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EPA Announces National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027

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On August 17, 2023, U.S. Environmental Protection Agency (EPA) announced its National Enforcement and Compliance Initiatives (NECIs) for Fiscal Years 2024-2027¹. For over 25 years, EPA has reviewed its priorities and set new enforcement and compliance initiatives every four years. Though EPA is charged with the enforcement of many environmental statutes, it prioritizes certain initiatives to address what it perceives to be the most serious and widespread environmental problems facing the United States.

While the EPA is preparing for the next four-year cycle, it is still enforcing under the current set of NECIs for Fiscal Years 2020-2023. The current six NECIs are:

1. Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources;
2. Reducing Hazardous Air Emissions from Hazardous Waste Facilities;
3. Stopping Aftermarket Defeat Devices for Vehicles and Engines;
4. Reducing Significant Noncompliance with National Pollutant Discharge Elimination Systems Permits;

¹ Memorandum from David M. Uhlmann to Regional Administrators, “FY 2024-2027 National Enforcement and Compliance Initiatives” (Aug. 17, 2023), available at <https://www.epa.gov/system/files/documents/2023-08/fy2024-27necis.pdf>

EPA, FY2022-2026 Strategic Plan, (March 2022) available at FY 2022-2026 EPA Strategic Plan. (<https://www.epa.gov/system/files/documents/2022-03/fy2022-2026-epa-strategic-plan.pdf>)

EPA, PFAS Strategic Roadmap: EPA’s Commitments to Action 2021-2024, available at https://www.epa.gov/system/files/documents/2021-10/pfasroadmap_final-508.pdf.

5. Reducing Noncompliance with Drinking Water Standards at Community Water Systems; and
6. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.

To determine initiatives for FY 2024-2027 cycle, EPA identified three criteria to evaluate the FY 2020-2023 initiatives and to consider new initiatives: **(1)** the need to address “serious and widespread environmental issues and significant noncompliance,” with particular focus on overburdened and disadvantaged communities; **(2)** a focus on areas where federal enforcement is needed to “hold polluters accountable” in order to “promote a level playing field”; and **(3)** alignment with EPA’s Strategic Plan Fiscal Year 2022-2026.

The FY 2024-2027 NECIs selected by EPA focus on three of EPA’s Strategic Plan goals in particular: **(1)** Tackle the Climate Crisis, **(2)** Take Decisive Action to Advance Environmental Justice, and **(3)** Enforce Environmental Laws and Ensure Compliance.

EPA solicited comments on whether to continue current NECIs, modify them, or conclude them. After consideration of public comments, EPA kept three initiatives from the current NECIs and prioritized, for the first time, three new national initiatives: mitigating climate change, PFAS exposure, and protecting communities from carcinogenic coal ash contamination.

In addition, EPA is incorporating environmental justice considerations into all six initiatives for FY 2024-2027.

The Fiscal Year 2024-2027 NEICs, described in greater detail below, are:

1. Mitigating Climate Change (new)
2. Addressing Exposure to PFAS (new)
3. Protecting Communities from Coal Ash Contamination (new)
4. Reducing Air Toxics in Overburdened Communities (modified from FY 2020-2023)
5. Increasing Compliance with Drinking Water Standards (continued from FY 2020-2023)
6. Chemical Accident Risk Reduction (continued from FY 2020-2023)

EPA returned three of its FY 2020-2023 initiatives to the standard “core” enforcement program where they will remain important areas for enforcement and compliance, even though they will no longer be national initiatives.

Fiscal Years 2024-2027 NEICs:

1. Mitigating Climate Change

For the first time, climate change is included in EPA’s NEICs as a priority. EPA intends the enforcement and compliance efforts of this initiative to reduce greenhouse gas emissions. This initiative will focus on what EPA considers to be three of the biggest contributors to climate change: (1) methane emissions from the oil and gas industry, (2) methane emissions from landfills, and (3) the use, production, and importation of hydrofluorocarbons.

As part of this initiative, EPA will use its enforcement and compliance tools to reduce greenhouse gas emissions while addressing significant documented noncompliance in these industry sectors. By focusing on enforcement of long-standing air pollution requirements, such as New Source Performance Standards at oil and gas facilities and landfills, EPA aims to achieve the ancillary benefit of reducing methane emissions. Significantly, EPA also indicated that if they promulgate new rules to reduce methane emissions in the future, enforcement of those requirements could be included in this initiative.

