

March 11, 2019

Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Mail Code M2221A
Docket ID No. EPA-HQ-OECA-2018-0843
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sir or Madam:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) *National Compliance Initiatives for Fiscal Years 2020-2023*, Docket ID No. EPA-HQ-OECA-2018-0843, which was published in the *Federal Register* on February 8, 2019.¹ Since this document will help guide EPA's compliance and enforcement activities for the next three years, it could have a profound impact on our nation's efforts to protect public health and the environment. Therefore, we are eager to contribute our thoughts and recommendations as the agency develops the final document.

NACAA is a national, non-partisan, non-profit association of state and local air pollution control agencies in 41 states, including 114 local air agencies, and the District of Columbia and four territories. The members of NACAA have primary responsibility under the Clean Air Act for implementing our nation's clean air program. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

EPA's National Compliance Initiatives (NCIs) are a multi-year planning document that allows EPA's Office of Enforcement and Compliance Assurance to target its resources to the most serious environmental violations by identifying national enforcement and compliance program priorities. At a high level, the criteria for inclusion or exclusion from the national priority list seem to focus primarily on whether EPA's activities produce results that are in line with EPA's Strategic Plan goals. In particular, the proposal makes reference to two strategic objectives: addressing vulnerable populations and addressing clean air act non-attainment areas. This is laudable, but has been inconsistently applied in this proposal as detailed later in these comments.

A theme missing throughout the document 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:

¹ 84 Fed. Reg. 2849 (Feb. 8, 2019). <https://www.govinfo.gov/content/pkg/FR-2019-02-08/pdf/2019-01548.pdf>

*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.*²

Local air pollution control agencies, along with their state counterparts, have tremendous experience and knowledge and have long contributed 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 local agencies should be explicitly included wherever these air pollution control agencies have a role.

Another criterion that could be considered by EPA when it considers whether to continue or desist from including areas in its national initiatives is whether agency expertise, resources, and focus are not substitutable by its state, local, and other partners' expertise. In some respects, Agency priorities should focus on where it can do work that its partners cannot. EPA plays an essential role in addressing sources that are nationally significant – those that represent a substantial portion of the emissions inventory, can be cost-effectively regulated at the national level and offer the potential to reduce emissions of numerous pollutants and precursors that cause or contribute to elevated criteria pollutant levels and numerous other public health and environmental problems. In addition to stationary sources, the nationally significant sources include mobile sources and fuels. As EPA acknowledges in its Strategic Plan, the agency “develops, implements, and ensures compliance with national emission standards to reduce mobile-source-related air pollution from light-duty cars and trucks, heavy-duty trucks, buses, nonroad engines and vehicles, and their fuels” (p. 11). EPA should consider an additional NCI focused on compliance by mobile sources with applicable laws and regulations.

A mobile source NCI could focus on vigorously assuring compliance with mobile source emission standards and fuel standards. This could include proactive investigation of all models of diesel engines to see if strategies to avoid pollution controls have been used, uncertified parts or engines or engines have been sold, or whether defeat devices have been installed, among other violations. As a compliance priority EPA could go beyond on-road motor vehicles to ensure compliance by non-road vehicles and engines, such as construction and farm equipment, and marine vessels including enforcement of the Emissions Control Area around the United States Coast, which impact states as far away as the Midwest. Finally, a mobile source NCI could examine excessive rail idling, which not only wastes fuel and causes odors, but also causes emissions of diesel particulate and ozone precursors. Diesel emissions are directly harmful to human health by exposing surrounding communities to cancer risks and these emissions exacerbate ozone problems, especially in “extreme” and “severe” areas where every feasible reduction is needed.

The NCI proposal seeks comment on whether to extend the inclusion of “Cutting Hazardous Air Pollutants.” NACAA supports this extension. The EPA's proposal clearly lays out a justification supported by the ongoing process of identifying sources and offering the right tools for efficiently ending noncompliance and meeting the strategic goal of “addressing vulnerable communities.” Clearly, “Cutting Hazardous Air Pollutants” is an area where continued partnership between the federal government and the

² Clean Air Act Section 101(a)(3) & (4), 42 U.S.C. § 7401(a)(3) & (4).

state and local air pollution control agencies will yield cleaner air and provide important public health benefits for Americans as they breathe in fewer hazardous air pollutants.

