Draft U.S. Environmental Protection Agency National Enforcement and Compliance Document for Years 2024-2027: Association of State and Territorial Solid Waste Management Officials Comments

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The United States Environmental Protection Agency ("EPA") published in the January 12th Federal Register a Request for Public Comment on the National Enforcement and Compliance Initiatives ("NECIs") it is proposing for fiscal years 2024-2027. See 88 Fed. Reg. 2093.

This EPA enforcement document was previously titled "National Enforcement and Compliance Initiatives."

The Association of State and Territorial Solid Waste Management Officials ("ASTSWMO") submitted a March 13th letter to EPA providing comments on the NECIs.

EPA chooses every four years national initiatives on which to focus resources on what it believes are serious and widespread environmental problems where federal enforcement can make a difference. The federal agency states that the primary objective of the initiatives is to:

. . . protect human health and the environment by holding polluters accountable and compelling regulated entities to return to compliance.

EPA states its objective is to align all existing and proposed NECIs with two of what it describes as "overarching Strategic Plan goals:"

1. Tackle the climate crisis
2. Take decisive action to advance environmental justice

EPA is proposing two new NECIs which include:

1. Mitigating climate change
2. Addressing PFAS contamination

Two additional areas the federal agency states are under consideration for possible development as NECIs include:

1. Reducing exposure to lead
2. Addressing coal combustion residuals

The EPA is planning to continue its four existing initiatives into the 2024-2027 cycle and return two current initiatives to what it describes as the current "core" program:

1. Reducing Toxic Air Emissions from Hazardous Waste Facilities.
2. Stopping Aftermarket Defeat Devices for Vehicles and Engines.

ASTSWMO comments include:

- Reducing Risks of Accidental Releases at Industrial and Chemical Facilities (An existing national compliance initiative)

The ASTSWMO Hazardous Waste Subcommittee supports it being continued with a "slight enhancement." It notes that facilities that are active generators of hazardous waste are also subject to Clean Air Act General Duty Clause and Risk Management Program Requirements. This is stated to provide an opportunity to focus on prevention of, rather than response to, catastrophic accidents and for collaboration which could increase the potential for preventive action at high-risk facilities. This is stated to include fostering collaboration with Regional EPA and State Resource Conservation and Recovery Act ("RCRA") compliance officials when EPA selects facilities for Clean Air Act General Duty Clause/Risk Management Program inspections.

- Reducing Toxic Air Emissions from Hazardous Waste Facilities (Proposed to be returned to the standard Core enforcement program)

This is stated to be supported but recommends that EPA continue implementation of the RCRA Air Emissions requirements by State programs to ensure proper implementation and provide robust training support to inspectors. Because of a lack of resources to purchase and maintain air monitoring equipment, it is suggested that EPA consider establishing and maintaining Regionally-based repositories for the air monitoring equipment to assist States in evaluating compliance with the RCRA Air Emission Requirements.

- Two potential initiatives under consideration as new NECIs:
- Notes ASTSWMO's position paper addressing PFAS and comments to EPA on the proposed rule to designate as CERCLA Hazardous Substances.
- Clarification is then requested on how enforcement discretion will be applied and how it will be considered during decision-making processes
- Two additional areas for further consideration:
- Addressing Coal Combustion Residuals ("CCRs") (encourages EPA not to utilize finite resources to develop a NECI for CCR but instead expedite the review and approval of State CCR Permit Programs.

ASTSWMO also notes a list of recommendations from individual states for potential areas of focus for future NECIs:

- Non-waste determinations and non-hazardous waste determinations at hazardous waste Treatment, Storage, or Disposal Facilities (TSDFs), drum reconditioners, and railcar/tank facilities
- Waste Analysis Plans at TSDFs, especially focused on non-waste determinations
- Facilities operating under the Definition of Solid Waste (DSW)/Hazardous Secondary Materials (HSM) rule (especially focused on the transfer-based exclusion)
- Land Disposal Restriction (LDR) compliance at waste consolidations facilities
- Focus on Non-notifiers, identification of facilities that should be in the RCRA hazardous waste program
- Specific industry sector initiatives including electronic waste handlers, wood preserving facilities,electroplating facilities, universal waste lamp destination facilities

A copy of the comments can be downloaded here.