can be shared by everyone living in the United States. Taken together, these initiatives focus on significant noncompliance with environmental laws across all media—air, water, and land—so that law-abiding companies are not at a competitive disadvantage with polluters.

In selecting initiatives for the FY 2024-2027 cycle, OECA relied upon three criteria: (1) the need to address serious and widespread environmental issues and significant violations impacting human health and the environment, particularly in overburdened and vulnerable communities; (2) a focus on areas

where federal enforcement authorities, resources, and/or expertise are needed to hold polluters accountable and promote a level playing field; and (3) alignment with EPA’s Strategic Plan.¹

The initiatives selected by OECA advance all goals of EPA’s Strategic Plan with a particular focus on three cross-cutting goals: Goal 1: *Tackle the Climate Crisis*; Goal 2: *Take Decisive Action to Advance Environmental Justice*; and Goal 3: *Enforce Environmental Laws and Ensure Compliance*.² To address Goal 1, OECA selected a new initiative that would focus on mitigating climate change by reducing noncompliance with the Clean Air Act and the American Innovation and Manufacturing Act. To advance Goal 2, OECA incorporated environmental justice considerations, a core principle of our work, into each initiative. To meet Goal 3, OECA will strategically deploy its criminal and civil enforcement resources in each initiative, in ways that OECA has not done before, to hold polluters accountable, reduce noncompliance with the environmental laws, and protect communities from environmental harm.

To select the FY 2024-2027 NECIs, OECA solicited public comment via a Federal Register notice to provide opportunity for stakeholder engagement.³ In response, OECA received input from states, territories, and tribes, as well as from environmental groups, regulated entities, and the public, which informed the selection of the NECIs. The NECIs were developed in collaboration with the EPA regional offices, who will play a key role in the implementation of each initiative. OECA will provide updates on the results achieved by each NECI in our annual enforcement reports.

Each of the FY 2024-2027 NECIs, described in greater detail below, seek to bring meaningful public health and environmental protection to communities across the country; prevent and address unlawful activities; and uphold the rule of law so that all people living in the United States can breathe clean air, drink safe water, and live free from harmful pollution and the worst effects of climate change.

FY 2024 – 2027 NATIONAL ENFORCEMENT AND COMPLIANCE INITIATIVES

1. Mitigating Climate Change (new)

OECA selected *Mitigating Climate Change* as a new NECI because tackling the climate crisis is EPA’s top priority, and enforcement and compliance efforts that reduce greenhouse gas emissions will help limit the worst effects of climate change. Climate change poses a substantial threat to public health and safety, water resources, agriculture, infrastructure, and ecosystems. EPA’s FY 2022-2026 Strategic Plan prioritizes actions to reduce precursors to climate change. Addressing climate change using OECA’s enforcement and compliance tools is critical to EPA’s mission of protecting human health and the environment, including overburdened communities that will be most vulnerable to climate change.

The *Mitigating Climate Change* NECI will use OECA’s criminal and civil enforcement authorities to address three separate and significant contributors to climate change: (1) methane emissions from oil and gas facilities; (2) methane emissions from landfills; and (3) the use, importation, and production of hydrofluorocarbons (HFCs). Oil and gas systems and landfills are the second and third largest sources of methane emissions in the United States. Methane is a climate super-pollutant that is more than 25 times as potent as carbon dioxide at trapping heat in the atmosphere. By focusing on enforcement of long-standing air pollution requirements, such as New Source Performance Standards at oil and gas facilities

¹ Memorandum from Lawrence E. Starfield, Acting Assistant Administrator for OECA, [Updated Policy for EPA’s Enforcement and Compliance Initiatives](#) (Dec. 20, 2022).

² [FY 2022 – 2026 EPA Strategic Plan](#) (Mar. 2022).

³ [88 Fed. Reg. 2093](#) (Jan. 12, 2023).

and landfills, OECA can achieve the ancillary benefit of reducing methane emissions. If EPA promulgates new rules to reduce methane emissions in the future, enforcement of those requirements could be included in this initiative as well.

OECA also can help mitigate climate change by ensuring that the phasedown of HFCs, another climate super-pollutant, occurs under the schedule required by the American Innovation and Manufacturing Act (AIM Act) and the Kigali Amendments to the Montreal Protocol. HFCs are another potent greenhouse gas with a global warming potential hundreds to thousands of times greater than carbon dioxide. Prior phaseouts of ozone-depleting substances under the Montreal Protocol resulted in significant unlawful activity that required a strong enforcement response, especially at our borders. OECA will reduce harmful HFC emissions through criminal and civil enforcement of the AIM Act.

