

RESPONSE TO COMMENTS
FY 2023-2024 NATIONAL PROGRAM GUIDANCE
Office of Enforcement and Compliance Assurance
EPA Publication Number: 300R22001

Instructions:

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<i>Include the comment.</i>	<i>Provide the commenter's name and affiliation.</i>	<i>Provide the page number to which the comment refers.</i>	<i>Note: If more than one commenter raises the same issue, please cross-reference the individual responses.</i>	<i>Specify changes made in response to comments and identify all locations in the Final Guidance (e.g., page numbers, sections, etc.).</i>

Template:

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<p>1. EPA’s discussion of state and local collaboration includes mention of “building state capacity, supporting state actions...” etc. EPA needs to be more active and effective at assuring that its state and local partners are resourced, trained, and have effective coordination and technical assistance from EPA in their role as co-regulators. This may include specific, line-item designations in State and Tribal Assistance Grants (STAG) or Performance Partnership Grants (PPG) towards technical assistance programs within states. This also relates the to the prior comment concerning grant increases to state agencies (See comment on page 30 of OAR NPG)</p>	<p>National Steering Committee (NSC) of the Small Business Environmental Assistance Programs (SBEAPs)</p>	<p>Pages 5, 6, 7 (Introduction)</p>	<p>EPA remains committed to supporting our co-regulators. Some programs’ STAG do include line-item designations for training and other forms of technical assistance. EPA continually evaluates how best to support each program given individual program needs and resources.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>1a. EPA should coordinate with states regarding federal inspections and enforcement actions. Effective consultation and coordination with the states, consistent with Assistant Administrator Susan Bodine’s July 11, 2019, memorandum, when federal inspections or enforcement actions are planned is essential. This is especially true of small businesses that may have to effectively shut down to focus on EPA inspections. The better coordination between EPA and states can result in less time taken by businesses in relation to inspections as well as the opportunity for a more focused and comprehensive overview of inspection results and how one issue may relate to other issues that can be solved simultaneously.</p>	NSC	N/A	<p>Coordination with states, tribes, and territories with regard to federal inspections and enforcement actions is a priority for EPA. We will continue to work collaboratively, 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>1b. The NSC supports the use of Supplemental Environmental Projects as part of judicial settlements and supports EPA is requesting review and revision of the DOJ policies that currently limit the use of SEPs.</p>	NSC	<p>Section II. Key Programmatic Priorities, Page 7</p>	<p>OECA made edits to the final guidance to reflect that on May 5, 2022, the Administrator of EPA joined the Attorney General to announce, among other things, the restoration of Supplemental Environmental Projects (SEPs) in appropriate circumstances as part of settlements with defendants who have violated federal environmental laws.</p>	<p>Made edits to reflect that on May 5, 2022, the Administrator of EPA joined the Attorney General to announce, among other things, the restoration of SEPs in appropriate circumstances as part of settlements with defendants who have violated federal environmental laws.</p>

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<p>1c. The NSC recommends adding PFAS and PFOS in addition to lead-based paint exposure in the collaboration with the DoD to protect military families as military bases were often where excessive PFAS and PFOS exposure was first noted as run off from firefighting drills. Best Practices developed there could then be applied in additional PFAS and PFOS areas/actions.</p>	NSC	<p>A: Background and Content, page 5, Section II. Key Programmatic Priorities, Page 8</p>	<p>OECA made edits to the final National Program Guidance to include collaboration with federal agencies to address PFAS chemicals, which include PFOA and PFOS, as appropriate.</p>	<p>Added a bullet on page 8 on collaboration with federal agencies to address PFAS contamination, as appropriate.</p>
<p>1d. The NSC requests that EPA, through the State Review Framework, encourage the support of state SBEAPs. These programs are designed to provide technical assistance to small businesses that may not have as much access to more costly technical assistance options such as private consultants. It has been noted that some states are not providing much support for their SBEAPs or have discontinued the SBEAP in their state completely. The SBEAPs are a designated program under Section 507 of the Clean Air Act and the SRF should include the SBEAPs in their evaluation of state performance. For states that do not implement an SBEAP, per Section 507, EPA should be implementing the SBEAP for that state.</p>	NSC	<p>State and Direct Implementation Program Oversight and Improvement, Pages 19, 20</p>	<p>OECA's State Review Framework focuses on implementation of compliance monitoring and enforcement programs; compliance assistance work is outside the scope of the State Review Framework.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>1e. As an alternative to impoundments and landfills, coal fired plants that produce Coal Combustion Residuals could establish programs for ready-mix concrete companies to receive shipments of CCR. Fly ash is often used as an additive to concrete due to its properties and such use encapsulates the fly ash, preventing it from becoming mobile. Encouragement of materials management and reuse could be a supplement and better use for some RCRA materials. Support of materials marketplaces offer a better option for waste materials than landfilling, which could in term reduce RCRA wastes.</p>	NSC	RCRA Coal Combustion Residuals, page 36	EPA will continue to encourage the appropriate beneficial use of CCR.	No revision to the National Program Guidance is necessary in response to this comment.
<p>2. AAPCA members appreciate EPA OECA's commitment to state and local government collaboration in compliance monitoring and enforcement programs, in particular efforts to build state capacity and support state actions.</p>	Association of Air Pollution Control Agencies (AAPCA)	Page 5 Section I. Introduction	EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to implement federal environmental laws.	No revision to the National Program Guidance is necessary in response to this comment.