EPA proposes to transition the initiative “Ensuring Energy Extraction Activities Comply with Environmental Laws” to a focus on significant sources of volatile organic compound (VOC) emissions. These emissions continue to harm the health of Americans and are an obstacle to local and state agency efforts to clean up the air as they work to move their nonattainment areas into attainment status, particularly for ozone given the role VOCs play as precursors to the formation of that pollutant. NACAA would support the transition of this NCI into “Cutting Hazardous Air Pollutants” provided that, in acknowledgement that all VOCs are not always listed as hazardous air pollutants, resources are more effectively targeted to both problems. However, this merger should not reduce EPA focus and resources on either of these two critical challenges facing state and local legal obligations to implement the Clean Air Act and assure clean air for Americans.

EPA also proposes to no longer include “Reducing Air Pollution from the Largest Sources” on its NCI list, stating “the Agency believes that this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide.” NACAA opposes returning this issue to the Core Program and eliminating it from the National Compliance Initiatives. This area of the Agency’s effort remains unfinished, and the sources in question have continued harmful impacts on the health of Americans, the economy, and the environment. The proposal asserts that EPA has taken significant action under this NCI, but does not provide an analysis on which to form a conclusion that air pollution from large sources is no longer a serious concern. EPA’s own enforcement website³ includes the following statements:

- **Coal-fired power plants.** There are approximately 1,100 coal-fired electric utility units in the United States with an overall capacity of 340,000 megawatts. This sector emits approximately two-thirds of the nation's emissions inventory of sulfur dioxide (SO₂) and approximately one-third of the nitrogen oxides (NO_x). Investigations of this sector have identified a high rate of noncompliance with NSR/PSD when old plants are renovated or upgraded.
- **Plants that manufacture sulfuric and nitric acid, which are used in fertilizer, chemical and explosive production.** Acid production plants emit many thousands of tons of nitrogen oxides, sulfur dioxide, and sulfuric acid mist each year. EPA investigations have found a high rate of non-compliance with NSR/PSD in connection with plant expansions and process changes.
- **Glass manufacturing plants.** There are approximately 125 large glass plants operating in the United States. These plants emit approximately 200,000 tons per year of NO_x, SO₂ and particulate matter (PM). Investigation of this sector has shown that there have been a significant number of plant expansions but few applications for the installation of pollution controls required under NSR/PSD.
- **Cement manufacturing plants.** Cement manufacturing plants are the third largest industrial source of air pollution, emitting more than 500,000 tons per year of SO₂, NO_x and carbon monoxide. EPA determined that many cement manufacturers made changes to existing facilities without applying for and obtaining pre-construction permits.

³ <https://www.epa.gov/enforcement/air-enforcement>

These statements are contradictory to EPA's NCI proposal assertion that "this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide," and while broad air quality improvement trends are noted, EPA offers no information about the opportunities (or absence of opportunities) that remain. Absent data showing otherwise, this NCI remains a critical tool to facilitate improvement in the EPA's strategic goal of positively affecting nonattainment areas. Keeping this NCI demonstrates EPA's commitment in this area. This NCI should be retained and a stronger commitment made to assuring compliance in this arena, either through federal action, assistance to state and local agencies, or through joint activity.

In August 2018, EPA changed the name of this endeavor from "National Enforcement Initiatives" to "National Compliance Initiatives"⁴ and expressed its intent that this should reflect that enforcement is one tool in a full toolbox that enables conformity with air pollution control laws and regulations. Inasmuch as the change communicates a shift in priorities, EPA should be clear in also communicating willingness by the federal government to bring enforcement actions against those who violate the law. The NCIs offer EPA a further chance to signal its priorities and demonstrate that EPA plays a non-substitutable role in our nation's clean air efforts along with state and local air pollution control agencies. This includes being the final provider of assurance that enforcement programs result in compliance with applicable air quality laws and regulations.

On behalf of NACAA, we thank you for this opportunity to provide these comments. If you have any questions please feel free to contact us, or Miles Keogh, Executive Director of NACAA at (202) 624-7864.

Sincerely,



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⁴ <https://www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives>