

EPA Announces Its Final National Enforcement and Compliance Initiatives for FY2024-2027

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The US Environmental Protection Agency (“EPA”) recently finalized its long-anticipated National Enforcement and Compliance Initiatives (“NECIs”) for fiscal years 2024 through 2027, naming six “priority areas” on which EPA’s Office of Enforcement and Compliance Assurance (“OECA”) will focus its enforcement efforts and direct additional resources. In his first significant action since being confirmed by the Senate on July 20, 2023, OECA Assistant Administrator David Uhlmann issued a [memorandum](#) on August 17, 2023 to the EPA Regional Administrators, advising of the six NECIs. He stated that over the next four years EPA will “address the most significant public health and environmental challenges, protect vulnerable and overburdened communities, and promote greater compliance with our environmental laws.”

As [we noted](#) when EPA published the proposed NECIs in January, the Biden Administration inserted “Enforcement” back into the name of the Initiatives—emphasizing EPA’s renewed focus for the FY2024-2027 cycle—to align with the [Updated Policy](#) that Acting Assistant Administrator Larry Starfield sent to the Regional Administrators in December 2022. OECA has shifted to a “comprehensive” approach—utilizing traditional enforcement methods (i.e., criminal and civil; judicial and administrative), as well as informal enforcement methods and compliance assurance tools. The new NECIs reflect the overarching goals set forth in the [FY2022-2026 EPA Strategic Plan](#), “where tackling climate change and advancing environmental justice and civil rights are integral to all the Agency does in carrying out the mission.”

The New and Continued NECIs Highlight the Biden Administration’s Increased Focus on Climate Change, Chemicals, and Environmental Justice

According to EPA, the United States faces “new environmental challenges that demand an enforcement response.” For the first time, EPA is focusing enforcement and compliance resources on (1) mitigating climate change, (2) addressing exposure to per- and poly-fluoroalkyl substances (“PFAS,” also known as “forever chemicals”), and [\(3\) protecting communities from alleged coal ash contamination](#). EPA will also update and continue prior initiatives on (4) addressing hazardous air pollution in overburdened communities, and (5) providing safe drinking water, and (6) reducing the risk of deadly chemical accidents.

Each of these initiatives addresses issues that EPA says would be difficult for the Agency and its state partners to tackle without additional resources and a concerted effort. Each Initiative incorporates environmental justice considerations and focuses on significant noncompliance with environmental laws across all media—air, water, and land. Not only does EPA note that the NECI’s “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 ...,” but also the NECI [memorandum](#) highlights EPA’s longstanding enforcement policy to “ensure law-abiding companies are not at a competitive disadvantage with polluters.”

The Final FY2024-2027 National Enforcement and Compliance Initiatives

As summarized below, EPA selected three new Initiatives, modified one existing NCI, and continued two NCIs:

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)
5. Increasing Compliance with Drinking Water Standards (continued)
6. Chemical Accident Risk Reduction (continued)

** EPA named this Initiative as an “additional” area under consideration rather than including it as one of the six proposed NECI’s but has now adopted this as an NECI.*

Existing NCIs FY2020-2023	FINAL NECI’s FY2024-2027	Changes in Initiatives
<p style="text-align: center;">N/A</p> <p><i>However, EPA sought to incorporate climate resiliency considerations generally in implementing the FY2020-2023 NCIs.</i></p>	<p>1. Mitigating Climate Change</p>	<p><i>New.</i> For the first time, EPA has named an NECI that focuses exclusively on climate change-related problems because “tackling the climate crisis is EPA’s top priority.” Accordingly, EPA will concentrate its enforcement efforts on “significant contributors to climate change,” namely: methane emissions from oil and gas facilities and landfills and hydrofluorocarbons (“HFCs”).</p> <p>As to methane emissions, EPA will specifically target oil and gas facilities and landfills—which EPA has identified as the second and third largest sources of methane emissions in the United States—to ensure compliance with air pollution requirements, such as New Source Performance Standards (“NSPS”) and any new, related rules in the future. For HFCs, OECA will reduce harmful HFC emissions through criminal and civil enforcement of the American Innovation and Manufacturing Act of 2020 (“AIM Act”) to ensure that the phasedown of HFCs occurs under the Act’s required schedule.</p>

While OECA selected the six NECI’s for FY2024-2027 summarized above, it also chose to *not* continue three current Initiatives: (1) Reducing Toxic Air Emissions from Hazardous Waste

Facilities, (2) Stopping Aftermarket Defeat Devices for Vehicles and Engines, and (3) Reducing Significant Noncompliance with NPDES Permits. (More details in the table below.) Consequently, those Initiatives (FY2020-2023 NCIs) will return to OECA's standard "core" enforcement program at year's end. And even though additional resources will no longer be directed to bolster enforcement and compliance efforts in those areas, each remains an important focal point within OECA's enforcement program, and compliance should be taken seriously without regard to their status as NECIs.

Key Takeaways & Considerations

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- The Final NEICs for FY2024-2027 highlight EPA's efforts to align with President Biden's Executive Order to use a whole-of-government approach in order to tackle the climate crisis and advance environmental justice.
 - EPA will "strategically" use the criminal and civil enforcement tools available under the various environmental statutes in order "to protect communities" and "provide a sustainable future."
 - While all regulated entities should be aware of EPA's new enforcement focus, the entities that fall under one of the facility categories expressly listed in the memorandum should take additional precautions and ensure compliance with all applicable environmental laws.
 - The addition of Addressing Exposure to PFAS is another sign of EPA's extensive focus on PFAS, even while the Agency continues to finalize regulations and develop enforcement policy. PFAS enforcement is very much a developing area of the law, and manufacturers and users of PFAS and PRPs at contaminated sites should stay abreast of the many changing regulations addressing PFAS across all EPA programs.
 - Environmental justice continues to be a primary focus this Administration, and it will be used as a targeting mechanism to aggressively pursue violations in underserved and overburdened communities.
 - EPA's selection of Protecting Communities from Coal Ash Contamination is narrowly focused and applicable to CCR facilities, meaning it will apply to only approximately 300 facilities. Thus, *all* CCR facilities nationwide should expect increased attention and scrutiny over the next four years and possibly beyond.
 - While the Initiative for Stopping Aftermarket Defeat Devices for Vehicles and Engines will be moved back to EPA's core enforcement program, the number of cases in this area continues to be on the rise. Therefore, manufacturers, distributors, and installers of aftermarket emissions-related parts should *not* be emboldened by EPA shifting away from treating this area as an Initiative.

Conclusion

EPA will continue to make attempts to increase the number and impact of its enforcement cases. With the confirmation of a new OECA Assistant Administrator, David Uhlmann, the regulated community should expect an even stronger enforcement push, including criminal environmental enforcement. In a recent statement, Assistant Administrator Uhlmann stated:

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. This is a clear indicator to regulated entities that EPA's approach, at least during the remainder of the Biden Administration, will be to use all tools at its disposal to improve environmental outcomes through enforcement.

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