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<p>2a. AAPCA continues to support the FY 2020 –2023 National Compliance Initiatives (NCI) for air. State and local agencies are vital partners as EPA evaluates the current NCIs and potential new ones beginning in FY 2023. EPA OECA also notes that “EPA and the states should discuss work-sharing and how to make the best collective use of EPA and state resources and expertise to achieve the goals of the NCIs.” Additional information would be helpful as agencies evaluate resources in support of EPA’s NCIs.</p>	<p>AAPCA</p>	<p>Pages 10–12C. FY 2020 –2023 National Compliance Initiatives--- Also: Pages 24 –25CAA Title II, Vehicle and Engine Enforcement Program</p>	<p>EPA will share information with state agencies once new NCIs are selected.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>2b. AAPCA and state and local agencies are providing key direction and input as EPA undertakes modernization of the Integrated Compliance Information System (ICIS). The transition to ICIS/ICIS-Air created difficulties for agencies, and EPA OECA should consistently engage and take feedback from agencies during the next transition.</p>	<p>AAPCA</p>	<p>Pages 17 –18 Section IV. Implementing Other Core Work A. Cross-program Activities (3. Data Reporting)</p>	<p>EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to modernize the Integrated Compliance Information System (ICIS).</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>2c. EPA OECA states that an Agency activity for FY 2023 –2024 will be to “Support and encourage states, territories, and tribes to support inspector training development.”Additional clarification from EPA OECA is needed in the final NPG. State and local agencies have previously stressed the importance of EPA taking a primary role in the development of training materials, courses, and other learning opportunities.</p>	<p>AAPCA</p>	<p>Page 20 Section IV. Implementing Other Core WorkA. Cross-program Activities (6. Field Activities)</p>	<p>EPA remains committed to supporting our co-regulators in regard to training. Some programs’ STAGs include line-item designations for training and other forms of technical assistance. EPA continually evaluates how best to support each program given individual program needs and resources. EPA also strives to provides online and in-person training opportunities in other areas for our co-regulators to the extent our resources allow. At the same time, EPA cannot take total responsibility for training. Co-regulators play an important role in training their own staff and partnering with EPA in training activities at the federal, state, tribal and local levels.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>2d. EPA OECA’s draft Guidance indicates that in Authorized Programs, the Agency will negotiate compliance monitoring strategy (CMS) and alternative compliance monitoring strategy (ACMS) plans with states, which will include an effort to “Maximize the flexibilities by considering each agency’s unique situation.” AAPCA members support this commitment and suggest that OECA consider off-site compliance monitoring.</p>	<p>AAPCA</p>	<p>Pages 22 –23 Section IV. Implementing Other Core WorkB. Program-specific Activities (1. Clean Air Act)</p>	<p>EPA will continue to work collaboratively with the states when negotiating CMS plans. Currently, the CAA CMS does provide flexibility for states to augment onsite inspections with offsite compliance monitoring activities (e.g., off-site Partial Compliance Evaluations) and include such activities in their CMS plans.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment</p>
<p>3. EPA should discuss the desire to coordinate with states regarding federal inspections, violation determination, and enforcement actions. This will ensure the most strategic use of limited resources.</p>	<p>Association of Clean Water Administrators (ACWA)</p>	<p>Page 5</p>	<p>EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to implement federal environmental laws and ensure strategic use of resources.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment</p>
<p>3a. EPA should prioritize inspector training. In 2022 ACWA provided EPA with survey data on the types of inspector training preferred.</p>	<p>ACWA</p>	<p>Page 5</p>	<p>EPA will consider the input from the States that ACWA shared with us as we work to identify training opportunities for State inspectors.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment</p>
<p>3b. EPA should continue to work closely with states in prioritizing violations and specifically identify those with environmental justice concerns.</p>	<p>ACWA</p>	<p>Page 8</p>	<p>EPA will continue to cooperate with states to address violations with an emphasis on communities with environmental justice concerns.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>3c. EPA should include remote compliance monitoring and desk reviews as critical tools for assessing noncompliance.</p>	<p>ACWA</p>	<p>Page 17</p>	<p>Experience over the past few years has shown that alternative compliance monitoring strategies such as offsite compliance monitoring can be used successfully to augment on-site inspections. EPA’s Compliance Monitoring Strategies will continue to include flexibilities for states to use offsite compliance monitoring activities, including remote compliance monitoring and desk reviews, as appropriate. An EPA-state team is currently evaluating the effectiveness of offsite compliance monitoring under the Compliance Learning Agenda. We intend to use results from this evaluation, as well as other information from state and EPA experiences, to inform our policies and recommendations for when and how to use of offsite compliance monitoring while maintaining a robust on-site compliance monitoring program.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>3d. EPA should continue to work closely with states on the SNC NCI and support efforts that help address the largest universes of SNC.</p>	<p>ACWA</p>	<p>Page 13</p>	<p>Thank you for your continuous support for the SNC NCI. We will continue to work closely with the states and ACWA on the SNC NCI and to focus our efforts, in consultation with our state partners, on areas and sectors where we believe our work can make a difference in compliance, e.g., small municipal wastewater treatment plants.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>3e. EPA should thoughtfully review all of the challenging guidance/policies identified by the ICIS Modernization Board to determine appropriateness of revision.</p>	<p>ACWA</p>	<p>Page 27</p>	<p>EPA will ensure that the appropriate national program offices within the Agency are engaged in the review of the identified challenging guidance/policies put forth by the ICIS Modernization Board. It should be noted that in most cases the national program offices responsible for the review and appropriate modification of guidance and policies are different than the national program office responsible for the technical implementation of the Integrated Compliance Information System (ICIS) modernization. EPA will clearly communicate when a revision is deemed appropriate, and be as transparent as possible about the revision process. As always, EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to modernize ICIS.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

