

September 5, 2018

EPA Announces Focus on Compliance

On August 21, in a memorandum to the Regional Administrators (the Memorandum), the U.S. Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance communicated the agency's plan to transition its enforcement framework "to better convey the message that increased compliance is the goal, and enforcement actions are not the only tool for achieving this goal."^[1]

Consistent with this shift from its past enforcement paradigm, the EPA announced the renaming of what were previously referred to as National Enforcement Initiatives (NEIs), or "national priorities," as National Compliance Initiatives (NCIs), effective in 2019. As stated in the Memorandum, this name change signals the EPA's "focus on compliance as the goal, the broader use of compliance assurance tools, and the opportunity for enhanced state engagement."

The current NEIs,^[2] which are considered every three years and are selected based on established agency criteria, are in effect through fiscal year 2019. The Memorandum outlines a plan to select NCIs that will be reevaluated in four-year cycles, the first of which is slated to span fiscal year 2020 to fiscal year 2023. According to the Memorandum, the selection criteria for the new NCI cycle will be modified to better align with the Agency Strategic Plan Measures and Priorities. The EPA plans to increase engagement of the states and tribes in the process of selecting and developing NCIs.

The Memorandum also announces the EPA's decision to retire several NEIs that focus on specific and targeted industries, leaving these NEIs to the agency's core enforcement program, as implemented at the state level. These targets include oil and gas (extraction activities), agriculture (concentrated animal feeding operations), municipalities (sewer overflow and contaminated stormwater) and the reduction of air pollution from the typically most significant sources of emissions.

According to the Memorandum, these NEIs are being retired because the EPA feels the environmental compliance issues that led to their listing as NEIs have been largely resolved and compliance has been generally achieved throughout these sectors. The EPA will continue to focus on reducing the most serious risks of accidental releases at industrial and chemical facilities, and on addressing the most significant sources of hazardous air pollutants and toxic air emissions, as well as unpermitted discharges.

The Memorandum clarifies that the EPA will emphasize the use of alternative compliance approaches in lieu of traditional enforcement practices such as facility inspections, formal enforcement cases, and the initiation of civil, criminal or judicial actions. Instead, nontraditional approaches, such as compliance assistance, voluntary resolutions and use of the EPA's self-disclosure audit policies, may be used to further the EPA's stated goal of achieving increased compliance. However, regulated entities can still expect to see traditional enforcement techniques being used; the completion of ongoing enforcement actions under the current NEIs is a stated EPA focus for fiscal year 2019.

Should you have any questions regarding the issues discussed above, please feel free to contact any of the attorneys listed in the sidebar.

^[1] ["Transition from National Enforcement Initiatives to National Compliance Initiatives,"](#) August 21, 2018.

^[2] More [information](#) on the eight NEIs currently in effect.

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