OECA has documented widespread noncompliance in all three of these areas, resulting in potentially tens of thousands of tons of unlawful emissions of greenhouse gases and other pollutants. This NECI will help achieve EPA's goals to combat climate change while also addressing significant noncompliance in specific industry sectors that are sources of harmful pollution.

2. Addressing Exposure to PFAS (new)

Due to the toxicity and persistence of per- and polyfluoroalkyl substances (PFAS) chemicals, and the breadth and scope of PFAS contamination throughout the country, OECA selected *Addressing Exposure to PFAS* as a new NECI. PFAS contamination is a significant priority for EPA and, while the regulatory framework for PFAS continues to develop across multiple statutes, OECA has already taken a number of enforcement actions to ensure compliance with existing statutes, including action to address an imminent and substantial endangerment to communities. OECA will increase those efforts, particularly where necessary to protect drinking water supplies, as part of this new initiative.

In addition, if EPA designates PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), this NECI would focus on implementing EPA's PFAS Strategic Roadmap and holding responsible those who significantly contribute to the release of PFAS into the environment, such as major manufacturers and users of manufactured PFAS, federal facilities that are significant sources of PFAS, and other industrial parties. If PFOA and PFOS are listed as hazardous substances, OECA does not intend to pursue entities where equitable factors do not support CERCLA responsibility, such as farmers, water utilities, airports, or local fire departments, much as OECA exercises CERCLA enforcement discretion in other areas.

The key goals of the PFAS NECI are to achieve site characterization, control ongoing releases that pose a threat to human health and the environment, ensure compliance with permits and other agreements (e.g., Federal Facility Agreements) to prevent and address PFAS contamination, and address endangerment issues as they arise. Initial goals include:

- identifying and characterizing the extent of PFAS contamination near PFAS manufacturing/use facilities in the country, using authorities such as CERCLA, the Resource Conservation and Recovery Act, the Clean Water Act, and the Safe Drinking Water Act;
- performing oversight of PFAS characterization and control activities at federal facilities to ensure these facilities meet all environmental obligations and serve as a model for the regulated community; and

- continuing to address violations and imminent and substantial endangerment situations by major PFAS manufacturers, federal facilities, and other industrial parties who significantly contributed to the release of PFAS contamination into the environment.

Beginning in FY 2025, the Agency will build upon these initial goals by taking additional enforcement actions where appropriate. Activities under this NECI may expand if additional regulations are finalized.

3. Protecting Communities from Coal Ash Contamination (new)

OECA has selected *Protecting Communities from Coal Ash Contamination* as a new NECI for the next cycle. In 2021, coal-fired electric utilities generated almost 80 million tons of coal combustion residuals (CCR), more commonly known as coal ash. Coal ash contains contaminants such as mercury, cadmium, chromium, and arsenic, which are associated with cancer and other serious health effects. There are approximately 300 regulated CCR facilities nationwide, comprised of approximately 775 coal ash units (240 landfills and 535 surface impoundments).

Neighborhoods located near coal ash facilities are often communities with environmental justice concerns. These communities are likely to face existing environmental burdens that put them at greater cumulative risk from the environmental impacts associated with proximity to coal ash landfills or impoundments, including harmful air pollution and threats to drinking water sources.

Noncompliance with the CCR requirements under the Resource Conservation and Recovery Act appears to be widespread. Many utilities are not complying with the current performance standards and monitoring and testing requirements. In addition to serious and widespread noncompliance, the CCR regulatory program is mainly a federally implemented program, with only three states currently approved to implement a regulatory program. This NECI focuses on conducting investigations, particularly at coal ash facilities impacting vulnerable or overburdened communities; taking enforcement action at coal ash facilities that are violating the law; and protecting and cleaning up contaminated groundwater, surface water, and drinking water resources.

4. Reducing Air Toxics in Overburdened Communities (modified from prior cycle)

OECA has selected *Reducing Air Toxics in Overburdened Communities* as a modification to its existing initiative started in FY 2020 as *Creating Cleaner Air for Communities*. The original initiative addressed the adverse health and environmental effects from exceedances of the National Ambient Air Quality Standards for ozone to which sources of volatile organic compounds contribute, as well as health impacts on communities from emissions of hazardous air pollutants (HAPs). In the Federal Register notice seeking public comment on the selection of NECIs, OECA stated its plan to continue this initiative because OECA is committed to reducing air pollution in communities across the country.