<p>4. One of the most pressing challenges state and tribal drinking water programs continue to face is prioritizing competing programmatic needs without increased funding for the programs. States are in the process of implementing the new Lead and Copper Rule Revisions (LCRR) while waiting for the Lead and Copper Rule Improvements (LCRI), preparing for a new drinking water regulation for PFAS, and helping systems comply with already existing regulations.</p> <p>4a. EPA OW, OECA, and Regions should work together with states to identify program areas that could be deemphasized at this time or shifted to a lower priority. There must be an acknowledgement and allowance from EPA to states that with the increasing workload from new issues, there must be existing work that becomes a lower priority. These priorities may have regional variations and should reflect local concerns in the states and regions. Policies that reflect allocating efforts based on biggest yield for the investment for public health protection would be welcomed by the states. For example, states having to chase down paperwork for outdated public notice violations rather than increasing time spent assisting systems with current or health-based violations. States are asking EPA to recognize the high volume of work completed by the state primacy programs and the successes states have already achieved in reducing non-</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 5</p>	<p>EPA understands the need to coordinate, focus, and shift resources as new priorities arise. EPA strives to set priorities via the NCI selection process and NPG review as well as during ongoing regional/state discussions.</p> <p>EPA recognizes that Primacy Agencies have many responsibilities under SDWA, and will continue to collaborate with all stakeholders to make sure regulators' limited resources are being used to address the most pressing public health issues.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
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<p>compliance.</p> <p>The current approach by EPA to continue to add regulatory and non-regulatory requirements, without additional resources and without guidance on disinvesting in lower priority issues, is not sustainable. With the ongoing workforce issues faced by states, states are at a critical point in which they must disinvest in lower priority activities or risk significant public health impacts and burn out or loss of state staff.</p>				
<p>4b. Identify the section describing OECA's two financial assistance programs.</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 6</p>	<p>The appropriate Section has been identified in the NPG.</p>	<p>Revision made. Section V has been added to NPG.</p>

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<p>4c. ASDWA encourages EPA to continue to work with the DOJ on the inclusion of SEPs in civil settlements. ASDWA strongly supports the use of SEPs for compliance. SEPs are a tool that can be utilized to address recalcitrance and in lieu of a penalty, return a public water system to compliance by investing in remediation actions (e.g., a system that has repeatedly failed to collect samples may undertake a SEP to contract out sampling). This is especially important where penalties may be assessed to a community-owned PWS and passed on to rate payers as this money would be better spent on remediating the concern. Additionally, at systems with critical technical, managerial, and financial (TMF) issues, assessing financial penalties, in lieu of offering a SEP, exacerbates these TMF issues, which may contribute to additional public health concerns.</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 7</p>	<p>OECA made edits to the final guidance to reflect that on May 5, 2022, the Administrator of EPA joined the Attorney General to announce, among other things, the restoration of Supplemental Environmental Projects (SEPs) in appropriate circumstances as part of settlements with defendants who have violated federal environmental laws.</p> <p>As a clarification, SEPs are not accepted in lieu of a penalty. A violator’s agreement to perform a SEP that benefits public health and/or the environment is a relevant factor for the EPA to consider in establishing an appropriate settlement penalty amount, just as factors like good faith and cooperation are considered. Further, settlements with SEPs must always include a final settlement penalty that retains the deterrent value of the settlement.</p>	<p>Made edits to reflect that on May 5, 2022, the Administrator of EPA joined the Attorney General to announce, among other things, the restoration of Supplemental Environmental Projects (SEPs) in appropriate circumstances as part of settlements with defendants who have violated federal environmental laws.</p>

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4d. ASDWA recommends that OECA partner with states, in addition to regions, regarding the type and frequency of increased inspections to address environmental concerns discussed in the April 30, 2021 memo – coordination is critical.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 7	EPA will confer with our partner states when planning and conducting federal inspections to ensure the most effective use of the compliance assurance tools at our disposal.	No revision to the National Program Guidance is necessary in response to this comment.
4e. The drinking water industry is impacted directly by climate change and faces challenges due to drought and other extreme weather events; however, the compliance and enforcement activities discussed in Part B of Section II do not outline efforts to ensure resilience to climate change for the water sector.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 9	We agree that the drinking water systems face many climate change challenges and we will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, to ensure safe drinking water.	No revision to the National Program Guidance is necessary in response to this comment.

