

September 29, 2023

Ms. Michele McKeever  
Ms. Beth Ragnauth  
U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Dear Ms. McKeever and Ms. Ragnauth:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to provide early input on EPA's upcoming FY 2024-2025 National Program Guidance (NPG) for the Office of Enforcement and Compliance Assurance (OECA), which you solicited on August 29, 2023. NACAA is the national, non-partisan, nonprofit association of 157 air pollution control agencies including 35 states, the District of Columbia, 116 metropolitan areas, and five territories. 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. NACAA offers input in three areas:

- Shared Goals and Priorities
- National Enforcement and Compliance Initiatives
- State and Local Partner Needs

We appreciate the opportunity for early input. Our recommendations follow.

#### Shared Goals and Priorities

In the FY2022-2026 EPA Strategic Plan, OECA identifies two strategic measures: Hold Environmental Violators and Responsible Parties Accountable; and Detect Violations and Promote Compliance.

These measures are improvements on previous NPG indicators of progress, "reducing average time" and "increasing compliance rates." EPA should continue to measure success based on detecting violations and improving increasing the compliance rate. Real-world environmental outcomes matter and improving compliance rates should not come simply from reduced enforcement or monitoring.

Additionally, EPA has prioritized environmental justice across its portfolio of actions. EPA's enforcement and compliance assurance actions should provide equitable protections for minority, disadvantaged, or vulnerable communities, and in its NPG for FY 2024-2025, EPA should establish performance measures to evaluate its improvement in this area.

As a broad rule, EPA priorities should focus on spheres in which the agency can do work that its state and local partners cannot, such as in areas where state and local agencies do not have jurisdiction or authority (e.g., risk management plan oversight). Moreover, EPA plays an essential role in addressing sources that are nationally significant, such as 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. As EPA determines its priorities in drafting its FY 2024-2025 NPG, it should focus its attention on situations where state and local agencies are not the appropriate entities or lack the national-scale resources to be effective, especially for issues that are nationally significant rather than regional.

### National Enforcement and Compliance Initiatives

On August 17, 2023, EPA established six National Enforcement and Compliance Initiatives (NECIs)<sup>1</sup> for FY 2024-2027, including:

1. Mitigating Climate Change
2. Addressing Exposure to PFAS
3. Protecting Communities from Coal Ash Contamination
4. Reducing Air Toxics in Overburdened Communities
5. Increasing Compliance with Drinking Water Standards
6. Chemical Accident Risk Reduction

On March 13, 2023, NACAA provided comments<sup>2</sup> to OECA on the draft NECIs, and we reiterate those comments here. The two new NECIs (addressing climate change and PFAS) will need particular consideration as OECA develops its NPG for FY 2024-2025. Each will need clear guidance from EPA about what performance will be addressed as enforcement and compliance issues, and against what standard actions could be taken. For example, OECA should work with EPA's Office of Research and Development to measure and characterize compliance goals for PFAS as an air pollution concern. While increased regulation of greenhouse gases (GHGs) is possible pending the finalization of EPA proposed rules on methane and CO<sub>2</sub> from the power sector, pending finalization, EPA should establish strong guidance for those federal GHG regulations against which enforcement and compliance actions could be taken, particularly those highlighted with existing EPA authority to address hydrofluorocarbon (HFC), methane, and vehicle CO<sub>2</sub> emissions.

EPA actions to expand its efforts to improve clean air outcomes for vulnerable communities should be in addition to, and not at the expense of, ongoing efforts at major sources. For example, EPA should avoid conducting inspections at natural minor facilities or facilities that are even smaller and below the permitting thresholds for clean air agencies.

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<sup>1</sup> Available online at <https://www.epa.gov/system/files/documents/2023-08/fy2024-27necis.pdf>

<sup>2</sup> Available online at [https://www.4cleanair.org/wp-content/uploads/NACAA-OECA-FY24\\_27-NECI-Comments--03132023.pdf](https://www.4cleanair.org/wp-content/uploads/NACAA-OECA-FY24_27-NECI-Comments--03132023.pdf)

In keeping with the Agency's commitments to advancing environmental justice, OECA has articulated that it will include the advancement of this issue in all six NECIs. OECA's enforcement and compliance assistance programs should be evaluated to see if their outcomes provide equitable protection, or if embedded in their systemic design or implementation they deliver outcomes that afford less protection to communities that face other disadvantages. Further, many enforcement activities may be triggered and driven by community complaints. Significant violations may persist in disenfranchised communities that may be reluctant to file complaints. EPA should continue to invest in mechanisms, technologies, and activities that improve reporting and public communications related to protecting the public and disproportionately impacted communities. Training should be afforded to state and local agencies on how enforcement and compliance assurance can provide equitable protections for minority, disadvantaged, or vulnerable communities. In addition, training associated with all of the NECIs would help to ensure consistent application of resources and priorities across all regions.

Beyond the NECIs for FY 2024-2025, EPA should continue to strategically address areas of continued widespread noncompliance, including wood stoves, mobile source tampering, and exposure to well-understood health-harming substances like asbestos.

Each year, residential wood combustion is responsible for hundreds of thousands of tons of PM<sub>2.5</sub> emissions. These emissions can increase the concentration of particle pollution to levels that cause serious health impacts ranging from exacerbation of cardiac and respiratory problems to premature death.<sup>3</sup> NACAA's January 15, 2021, Transition Letter raised lagging enforcement in of emission standards from residential wood heaters, which contribute to some of the most severe nonattainment events in the country. "After decades of being severely shortchanged, EPA must take decisive action to ensure the emission reductions intended to accrue from this important program are actually achieved," our letter states. On February 28, 2023, EPA's OIG released a report on EPA's residential wood heating program concluding that this ineffective program puts human health and the environment at risk for exposure to dangerous fine particulate matter pollution by allowing sales of wood heaters that may not meet emission standards<sup>4</sup>. EPA's National Program Guidance for OECA should reiterate the agency's commitment to enforcing the wood heater regulations in ways that effectively protect public health.

In our January 15, 2021 Transition Letter, NACAA offered that a broader "mobile source NCI could focus on ... 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 nonroad 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 impacts states as far away as the Midwest. Finally, a mobile source NCI could examine excessive rail idling, which not only

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<sup>3</sup> Strategies for Reducing Residential Wood Smoke, U.S. Environmental Protection Agency (March 2013), p. 4 – <https://www.epa.gov/sites/production/files/documents/strategies.pdf>

<sup>4</sup> EPA OIG Report #23-E-0012, February 28, 2023, available online at <https://www.epa.gov/office-inspector-general/report-epas-residential-wood-heater-program-does-not-provide-reasonable>

wastes fuel and causes odors, it also causes emissions of diesel particulate and ozone precursors.”

While PFAS has been listed by EPA among its enforcement priorities, these stronger efforts must not come at the expense of additional efforts to enforce NESHAPs violations concerning well-understood hazardous air pollutants. EPA issued proposed new regulations in April 2022 prohibiting the use of many types of asbestos under the Toxic Substances Control Act (TSCA), and while these rules have yet to be finalized, state and local agencies continue to take the lead in enforcing noncompliance with substances like asbestos that continue to provide health risks when inhaled. The Clean Air Act has numerous provisions banning asbestos use, and EPA should include a commitment to enforcing regulations for these and other NESHAPs in its FY 2024-2025 NPG.

### State and Local Partner Needs

To the extent possible, EPA should treat states in a consistent manner. While some flexibility is called for to reflect different circumstances, as a general matter it makes sense to strive for national consistency. This is especially true when addressing issues with larger companies that have a presence in multiple jurisdictions. In order to move toward greater consistency, headquarters should work closely with regional offices to implement the new guidance.

When requested, EPA must provide an environmental presence to aid state and local agencies in enforcement activities. Even in state or local areas that are authorized to enforce clean air requirements, EPA serves a critical role in addressing serious national non-compliance problems, such as those affecting multiple jurisdictions. EPA should also assist state and local agencies with enforcement issues when the agencies request support due to a lack of resources or capability. Joint enforcement action may, at times, be the best option when EPA and the appropriate agency agree.

Some state and local agencies note that digital incompatibility remains a barrier to effective joint enforcement. Investments in information systems that align EPA’s systems with those of its state and local regulatory partners would improve information sharing and management and reduce the burdens on agencies already stretched by resource constraints. NACAA has been deeply involved in the modernization of the Integrated Compliance Information System (ICIS) and in updates to the Enforcement and Compliance History Online (ECHO) tool; EPA’s investment in, and involvement of the state and local experts in, these updates are critical and should continue.

As EPA’s co-regulators, we believe it is essential that state and local air quality agencies and EPA work cooperatively on enforcement and compliance activities. Indeed, EPA has indicated that it plans to enhance its reliance on state and local air quality programs through cooperative federalism. Therefore, it is more critical than ever that state and local air quality agencies receive adequate federal funding to be able to carry out this important work. The level of federal support to state and local agencies that are implementing federal programs, policies and standards should reflect the scope and complexity of the responsibilities that these agencies are undertaking. Unfortunately, federal funding to state and local air agencies has not been

adequate; in fact, it has not even kept pace with inflation and has remained essentially flat for the last two decades. In order to continue to carry out our responsibilities and perhaps take on additional work under cooperative federalism, significant increases in federal grants are required. We believe the investment of federal funds in state and local agency activities enables us to be effective in work of vital importance to this country.

In all programs undertaken, funding must be adequate both for state and local agencies, and for our federal partners as well. EPA must invest in its own workforce. EPA staffing levels are well below the FY 1999 peak and are currently at their lowest levels since 2017<sup>5</sup>. Press reports particularly flag the loss of staff at OECA; EPA should act strategically to ensure that it has the staffing and expertise needed to do fulfill its half of the responsibilities of cooperative federalism.

We thank you for this opportunity to provide early input into the development of the NPG for FY 2024-2025 and we look forward to continuing to work with EPA as the agency develops the final document.

Sincerely,



Michael G. Dowd  
Virginia  
Co-Chair  
NACAA Enforcement Committee



Richard A. Stedman  
Monterey, California  
Co-Chair  
NACAA Enforcement Committee

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<sup>5</sup> See data from <https://www.epa.gov/planandbudget/budget>