

RESPONSE TO COMMENTS
FY 2020-2021 NATIONAL PROGRAM GUIDANCE
Office of Enforcement and Compliance Assurance

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>EPA should treat states in a consistent manner to the extent possible. Therefore, headquarters should work closely with regional offices to implement new guidance.</p> <p>In conjunction with state and local agency input, EPA should continue to work toward global-sector settlements where appropriate. This would include continued pursuit of global settlements already in progress.</p> <p>Finally, it is important that EPA continue to act as a federal backstop and environmental presence to aid state and local agencies in enforcement activities.</p>	<p>National Association of Clean Air Agencies (NACAA)</p>	<p>Page 3 (Introduction)</p>	<p>EPA agrees that it is important to treat states in a consistent manner and coordinate closely with regional offices to implement new guidance.</p> <p>EPA agrees that global settlements can be an efficient tool for returning companies to compliance and will continue to pursue them when appropriate. In both the January 2018 Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States, and the draft revised replacement policy out for public comment, OECA recognizes that federal enforcement plays an important role and that EPA may take direct action in appropriate circumstances.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>Section IIA of the guidance focuses on OECA activities to promote compliance through Cooperative Federalism. A theme missing in this Section is the recognition of the essential part that both state and local agencies play in our nation’s environmental programs and the importance of federal efforts to collaborate with these organizations. Indeed, the Clean Air Act articulates the critical role of local air agencies, as well as state agencies, as follows:</p> <p style="padding-left: 40px;">The Congress finds...(3) that air pollution prevention...and air pollution control at its source is the primary responsibility of States and local governments; and (4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.¹</p> <p>Local air pollution control agencies, along with their state counterparts, have tremendous experience and knowledge to contribute to our nation’s efforts to obtain and maintain healthful air quality. EPA should rely on the expertise of these air agencies in developing and implementing national compliance and enforcement programs, and they should be considered, and explicitly named, wherever state air pollution control agencies are mentioned in Section IIA of the guidance.</p>	NACAA	Pages 3, 4, 5 (Introduction; Key Activities to Promote Compliance through Cooperative Federalism)	Thank you for your comment. EPA agrees that states, tribes, territories, and local government entities such as local air agencies all play important roles in federal environmental programs.	EPA has made edits on pages 3 and 4 to clarify that local governments play a role in federal efforts in addition to states, tribes, and territories.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>AAPCA members support U.S. EPA OECA in efforts regarding “Other ongoing collaborative efforts with ECOS [that] include: producing webinars to help us identify new compliance approaches that we could then pilot and evaluate; developing smart mobile tools to make our inspectors more efficient and effective; increasing availability of training; preparing for advances in pollution monitoring technology.”</p>	<p>Association of Air Pollution Control Agencies (AAPCA)</p>	<p>Page 4 A. 2.</p>	<p>Thank you for your comment. EPA will continue to work collaboratively with ECOS and other stakeholders on these projects.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>EPA should continue to draw upon input from the ECOS-EPA Workgroup on State & Federal Collaboration in Compliance Assurance as it seeks to further institutionalize and report on its State Assists Pilot program and other new initiatives and efforts to improve State-EPA collaboration.</p>	<p>Environmental Council of the States (ECOS)</p>	<p>Section II-A; Subpart 3: State Assists Pilot (p4)</p>	<p>Thank you for your comment. EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to implement federal environmental laws.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>U.S. EPA OECA prioritization of training opportunities and capacity building for air agency personnel is vital to appropriate and fair compliance and enforcement efforts at the state and local levels.</p>	<p>AAPCA</p>	<p>Page 5 A. 4.</p>	<p>Thank you for your comment. We agree that prioritization of training and capacity building for federal, state, tribal, and local enforcement and compliance monitoring personnel, including air agency personnel, is important. We will continue to aim to develop training and capacity building efforts to support these enforcement and compliance efforts.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

¹ Clean Air Act Section 101(a)(3) and (4)