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<p>4f. ASDWA recommends that OECA partner with states in conducting additional inspections to identify and address risks for the noncompliance at community PWSs. Unless a case has been referred for federal enforcement, the state has primary enforcement authority and should be the lead for inspections and communications with systems – OECA can fill in gaps or where inspections are requested by the state. Duplicating states’ efforts is not effective. A robust dialogue with states regarding violations and significant deficiencies will be a more effective approach to increasing compliance, in addition to the increased inspections.</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 13</p>	<p>Joint strategic planning with primacy agencies will continue to play an important role in EPA’s implementation of the drinking water NCI. Each Region, in collaboration with primacy agencies, will be developing a drinking water NCI action plan to ensure the efficient allocation of scarce resources and identify where the EPA support can most effectively complement, supplement, and not duplicate, the states’ ongoing efforts.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>4g. OECA should partner with OW in all compliance reviews, as the burden of conducting the review is otherwise doubled for the states. States have limited capacity and are facing funding and workforce issues on top of heightened expectations and a growing number of regulations; as such, a streamlined process among OECA, OW and the regions to inspect their efforts is needed. Many states welcome collaboration with EPA; however, historically states have not felt that EPA appreciates the drain on resources that competing compliance reviews have on their programs.</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 14</p>	<p>EPA is currently piloting its enforcement file reviews. The pilots include recommended coordination steps between regional enforcement and program reviews. As part of the pilot process, EPA is seeking feedback from primacy states on opportunities for streamlining and specifically on the question of their preference for joint or separate reviews.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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4h. Is OECA considering monitoring and reporting violations to be health-based violations with respect to the NCI? This question merits additional discussions with ASDWA's members	J. Alan Roberson, P.E., ASDWA Executive Director	Page 14	OECA recognizes monitoring and reporting and health-based violations as different. We will engage the appropriate stakeholders on these issues through the SDWA Community Water System NCI.	No revision to the National Program guidance is necessary in response to this comment.
4i. Is OECA considering an action level exceedance or a significant deficiency a violation for purposes of the NCI? This question merits additional discussions with ASDWA's members.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 14	When implementing national compliance initiatives, the agency does so in accordance with the existing laws and regulations. Accordingly, if something is not considered a violation under the statute or regulations, the agency does not change that designation via the NCI.	No revision to the National Program Guidance is necessary in response to this comment.

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<p>4j. The Lead and Copper Rule () is specifically called out for rule-based file reviews aimed at increasing timely and tangible benefits for communities. The exceedance of the lead or copper AL is not a violation of the NPDWRs; however, noncompliance with the deadlines and requirements stemming from an ALE would result in a violation. If a system is in compliance with the deadlines & requirements within the LCR, does OECA plan to require a system to complete actions beyond what is in rule in order to achieve these EJ benefits of timeliness? This question merits additional discussions with ASDWA’s members.</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 14</p>	<p>OECA has a range of tools to help primacy states and communities sustain compliance with the lead and copper rule. Generally, EPA, in coordination with our coregulators, makes case-specific decisions about what actions are needed to protect public health.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>4k. Over what time period is OECA planning to conduct compliance evaluations of half of the large community systems? It is important for EPA to consider the significant time burden this places on states who are required to coordinate with and provide documentation for these evaluations. ASDWA recommends coordinating with states on developing a better, more streamlined, approach to identifying the necessary information without placing added burden onto the state enforcement staff.</p>	<p>J. Alan Roberson, P.E., ASDWA Executive Director</p>	<p>Page 14</p>	<p>OECA is currently considering the appropriate timeline for evaluation of large Community Water Systems. Each Region, in collaboration with primacy agencies, will be developing a drinking water NCI action plan to ensure the efficient allocation of scarce resources.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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4l. Outreach efforts to communities should focus not only on the general public, but also on local government entities that have control and decision-making power over community drinking water systems. Recalcitrance of these entities may be the source of non-compliance, or the entities may not fully appreciate the situation and fail to address compliance concerns.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 14	EPA agrees that local government participation is important to our communication efforts. Your comment raises an important issue that we will make sure to consider as part of our compliance and enforcement activities.	No revision to the National Program Guidance is necessary in response to this comment.
4m. OECA and OW need to coordinate efforts regarding data reporting and the critical need to update SDWIS. The lack of accurate and timely data and information hinders everyone's efforts to increase compliance.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 18	OECA and OW are coordinating on modernizing the Safe Drinking Water Information System which is expected to reduce state data management work and enhance the timeliness and accuracy of drinking water data transferred among drinking water systems, primacy agencies, and EPA.	No revision to the National Program Guidance is necessary in response to this comment.
4n. It should be clarified that in most cases EPA does not directly enforce the SDWA, as indicated by item 2 under EPA Activities. Additionally, because SDWA has not historically been a part of the "State Review Framework", actions 3-9 do not necessarily align with OECA's actions regarding SDWA. ASDWA suggests clarifying with a separate sub-section to highlight the differences of OECA's involvement with SDWA and include coordination efforts with OW and Regions.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 19-20	Revisions have been made to section IV.A.5 to distinguish between activities under SRF for CAA, CWA, and RCRA and the pilot SDWA enforcement reviews.	Edits made to section IV.A.5 to clarify.

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4o. OECA and OW should collaborate on SDWA inspector training and development.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 20	Input from OW is an essential component of OECA SDWA inspector training.	No revision to the National Program Guidance is necessary in response to this comment.
4p.OECA should provide support and guidance to co-regulators to address concerns regarding contamination of drinking water by unregulated, emerging contaminants, including PFAS, especially at federally-owned PWSs (e.g. military bases).	J. Alan Roberson, P.E., ASDWA Executive Director	Page 21	OECA made edits to the final National Program Guidance to include collaboration with co-regulators to address PFAS chemicals, including PFOA and PFOS, as appropriate.	Added a bullet on page 8 on collaboration with co-regulators to address PFAS contamination, as appropriate
4q.Items 1 and 2 under EPA activities are conducted by state primacy agencies, and while EPA has oversight of these activities, it should be clarified EPA’s activity consists of ensuring states complete these activities, as denoted in item 3.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 30	EPA maintains independent authority to monitor compliance with the SDWA, conduct inspections, and to initiate enforcement responses if violations are found.	No revision to the National Program Guidance is necessary in response to this comment.
4r.An additional activity should be added to EPA’s general activities: develop and release guidance for states and regulated entities. States rely on guidance for implementation of the SDWA and it should be a priority for EPA to release implementation guidance in a timely manner, in collaboration with OW and the states themselves, as regulations are being updated or created to ensure effective and consistent implementation and understanding of the requirements.	J. Alan Roberson, P.E., ASDWA Executive Director	Page 30	OECA routinely consults with OW to develop needed guidance.	No revision to the National Program Guidance is necessary in response to this comment