2. Addressing Exposure to PFAS

Also for the first time, EPA included PFAS contamination as a top priority, in light of the widespread presence of PFAS in air, water, and land throughout the United States. The primary goals of this initiative, are to (1) achieve site characterization, (2) control ongoing releases that pose a threat to human health and the environment, (3) ensure compliance with

permits and other agreements to prevent and address PFAS contamination, and (4) address endangerment issues as they arise.

The initial goals outlined by EPA to support their primary goals include (1) identifying and characterizing the extent of PFAS contamination near PFAS manufacturing/use facilities, (2) performing oversight of PFAS characterization and control activities at federal facilities to serve as a model for regulated community, and (3) continuing to address violations and imminent and substantial endangerment situations by major PFAS manufacturers, federal facilities, and other industrial parties who significantly contribute to PFAS contamination. Beginning in FY 2025, EPA will build upon these initial goals by taking additional enforcement actions where appropriate.

EPA also indicated that if EPA designates PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), this NEIC will focus on implementing EPA’s PFAS Strategic Roadmap and holding those responsible for significantly contributing to the release of PFAS in the environment. EPA specifically noted that it does not intend to pursue “entities where equitable factors do not support CERCLA responsibility, such as farmers, water utilities, airports, or local fire departments.”

3. Protecting Communities from Coal Ash Contamination

The third new initiative for FY 2024-2027 will focus on coal combustion residuals (CCR), which are found throughout the country in onsite landfills, settling ponds, and other coal plant surface impoundments. This initiative will focus on the approximately 300 facilities EPA has identified nationwide that are collectively responsible for approximately 775 coal ash units. As part of this initiative, EPA notes that neighborhoods located near these facilities are often communities with environmental justice concerns. This NEIC will focus on conducting investigations, particularly at coal ash facilities impacting overburdened or vulnerable communities, taking enforcement action at coal ash facilities in noncompliance, and protecting/cleaning contaminated groundwater, surface water, and drinking water resources.

4. Reducing Air Toxics in Overburdened Communities

This initiative is a modification of EPA’s existing

NECI Creating Cleaner Air for Communities. The original initiative addressed the adverse health and environmental effects from exceedances of the National Ambient Air Quality Standard (NAAQS) and health impacts on communities from emissions of hazardous air pollutants (HAPs). Recognizing the need to address environmental justice concerns for communities that suffer impacts from high levels or multiple sources of air pollution, the modified NECI will focus on overburdened communities selected by each EPA Region that are facing high levels of air pollution from HAPs. Each Region will make these determinations in partnership with states based on fence-line monitoring and other tools that detect air pollution. It will target, investigate, and address noncompliance with clean air standards designed to protect public health, with a focus on sources of HAPs in communities already highly burdened with pollution impacts.

companies can identify aspects of their operations that fall within the ambit of the NECIs and evaluate internal compliance programs as appropriate. Additionally, companies should be aware that EPA will occasionally prepare updated guidance documents related to components of the NECIs in an effort to assist the regulated community in complying with the underlying environmental laws and regulations.

5. Increasing Compliance with Drinking Water Standards

This initiative, which began in FY 2020, seeks to ensure that the approximately 50,000 regulated drinking water systems, Community Water Systems (CWSs), comply with the Safe Drinking Water Act (SDWA). EPA noted that, while considerable progress has been made in improving SDWA compliance, further improvement of compliance is needed. Therefore, EPA will ramp up its field presence, take impactful enforcement to increase compliance, and offer more compliance assistance to prevent and address public health risks. In addition, EPA 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

This initiative, continued from the FY 2020-2023 cycle, is intended to reduce the likelihood of catastrophic chemical releases, and to address the problem of avoidable chemical incidents that continue to occur throughout the county. EPA has found significant noncompliance by companies that handle hazardous substances and will target companies that do not comply with risk management requirements established to protect public health and safety from hazardous chemical releases. This NECI will focus on inspecting and addressing noncompliance at facilities using two hazardous substances in particular: anhydrous ammonia and hydrogen fluoride. Maintaining an awareness of the NECIs as they are developed and implemented can help the regulated community understand where EPA has identified significant nationwide noncompliance. With this knowledge,