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>Under the heading of “Tribal Government Collaboration and Consultation” is a provision that states “In addition, EPA-tribal collaboration occurs within the context of federal Indian law and the unique Agency policies applicable to Indian country and tribes, including ... EPA-Tribal Environmental Plans (ETEPs) which outline EPA and tribal priorities for each tribe” This statement is not accurate as to ETEPs, and the reference to ETEPs should be deleted.</p> <p>As provided in the 2013 GAP Guidance, ETEPs are intended to inform GAP workplans and to reference in measuring performance under GAP. “Established” ETEPs contain provisions specifically to serve this purpose and were not intended by the Tribes that have approved ETEPs to inform any other aspect of the relationship between Tribes and EPA.</p> <p>If the Agency wants to consider and propose a regulation or policy to more broadly rely on ETEPs to define the relationship between various EPA offices including OECA and Tribes, it should do this in an action separate from the NPMG development process, after thorough and meaningful government-to-government consultation as required by EPA’s 2011 Policy on Consultation and Coordination with Indian Tribes.</p>	<p>Alan Bacock, Region 9 RTOC Tribal Co-Chair</p>	<p>Section II.A.5, pages 5-6</p>	<p>Collaboration with tribes is guided by multiple policies and documents that outline EPA/tribal roles, responsibilities, and goals. As stated in the EPA FY 2018-2022 Strategic Plan which guides the NPG, ETEPs are “a joint planning document” which “identify tribal, EPA, and shared priorities, and the roles and responsibilities for addressing those priorities.”</p> <p>See OITA’s NPG response to comments for additional information.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>EPA is setting a goal of reducing the rate of significant noncompliance (SNC), which includes Category I violations at NPDES minor permittees, in the NPDES program by 50% by the end of FY 2022. South Dakota has been working for a number of years to reduce the number of its facilities in SNC and has reduced its SNC rate by about 90% in the last 10 years. Reducing that rate by another 50% may be a challenge. EPA's measure is a good nationwide goal, but individual states should not be held to that expectation if their SNC rate is already well-below the national rate.</p>	<p>South Dakota Department of Environment and Natural Resources</p>	<p>Page 6</p>	<p>Thank you for your comment. EPA is not seeking a 50% reduction in the SNC rate in every state, only in the overall, national SNC rate. States that already have taken steps to increase compliance and have achieved a low SNC rate should continue the good work that produced the low rate and assure that serious SNC violators that arise are timely and appropriately addressed. We look forward to working with South Dakota to see if their effective efforts to reduce significant noncompliance may be best practices that can be helpful to other states and the EPA.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>U.S. EPA OECA work regarding compliance monitoring and enforcement activities under the Clean Air Act to reduce the number of nonattainment areas should be done in collaboration with state and local air agencies.</p>	<p>AAPCA</p>	<p>Page 7 B. 3. a.</p>	<p>Thank you for your comment. EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to implement federal environmental laws.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

<p>In Section II B 4 of the OECA Guidance, the agency seeks input on the new cycle of National Compliance Initiatives (NCIs) for FY 2020 to 2023. On March 11, 2019, NACAA provided comments on the proposed FY 2020-2023 NCIs, and these remain our recommendations. In that letter, NACAA recommended that both state and local clean air agencies be explicitly included as partners in the list of NCIs related to air pollution. NACAA also offered that EPA should consider an additional NCI focused on compliance by mobile sources with applicable laws and regulations. NACAA supported the extension of the “Cutting Hazardous Air Pollutants” initiative as a national priority and opposed the removal of the “Reducing Air Pollution from the Largest Sources” initiative from the national priority list. The March 11, 2019 letter is available online at http://4cleanair.org/sites/default/files/Documents/NACAA_Comments%20%20EPA%20NCIs%202020%202023%20%20031119.pdf</p>	<p>NACAA</p>	<p>pages 8-9 (FY 2020-2023 National Compliance Initiatives)</p>	<p>EPA appreciates the suggestion for adding an NCI focused on compliance by mobile sources with applicable laws and regulations. EPA has selected <i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i> as a new NCI for the next cycle. EPA is also selecting <i>Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants (CCAC)</i> to focus on reducing emissions of hazardous air pollutants as well as large sources of volatile organic compounds that contribute to air quality non-attainment. We look forward to working with our state and local partners in implementing this NCI. Finally, EPA and our state partners have addressed a significant percentage of the major facilities in non-compliance with the New Source Review and Prevention of Significant Deterioration provisions of the Clean Air Act through several cycles of the <i>Reducing Air Pollution from the Largest Sources</i> initiative. Therefore, the agency believes it is appropriate to return this initiative to the “core” or standard enforcement program. EPA will continue its efforts to achieve compliance from these sources</p>	<p>EPA has revised the National Program Guidance sections on NCIs to identify and describe the selected NCIs for FY 2020 – 2023.</p>
---	--------------	---	--	--