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<p>5. An overall comment for EPA to continue to consider as the National Program Guidance (NPG) nears finalization is the notion that over the past two plus years, the global pandemic has generated numerous challenges both for regulated entities as well as for regulators, from restrictions on inspections due to local public health orders to supply chain, transportation, and labor force issues. We would urge EPA to continue to build as much flexibility into the NPG as possible to allow States and other affected partners to adapt to fluid circumstances in each State or region.</p>	<p>ASTSWMO</p>	<p>Page 5: Section I.A. Introduction – Background and Context:</p>	<p>Section V of the NPG encourages the use of several vehicles which can be used to facilitate administrative, financial, and programmatic flexibilities for states, tribes, and territories.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>5a. If EPA’s intent is to incorporate specific requirements related to focusing enforcement resources on increasing inspections and enforcement in “overburdened and vulnerable communities” into Performance Partnership Agreements (PPAs) commitments, we suggest building as much flexibility as possible into guiding documents for authorized States to account for differing environmental justice initiatives being implemented at the State level.</p>	<p>ASTSWMO</p>	<p>Page 5: Section I.A. Introduction – Background and Context:</p>	<p>The EPA is committed to offering a level of flexibility that accounts for the unique circumstances encountered by our co-regulators while also ensuring compliance assurance programs are effective.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>5b. What specifically is meant by EPA’s intent to directly implement compliance monitoring and enforcement programs? Is this true for authorized RCRA programs where a State’s RCRA program operates in lieu of the Federal program? It has always been true that EPA retains its enforcement authority and exercises that authority if States/Territories/Tribes or local governments lack the authority, capability, or resolve to take timely and appropriate action; is EPA contemplating a change to its scope of work related to directly conducting inspections and enforcement in authorized States?</p>	<p>ASTSWMO</p>	<p>Page 5: Section I.A. Introduction – Background and Context:</p>	<p>These statements reflect EPA’s ongoing responsibilities for direct implementation in certain scenarios and oversight of our co-regulators on program implementation. EPA is not contemplating a fundamental change in the way that authorized state RCRA programs operate in lieu of a federal program.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>5c. We encourage EPA to continue to provide and expand training opportunities to enhance co-regulator capacity for enforcement, compliance monitoring and compliance assurance.</p>	<p>ASTSWMO</p>	<p>Page 5: Section I.A. Introduction – Background and Context:</p>	<p>EPA will continue to provide and look for opportunities to expand training for our co-regulators.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>5d. When EPA looks to incorporate performance measures associated with environmental justice and climate change into specific standards that States must implement, these should be clearly articulated and affected programs given ample opportunity for input and collaboration prior to inclusion in the NPG or other guiding documents, such as the Compliance Monitoring Strategy (CMS) or individual PPAs.</p>	<p>ASTSWMO</p>	<p>Pages 7 – 10: Section II. Key Programmatic Priorities:</p>	<p>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>5e. We suggest that any increase in the number of RCRA NCI inspections be coordinated and agreed upon at the Regional level with specific States and take into account States’ differing programmatic organization/resources and expertise to conduct organic air emissions inspections. Additionally, the focus should prioritize facilities with a high likelihood of contributing to air pollution from organic air emissions.</p>	<p>ASTSWMO</p>	<p>Page 11: Section II. C.2 – Key Programmatic Priorities – FY 2020-2023 National Compliance Initiatives (NCI) – Reducing Hazardous Air Emissions from Hazardous Waste Facilities:</p>	<p>We agree that EPA Regions and states must continue to coordinate and agree on inspection targets, including those for the RCRA NCI. EPA is committed to supporting states with the training and technical expertise needed to fully implement organic air emission evaluations into their RCRA inspection and enforcement programs.</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>5f. We support increasing capacity among Regional and State RCRA inspectors through continued training and development.</p>	<p>ASTSWMO</p>	<p>Page 11: Section II. C.2 – Key Programmatic Priorities – FY 2020-2023 National Compliance Initiatives – Reducing Hazardous Air Emissions from Hazardous Waste Facilities:</p>	<p>We agree that prioritization of training and capacity building for federal, state and regional enforcement and compliance monitoring personnel, including RCRA inspectors, 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>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>5g. It was noted by some members that the challenges presented by the pandemic required programs to pivot to alternative strategies for compliance monitoring and assurance and would encourage EPA to continue to provide flexibilities in order to allow State waste programs to focus efforts in a manner that optimizes resources. Since the document memorializes EPA’s operational planning priorities, strategies, and key activities especially as relates to State waste program oversight, compliance monitoring initiatives and grant work planning, flexibilities will ensure that regional challenges associated with the Covid-19 pandemic, natural disaster response or other local concerns can be addressed while still operating within the expectations of EPA’s priorities.</p>	<p>ASTSWMO</p>	<p>Page 17- Section IV. Implementing Other Core Work</p>	<p>OECA understands the flexibilities provided in the July 22, 2020 partner agency inspection flexibilities memo and subsequent extensions through March 31, 2022 were crucial during the pandemic. The experience has shown that certain offsite compliance monitoring activities can be used successfully to augment on-site inspections. EPA will consider the pandemic flexibilities in the context of the compliance learning agenda and our EPA-State compliance monitoring strategies. We intend to use our collective experiences to inform our policies and recommendations for when and how to use different compliance monitoring approaches while maintaining a robust compliance assurance program.</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>5h. There is an offer of CCR training opportunities, both general and subject-specific for States. Since States are already requesting program approval and others are working on their rules/applications, States need such training now, especially if there are expectations for CCR rule interpretation.</p>	<p>ASTSWMO</p>	<p>Page 36: RCRA Coal Combustion Residuals (CCR) Compliance Assurance and Enforcement Program:</p>	<p>EPA has provided CCR training to numerous state partners over the last several years, and will continue to seek these opportunities, including through engagement with ASTSWMO on CCR.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>5i. There is an expectation of coordination and collaboration in CCR rule implementation and facility noncompliance. This seems to be a departure from approved State Municipal Solid Waste (MSW) landfill permit programs, where beyond approving initial regulations/programs, there has been little EPA interaction with approved State programs. The EPA authority derived from the WIIN Act should be made clear for States seeking CCR program authority.</p>	<p>ASTSWMO</p>	<p>Page 36: Under EPA Activities in Authorized Program and Expectations for State, Territory, Tribal, or Local Government Activities in Authorized Programs</p>	<p>EPA plans to maintain its collaborative relationship with states as it enforces the CCR Rule in unapproved states and coordinates enforcement efforts in approved states. Unlike the MSW program, Congress through the WIIN Act, gave EPA authority to enforce the CCR Rule directly in both unapproved and approved states.</p>	<p>Revision made in the National Program Guidance on p. 36 #5.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
<p>6. EPA should coordinate with states regarding federal inspections and enforcement actions. Effective consultation and coordination with the states, consistent with Assistant Administrator Susan Bodine’s July 11, 2019 memorandum, when federal inspections or enforcement actions are planned is essential. This will assure the best use of limited compliance resources, minimize friction, and reduce duplication of effort.</p>	<p>Environmental Council of the States (ECOS)</p>	<p>Page5: Introduction</p>	<p>EPA agrees that cooperative joint planning and regular communication with states are essential to promote shared accountability between federal and state enforcement authorities. That is why EPA regularly engages with ECOS and its members to discuss compliance and enforcement issues. Additionally, EPA regional offices meet with their states to discuss and coordinate compliance and enforcement topics. EPA will continue our collaboration 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>6a. EPA should continue to prioritize inspector training. Resources continue to be a challenge as states take on more work despite flat budgets. Training continues to be a priority to ensure inspectors are equipped with the current information needed to pursue cases to the fullest.</p>	<p>ECOS</p>	<p>Page 5: Introduction</p>	<p>EPA will continue to prioritize training to ensure inspectors are adequately equipped. EPA provides online and in-person training opportunities for our inspectors and our co-regulators to the extent our resources allow.</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>6b. EPA’s discussion of state and local collaboration includes mention of “building state capacity, supporting state actions...” etc. EPA needs to be more active and effective at assuring that its state and local partners are resourced, trained, and have effective coordination and technical assistance from EPA in their role as co-regulators.</p>	<p>ECOS</p>	<p>Pages 5-7: Introduction</p>	<p>EPA remains committed to supporting our state and local partners. We provide STAGs that include funding for training and other forms of technical assistance. EPA continually evaluates how best to support each program given individual program needs and resources. EPA also strives to provides online and in-person training opportunities in other areas for our co-regulators to the extent our resources allow.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
<p>6c. States have identified challenges regarding Publicly Owned Treatment Works in small or remote communities, often operated by third parties. EPA should work closely with states to achieve improvements in Community Water Systems (CWSs) compliance.</p>	<p>ECOS</p>	<p>Page12,13 (Community Water Systems)</p>	<p>EPA recognizes the compliance challenges faced by small Publicly Owned Treatment Works and Community Water Systems. EPA will work with states to expand the use of the Compliance Advisors to help overburdened systems return to compliance.</p>	<p>Added language to p. 12, Section 4, on the SNC NCI to clarify that assistance for underserved communities includes Compliance Advisors. This mirrors language in the Section 5 on the CWS NCI.</p>

Comment	Commenter(s)	Location in Draft Guidance	National Program Offices Response	Action Taken in Final Guidance
6d. EPA should include Off-site Compliance Monitoring as a critical tool for assessing noncompliance.	ECOS	Page 17 (A. Cross-program Activities)	EPA’s Compliance Monitoring Strategies will continue to include flexibilities for states to augment onsite inspections with offsite compliance monitoring activities, as appropriate. An EPA-state team is currently evaluating the effectiveness of off-site compliance monitoring under OECA’s Compliance Learning Agenda. We intend to use results from this evaluation, as well as other information from state and EPA experiences, to inform our policies and recommendations for when and how to use of offsite compliance monitoring while maintaining a robust compliance assurance program.	No revision to the National Program Guidance is necessary in response to this comment.
6e. EPA plays an important role as the liaison between states and other federal agencies. EPA's goal to reduce the number of all referred no complaint filed civil judicial cases more than 2.5 years old is a good first step.	ECOS	Page 48 (FY 23 National Program Measures)	EPA will continue to work on reducing the number of all referred no complaint filed civil judicial cases more than 2.5 years old.	No revision to the National Program Guidance is necessary in response to this comment.

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<p>7. Office of Enforcement and Compliance Assurance Draft National Program Guidance, Fiscal Years 2023-2024 cites in Section VI (National Program Guidance Measures) a target of 10.1% or less for permittees in significant noncompliance with their permit limits. Since some permittees have multiple NPDES permits, and only one of those permits may be in SNC status, Wyoming recommends changing this target to 10.1% or less “of issued NPDES permits in significant noncompliance with their effluent limits.” This would provide a more accurate reflection of compliant vs. non-compliant facilities and their affected water bodies.</p>	<p>Water Quality Division, Wyoming DEQ</p>	<p>Pg. 48, Draft National Enforcement and Compliance Assurance Program Guidance</p>	<p>We very much appreciate Wyoming DEQ’s raising an interesting observation. The SNC NCI Steering Committee will discuss this issue and decide on a path forward.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>

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<p>7a. Section 4. Safe Drinking Water Act: SDWA UIC Compliance Assurance and Enforcement Program. EPA indicates that a state expectation is to “Coordinate with EPA to review draft primacy program regulations throughout the development process including drafting and finalizing stages.” As part of cooperative federalism, DEQ is committed to coordinating with EPA when promulgating rules related to primacy programs. However, also in the interest of cooperative federalism, DEQ will follow established state rulemaking procedures when promulgating rules. On a case-by-case basis, the DEQ will collaborate with EPA region staff to determine review procedures to ensure that EPA, as the oversight agency, has an appropriate role in the rulemaking process. EPA's attempt to establish requirements for state rulemaking procedures in the NPGs is not appropriate.</p>	<p>Water Quality Division, Wyoming DEQ</p>	<p>Pg. 32, Draft National Enforcement and Compliance Assurance Program Guidance</p>	<p>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>

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<p>8. In its introduction, OECA says that it “supports EPA’s FY 2022-2026 principles of following the science, following the law, being transparent, and advancing justice and equity. OECA’s priorities, policies, and practices will focus on being consistent and systematically fair, just, and impartial in our treatment of all individuals.” NACAA supports these underpinning principles, consistent with NACAA’s early input on the FY 22-26 NPGs and previous comments on earlier guidances (for example, https://www.4cleanair.org/wp-content/uploads/Documents/NACAANPMComments-FY20-21-05022019.pdf).</p>	<p>National Association of Clean Air Agencies (NACAA)</p>	<p>Page 5: Introduction</p>	<p>Thank you for your continued support of EPA’s principles of following the science, following the law, being transparent, and advancing justice and equity.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment</p>

<p>8a. Section 1 A also calls for “This work [to] include targeting and screening to prioritize inspections and enforcement cases in overburdened and vulnerable communities.” This aligns with the first recommendation in NACAA’s January 15, 2021 Transition Letter to the Biden-Harris Administration, that “EPA should make the consideration of racial justice and protection of overburdened communities from the impacts of pollution and climate change a central focus across all its activities, as well as exploring ways to involve overburdened communities in environmental regulatory decisions that affect their residents. Environmental Justice (EJ) should not be just a single program within EPA, it should be integrated prominently into every program across EPA.” It continues that “EPA’s permitting and enforcement efforts should be among the first areas of focus for these activities. When EJ is placed as a central concern in permitting and enforcement, it creates immediate opportunities for reducing harms to the communities most heavily burdened by pollution impacts. EPA should consider the permitting and enforcement models of NACAA member agencies that have centered disproportionately affected communities.” As a community of agencies, NACAA continues to be involved in the modernization of the Integrated Compliance Information System (ICIS) and OECA should continue to make NACAA a central partner in</p>	<p>NACAA</p>	<p>Page 5 Introduction</p>	<p>OECA’s commitment to EJ across all media programs is outlined in the following memorandums. On April 30, 2021, OECA issued a memorandum, Strengthening Enforcement in Communities with Environmental Justice Concerns, directing an increase in the number of facility inspections in overburdened communities, enhancements to remedies, and an increase in community engagement. EPA will focus on strengthening enforcement and resolving environmental noncompliance through remedies with tangible benefits for the impacted community. On June 21, 2021, OECA’s Acting Assistant Administrator, issued a memorandum, Strengthening Environmental Justice Through Criminal Enforcement, directing strengthened detection of environmental crimes in overburdened communities through effective civil-criminal coordination on investigations and cases, improved assistance to crime victims, and enhanced remedies sought in environmental crime cases. Lastly, on July 1,</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
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<p>that effort. As OECA develops new tools to assist in targeting and screening, it should involve the NACAA community of agencies at every stage.</p>			<p>2021, OECA issued a memorandum, Strengthening Environmental Justice Through Cleanup Enforcement Actions, directing cleanup enforcement staff to require responsible parties to take early and prompt cleanup actions, press for more robust enforcement instruments, and increase cleanup oversight.</p>	

