State Comments on the January 2018 OECA Interim Guidance and the National Compliance Initiatives (NCIs) – December 2018

State	Contact	Date	Comments
AZ	Misael Cabrera, Director, AZ Dept. of Envir. Quality	12/10/18	**Feedback on OECA January 2018 Interim Guidance memo:** These are working well – I specifically like: **Water:** • The increased focus on face-to-face meetings • The increased focus on information sharing through the organizations up to the executive levels. • The overall increase in the focus on state/EPA collaboration. • Deference to state authority as appropriate. • The focus on alternative compliance monitoring approaches as opposed to broad approaches applied to every state with very different circumstances. **Waste:** Haz Waste: • ADEQ is getting good advance notice of EPA inspections in Arizona. • EPA is offering a lot of training to new ADEQ inspectors during field inspections and in classroom-style settings. **LUST/UST:** • EPA deferral to states is appropriate. • Coordination between EPA Regions and States on the planned inspections for the year. **Air:** • The Compliance Monitoring Strategy agreement is a useful tool that outlines the states compliance plan and provides the State and EPA with the critical planned compliance activities to avoid surprises. The CMS process also covers Periodic Joint Work Planning through EPA's annual required Full Compliance Evaluation to ensure states are meeting the CMS obligations. • Collaboration with EPA on information sharing and training for new or emerging compliance issues. For example, the EPA has agreed to help train ADEQ on identifying emission testing defeat devices as the opportunity for onboard vehicle computer tampering increases due to rapid changes in ability to alter vehicle computers.

ED_002674_00000816-00001

State	Contact	Date	Comments
AZ			• Deference to states on compliance and enforcement issues. The states are best equipped to engage in compliance and enforcement activities as they are typically the primary permitting agency and have significantly more interaction and understanding of the facility's process and applicable regulations. <u>There is opportunity for improvement, here is my suggestion:</u> **General:** • There should be a specific process and timeframe for resolution for the escalation process with the OECA Assistant Administrator when there is a difference between State and Federal. • How will success be measured? **Water:** • The document does not say much regarding compliance with the document itself. **Waste:** Haz Waste: • More explanation could be given regarding when States find a need to refer a case to EPA or ask for assistance, what is the process and how can EPA guarantee appropriate follow-up when help is needed. **LUST/UST:** • More discussion on how facilities are selected for inspection. • EPA inspection reports must be prepared much more quickly (currently 36 months). **Air:** • Planned audits and program reviews could be more aligned to mission outcomes, specifically reviewing for air pollution reduction (i.e. mitigation or avoidance) and evaluating the state's use of compliance and enforcement tools to timely remedy noncompliance, e.g. how compliance tools result in measureable pollution reduction or mitigation both in the short and long term.

State	Contact	Date	Comments
AZ			**Feedback on FY2020-FY2023 National Compliance Initiatives (NCIs):** <u>These are working well – I specifically like:</u> **Water:** • Aligning NCIs to the EPA strategic plan is important. • Collaboration with the states regarding the application of state and federal expertise, authority, and resources leads to optimal results. **Waste:** Haz Waste: • Prefer the focus on compliance assistance vs. enforcement. • Prefer longer compliance initiative period. **LUST/UST:** • The current NEIs/NCIs are appropriate. • No issues with transitioning to a 4-year timeframe. **Air:** • NCI selection to prioritize nonattainment areas and populations vulnerable to air pollution. • Focusing on reducing air pollution from the largest sources, including mobile sources (e.g., 2018 Tampering policy) with a focus on nonattainment areas. <u>There is opportunity for improvement, here is my suggestion:</u> **General:** • How will success of the NCIs be measured? **Water:** • NCI's should have measurable, visible, real time metrics which are in alignment with quantifiable goals. **Waste:** Haz Waste: • Could improve communications on goals and objectives specifically to the haz waste program. **Air:** • Providing timely guidance to facilities on how to revise their permit now that the "Once in Always In" Policy has changed. Specifically provide guidance to ensure national consistency throughout the U.S. that gives certainty to facilities who may be considering revising their permit from major to minor source of HAPs in such