Recognizing the need to address communities that suffer impacts from higher levels or multiple sources of toxic air pollution, OECA has decided to focus the FY 2024-2027 air enforcement initiative on overburdened communities selected by each Region that are facing high levels of toxic air pollution from HAPs. Each Region will make those selections in partnership with states based on fence-line monitoring and other sophisticated tools that allow detection of the worst forms of toxic air pollution. Reducing air toxics will result in corollary benefits of reducing concentrations of criteria air pollutants such as ozone and particulate matter because HAPs can be comprised of criteria pollutant precursor

emissions. Core air enforcement program activities will also contribute to reducing criteria air pollutant concentrations.

Many communities overburdened by air pollution are impacted by HAPs, such as benzene, ethylene oxide, and formaldehyde. These pollutants are known or suspected to cause cancer or other serious neurological, reproductive, developmental, and respiratory health effects when breathed or ingested through the food chain, including harm to children. This initiative will seek to target, investigate, and address noncompliance with HAP regulations with a focus on sources of HAPs in communities already highly burdened with pollution impacts. Where noncompliance is found and enforcement is appropriate, Regions will engage with community groups on appropriate relief to address the community's concerns.

5. Increasing Compliance with Drinking Water Standards (continued from prior cycle)

OECA has selected *Increasing Compliance with Drinking Water Standards* as an initiative to continue into the next cycle.⁴ This initiative, which began in FY 2020, seeks to ensure that the approximately 50,000 regulated drinking water systems that provide water to residents year-round (referred to as Community Water Systems or CWSs) comply with the Safe Drinking Water Act (SDWA). In FY 2022, 18,282 CWSs had at least one SDWA violation, and 2,854 of those systems had a health-based violation. Many overburdened communities, including those in Indian country, often face challenges meeting their obligations under SDWA.

OECA is continuing this initiative for the FY 2024-2027 cycle. While OECA, working with the states, has made considerable progress in improving SDWA compliance, further improvement in compliance is needed. Each year thousands of CWSs continue to violate one or more drinking water standards, exposing millions of people to potential health risks. In the next cycle of this NECI, OECA will ramp up its field presence, pursue strategic enforcement to reduce noncompliance, and offer more compliance assistance to prevent and address public health risks. OECA will continue to promote communication and understanding of the NECI goals with the Association of State Drinking Water Administrators and its members. OECA will continue to support and work with states, tribes, territories, local governments, and the regulated community to ensure delivery of safe water to communities.

6. Chemical Accident Risk Reduction (continued from prior cycle)

OECA has selected *Chemical Accident Risk Reduction* as an initiative to continue into the next cycle. This initiative seeks to reduce risks to human health and the environment by decreasing the likelihood of chemical accidents. Thousands of facilities nationwide make, use, and store extremely hazardous substances. OECA has found that many facilities regulated under the risk management program of Section 112(r) of the Clean Air Act are neither adequately managing the risks they pose nor ensuring the safety of their facilities to protect workers, first responders, and surrounding communities (nearly half of which are communities with environmental justice concerns).

The failure to implement required risk management programs at facilities handling extremely hazardous substances can result in catastrophic accidents that cause fatalities and serious injuries, evacuations, and shelter-in-place orders. In addition to addressing widespread violations, the 112(r) regulatory program is primarily a federally implemented program, with only a few state-delegated enforcement programs.

⁴ This initiative was previously named *Reducing Noncompliance with Drinking Water Standards at Community Water Systems*.

Work under this NECI will focus on inspecting and addressing noncompliance at facilities using two extremely hazardous substances that pose high risk to communities: anhydrous ammonia and hydrogen fluoride. Anhydrous ammonia, predominantly used as an agriculture fertilizer or a refrigerant, poses an inhalation risk due to its toxicity, and is the most frequently released hazardous chemical from facilities regulated under Section 112(r). In addition, recent incidents involving the release or potential release of highly toxic hydrogen fluoride, used in the petrochemical manufacturing, and concerns about the potentially catastrophic consequences of a hydrogen fluoride release support a focus on these facilities using these hazardous chemicals in their processes.

Facilities using anhydrous ammonia and hydrogen fluoride have had dangerous releases, some of which nearly caused catastrophic impacts on surrounding communities, while many others required medical response and evacuations and caused serious injury and fatalities. OECA will use all available enforcement tools to address violations of risk management requirements, including holding entities criminally responsible.