<p>8b. The draft states that “OECA will address climate change by establishing a new hydrocarbon enforcement program...” On July 2, 2021, NACAA supplied comments to the EPA regarding its American Innovation and Manufacturing (AIM) Act implementation rule, (https://www.4cleanair.org/wp-content/uploads/Final-NACAA_7_2_21_Comments_HFC_AIM_ACT-1.pdf) and in those comments identified areas where EPA should coordinate with state and local programs on issues such as enforcement. For example, NACAA’s comments noted that “EPA should coordinate with those agencies that have programs to facilitate multijurisdictional consistency surrounding labelling, recordkeeping, tracking, reporting, verification, and enforcement. Tracking programs should allow for terminological flexibility around issues such as labeling and disclosure to enable consistency with, and take advantage of lessons learned from, the variety of existing local and state programs. In addition, authorized by statutes and regulations in their jurisdictions some local and state programs emphasize GHG reductions over a period that prioritizes some HFCs with longer or shorter persistence longevity.” Also, NACAA’s July 2, 2021 comments noted that “As it finalizes its proposal, EPA should also detail how it will coordinate with state and local recovery, reclamation and reuse programs.”</p>	<p>NACAA</p>	<p>Page 5 Introduction</p>	<p>EPA will continue to work collaboratively with states, territories, tribes, and local agencies, as appropriate, as we move forward with implementation of regulations under the AIM Act.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
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<p>State and local agencies have existing programs and EPA should make every effort to coordinate with these agencies and leverage their experience, widespread presence, institutional strengths, and expertise.</p>				
<p>8c. The sentence referenced in the previous comment continues “...directing enforcement resources to ensure effective enforcement against noncompliant emissions of greenhouse gases...”</p> <p>As reflected in NACAA’s response to OAR, EPA should work to assure that state and local enforcement efforts have sufficient resources from the federal government to accomplish their role as enforcement co-regulators. In addition to grant funding, key areas that EPA can facilitate are the provision of technical assistance and training.</p>	NACAA	Page 5: Introduction	EPA remains committed to supporting our co-regulators in regard to training and technical assistance. EPA continually evaluates how best to support each program given individual program needs and resources. EPA also strives to provides online and in-person training opportunities in other areas for our co-regulators to the extent our resources allow.	No revision to the National Program Guidance is necessary in response to this comment.

<p>8d. EPA’s discussion of state and local collaboration includes mention of “building state capacity, supporting state actions...” etc. As noted above, EPA needs to be more active and effective at assuring that its state and local partners are resourced, trained, and have effective coordination and technical assistance from EPA in their role as co-regulators.</p> <p>Enforcement of new rules will not keep pace without additional resources to effect data gathering and action taken to support compliance and address violations. In NACAA’s January 28, 2022 comments on the EPA’s proposed NSPS for the Oil and Gas Sector (https://www.4cleanair.org/wp-content/uploads/NACAA-Oil-and-Gas-NSPS-Comment-Letter-01_28_2022.pdf), NACAA noted that “all agencies face inadequate resources to meet their existing and emerging Clean Air Act responsibilities. For agencies that have a daunting number of sources and already-stretched funding, human resources, and equipment, the rule will create implementation challenges if EPA does not become a more effective advocate for fully funding these agencies, and matching the regulatory responsibilities assigned to these agencies with the resources to carry them out. “New EPA rules will overburden agencies with many new sources requiring new inspection and enforcement actions with unchanged funding, resources and support. The Agency</p>	<p>NACAA</p>	<p>Page 5-7: Introduction</p>	<p>EPA remains committed to supporting our co-regulators in regard to training and technical assistance. EPA continually evaluates how best to support each program given individual program needs and resources. EPA also strives to provides online and in-person training opportunities in other areas for our co-regulators to the extent our resources allow.</p>	<p>No revision to the National Program Guidance is necessary in response to this comment.</p>
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has a responsibility to address this issue.				
9. When US EPA is to conduct civil or criminal action, the US EPA should remember that Tribes are not land owners. In the new language in RCRA, tribes are defined as land owners.	Navajo Nation	General Comment	Please contact Jonathan Binder for further clarification on the comment.	No revision to the National Program Guidance is necessary in response to this comment.
9a. Are there baseline statistics to show the number of inspections per tribe for the OITA office to share?	Navajo Nation	Page 10 (OITA NPG)	EPA can provide information on the number of inspections conducted in Indian country. EPA is not currently able to provide baseline statistics on the number of inspections conducted per tribe.	No revision to the National Program Guidance is necessary in response to this comment.
10. The phrase "... and federally recognized Indian t (tribes),..." needs to be completed to say "... and federally recognized Indian tribes (tribes), ...".	Mille Lacs Band of Ojibwe	Page 5	The sentence has been updated	Edit made to National Program Guidance.
10a. The document has hotlinks for various relevant topics and sites. This is good if the document will be strictly electronic. But because some may receive the document in a paper form, all hotlink URLs should be provided as reference either within the text itself, or be footnoted, and have then have the provided URL be hot-linked.	Mille Lacs Band of Ojibwe	throughout	Endnotes added to the National Program Guidance with URLs	Edits made to the National Program Guidance