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
			through concluding on-going actions; monitoring existing settlements; adapting settlements as necessary due to changing circumstances or taking advantage of new technologies; and additional inspections and investigations, as warranted.	
AAPCA members directly support the co-regulator activities identified by U.S. EPA OECA regarding compliance monitoring field activities that recognize the appropriate and critical role of state and local air agencies.	AAPCA	Page 12 C. 1. f.	Thank you for your comment. EPA and state, territory, tribal, and local government entities all have important roles in monitoring compliance with environmental laws.	No revision to the National Program Guidance is necessary in response to this comment.
EPA needs to include in the OECA National Program Guidance NCI in the Clean Air Act and the Toxic Substance Control Act, the National Emissions Standard for Hazardous Air Pollutants (NESHAP) 40CFR, Part 61, Subpart M- Asbestos. Even though this federal regulation is dated it is more important than ever to be proactive and inform the nation of the requirements needed to protect the environment and the public with the increasing damage to our nation's infrastructure of homes and businesses due to hurricanes, wildfires, etc.	Jeff Dellinger NC Health Hazards Control Unit (Delegated State Asbestos and Authorized Lead-Based Paint Programs)	Page 14 and Page 28	Thank you for your comment. Compliance with the Clean Air Act and Toxic Substances Control Act as they relate to asbestos is important for the protection of public health. Enforcement of these provisions is a part of our core enforcement program. However, we are not selecting asbestos as a focus area for the National Compliance Initiative this cycle.	EPA has revised the National Program Guidance sections on NCIs to identify and describe the selected NCIs for FY 2020 – 2023.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>AAPCA members appreciate U.S. EPA OECA’s efforts to engage and collaborate with air agencies early in compliance and enforcement activities. U.S. EPA OECA should also ensure consistency in compliance assurance work across regions, states, and localities.</p>	<p>AAPCA</p>	<p>Page 15 C. 2. b.</p>	<p>Thank you for your comment. EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to implement federal environmental laws.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

<p>AAPCA members have previously expressed concern to U.S. EPA OECA about emission systems tampering. Tampering with these systems has the potential to significantly increase emissions of criteria air pollutants, directly impacting air quality. U.S. EPA OECA should work with air agencies to prioritize curtailing the manufacture and installation of these devices, particularly in areas that do not currently meet the NAAQS for fine particulate matter and ozone.</p>	<p>AAPCA</p>	<p>Page 16 C. 2. b.</p>	<p>In the past few years, EPA has concluded more than 30 enforcement cases which collectively involved over 1 million aftermarket defeat devices. Going forward, EPA has selected <i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i> as a new NCI for FY 2020-2023.</p> <p>EPA has been ramping up efforts to collaborate with states to address this problem. For example, in 2018, the EPA provided numerous trainings for EPA regional civil inspectors as well as counterparts from state agencies to enable attendees to conduct inspections and understand the technical aspects of this work. Although states are not delegated enforcement authority under the Clean Air Act's provisions concerning mobile sources, some states nonetheless have complementary authorities including state law that prohibits dealers from selling tampered vehicles and vehicle inspection and maintenance programs to prevent tampered vehicles from registering with the state department of motor vehicles.</p> <p>EPA enforcement personnel would welcome the opportunity to meet</p>	<p>EPA has revised the National Program Guidance sections on NCIs to identify and describe the selected NCIs for FY 2020 – 2023.</p>
--	--------------	-----------------------------	--	--

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
			with AAPCA to provide an update on EPA's work and to learn what states recommend for addressing this noncompliance.	
We strongly support EPA's prioritization of e-Commerce product distribution monitoring and enforcement. Compliance I that distribution chain has much greater potential for impact than any other brick and mortar marketplace establishment effort ever could.	David E. Scott, Office of Indiana State Chemist	31, 1 st bullet item	Thank you for your comment.	No revision to the National Program Guidance is necessary in response to this comment.

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>Collaborative Compliance Assurance is a wonderful concept and priority. However, if OECA is unwilling to engage with States on a meaningful and consistent basis in addressing the distribution of federally non-compliant Sec. 25(b) products, this priority seems to be nothing more than EPA self-serving rhetoric and should be removed from the FIFRA portion of the guidance. States have identified a compliance function with which we could really benefit from federal cooperation but have been ignored at every opportunity.</p>	<p>David E. Scott, Office of Indiana State Chemist</p>	<p>31, items #4 and #2</p>	<p>The Collaborative Compliance Assurance component of the FIFRA NPG is intended to encourage support for each other's compliance monitoring and enforcement activities consistent with the respective authorities established under FIFRA. Examples include the pesticide inspector residential training (PIRT) and pesticide regulatory education program (PREP) trainings; participation in the State FIFRA Issue Research and Evaluation Group) SFIREG, the Association of American Pesticide Control Officials (AAPCO), and the Tribal Pesticide Program Council (TPPC) meetings, all of which serve as forums for productive discussion about issues of concern, including the issue you raise in your comment. It is our intention to continue the dialogue and collaborate with our co-regulators through these and other forums</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>U.S. EPA OECA indicates in the draft Guidance that the Agency will “Hold the federal government accountable to the same standard of environmental compliance as other members of the regulated community” and that “Except where EPA directly implements a regulatory program, work with state, local and tribal partners to address noncompliance at federal facilities, and when appropriate, collaboratively work towards coordinated compliance monitoring and response actions, or the assignment of appropriate roles for each entity.” U.S. EPA OECA’s acknowledgement is shared by AAPCA’s state and local members.</p>	<p>AAPCA</p>	<p>Page 32 – 33 C. 2. j.</p>	<p>Thank you for your comment.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>