RETURN TO CORE ENFORCEMENT PROGRAM

In addition to selecting the six initiatives described above, OECA will return the following three current initiatives to the standard “core” enforcement program at the end of FY 2023. Initiatives returned to the core enforcement program remain important areas for enforcement and compliance efforts, even though they are no longer national initiatives. As part of the core program, in collaboration with authorized state programs, OECA and the Regions will continue to conduct inspections and pursue enforcement actions.

1. Reducing Toxic Air Emissions from Hazardous Waste Facilities

OECA began this initiative in FY 2017 and significantly raised visibility and awareness of the RCRA organic air emissions standards among regulators and the regulated community. Since the start of this NECI, EPA concluded over 100 enforcement cases and prevented the release of over 120 million pounds of total air pollutants to the environment. Nearly all pollutant reductions were from facilities located in overburdened communities. In addition to taking enforcement actions to compel compliance and create deterrence, EPA also worked with states and industry to provide training, with the goal of improving compliance within the regulated community. Substantial training resources and opportunities now exist, including web-based trainings available to regulators, and private training companies now include coverage of these RCRA organic emissions regulations in their curricula. Along with compliance monitoring and enforcement actions where appropriate, OECA will continue efforts to develop training materials for both industry and regulators as well as build state capacity in this program.

2. Stopping Aftermarket Defeat Devices for Vehicles and Engines

OECA met the goals of this NECI by developing a national enforcement program in all ten EPA Regions, addressing serious violations through both civil and criminal enforcement actions, reducing pollution and improving air quality, and achieving general deterrence through robust enforcement. Since the inception of this initiative in FY 2020, EPA resolved over 130 cases, which addressed over 539,000 violations. Accordingly, OECA is returning work in this area to the core program at the end of FY 2023. OECA and the Regions will continue to investigate and pursue enforcement against upstream manufacturers and distributors of defeat devices to leverage the greatest benefits for human health and the environment, as well as continue to provide training and coordinate with states and maintain outreach and compliance assistance to industry groups.

3. Reducing Significant Noncompliance with NPDES

OECA began this national initiative to improve compliance in the Clean Water Act permitting program (the “NPDES” program). For decades, the level of significant noncompliance (SNC) in the NPDES program had been over 20% – meaning that approximately one out of every five permittees had significant violations of their permit every quarter, every year. Under this initiative, in partnership with the states, EPA exceeded the NECI goal and achieved over a 50% reduction in SNC. Much of the success of the initiative involved vastly improving the completeness and accuracy of NPDES compliance data. This means that EPA and states can now clearly see which facilities are in violation of their permit and can prioritize these facilities for enforcement or technical assistance. EPA and states will continue to work toward reducing the SNC rate further, assuring the progress gained is not lost, and will also continue to work with the Association of Clean Water Administrators to support collaborative state and EPA efforts in the NPDES compliance and enforcement program.

NOT SELECTED

In the Federal Register notice on the NECIs, OECA sought input on a potential NECI focused on reducing exposure to lead. Ongoing exposures to lead via lead-based paint, drinking water, soil, and air emissions present a health risk to many people nationwide, especially in vulnerable or overburdened communities. Reducing lead exposure is a top EPA priority. Rather than develop a separate, enforcement program-led NECI, however, OECA believes the better approach is to participate in the established Agency-wide lead initiative to tackle lead contamination in all environmental media. EPA’s Lead Strategy⁵ sets forth a comprehensive strategy to implement a wide range of authorities to address noncompliance, obtain cleanups, deter future violations, and mitigate harm. The enforcement and compliance assurance program will contribute to the Agency’s overall efforts to address lead exposure as outlined in the Lead Strategy.

CONCLUSION

These national enforcement and compliance initiatives will help EPA address the most significant public health and environmental challenges, protect vulnerable and overburdened communities, and promote greater compliance with our environmental laws. EPA recognizes that companies throughout the United States invest significant resources to meet and often exceed their obligations under the environmental laws. The Agency values those efforts since, as Administrator Regan has said, we cannot regulate our way out of every environmental problem—a maxim that holds true for enforcement.

But those who break the law, who put the environment and the health of our communities at risk, and who seek an unfair competitive advantage must be held accountable based on the law and the facts. EPA will utilize its criminal and civil enforcement tools fairly and strategically to protect communities in the United States from the harmful effects of illegal pollution, to deliver on the full promise of America’s environmental laws, and to provide a sustainable future for our children and grandchildren.

cc: Assistant Administrators
OECA Office Directors and Deputies
OECA Division Directors

⁵ [*EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities*](#) (Oct. 2022).