State	Contact	Date	Comments
AZ			a way to avoid a potential permitting error and associated enforcement action.
CT	Nicole Lugli Director, Office of Planning and Program Development, Office of the Commissioner CT Dept. of Energy and Envir. Protection	12/10/18	DEEP appreciates EPA OECA seeking input from the states on these recent compliance and enforcement initiatives and updates. First, on the January **2018 Interim Guidance memo**, DEEP's experience with EPA Region I is that the guidance is working well and <u>we specifically like</u> - • For the most part, how it reflects our current process to coordinate and communicate with EPA Region I on inspections and enforcement case development. • Emphasis on periodic joint work planning and communication and coordination with senior leadership and throughout the management/staff level. This is critical in maintaining a collaborative relationship. • The examples of the types of situations that warrant EPA involvement in individual inspections especially for actions to address cross-boundary impacts affecting other states such as companies with facilities in multiple states or widespread non-compliance in a sector/program or in response to a state request for assistance in a specific situation, or broader work-sharing for a particular sector or geographic area. <u>There is opportunity for improvement, here is my suggestion.</u> As resources continue to diminish, continue to seek opportunities to leverage resources and increase capacity between EPA and states to contribute to enforcement and compliance efforts by sharing tools and technologies and by training state inspectors. Second, on OECA's input from states and tribes on the FY2020-FY2023 round of its National Compliance Initiatives (NCIs) **see** [HYPERLINK "https://www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives" \t "_blank"]– <u>we specifically like</u> • EPA's effort to develop more opportunity for early state engagement and input on the National Compliance Priorities. • Efforts in additional to enforcement outputs, to also track outcome and performance metrics such as compliance rates.

State	Contact	Date	Comments
CT			• Extending the cycle from three years to four years to better align with EPA's National Program Guide There is opportunity for improvement, here is my suggestion. Interested in hearing more about EPA's effort to explore the possibility of adding drinking water as an NCI to increase compliance with drinking water standards.
IA	Jason Marcel, Chief, Field Services & Compliance Bureau, IA Dept. of Natural Resources		**Feedback on OECA January 2018 Interim Guidance memo:** These are working well – I specifically like • Overall, communication at both the leadership and career management level with EPA Region 7 is good. I like the fact that effective communication and collaboration between EPA and States is the main focus in this memo. There is opportunity for improvement, here is my suggestion • Consider adding "emerging issues" in compliance/enforcement as a topic that is discussed by leadership and career staffers on a regular basis. **Transition from National Enforcement Initiatives to National Compliance Initiatives:** These are working well – I specifically like • Overall, the process of identifying national priorities for compliance initiatives seems to work pretty well. Keep it a transparent, streamlined, and fair process that is focused on reducing risk to public health. Aligning the NCI with EPA's Strategic Plan measures and priorities makes logical sense. There is opportunity for improvement, here is my suggestion • Improve data quality that is used to measure compliance/enforcement initiatives. For example, data flow from States to ICIS regarding significant noncompliance rates in the NPDES program should continue to be a focus area for improvement.
MA	Ann Lowery Assistant Commissioner -Bureau of Planning and Evaluation,	12/11/18	**Feedback on OECA January 2018 Interim Guidance memo:** These are working well – I specifically like

State	Contact	Date	Comments
MA	MassDEP		• Regular meetings with state / EPA Regional representatives on compliance assurance work, and specifically focused discussions on work sharing and collaboration arrangements. In Region 1 these have been held regularly in June with all New England states. • Regular communication on compliance Monitoring Strategies, and Alternative Compliance Monitoring Strategies. We are particularly appreciative of EPA Region 1's openness and continued work on Alternative Compliance Monitoring Strategies – that can target environmental outcomes rather than activity outputs. • Support for identifying EPA's role for assisting states where national consistency can be helpful, and where technology and data systems can leverage analysis and tracking of compliance. <u>There is opportunity for improvement, here is my suggestion</u> • While the annual state/regional compliance and enforcement/compliance assurance meetings are important forums for compliance assurance efforts among the states and EPA, periodic meetings focused on compliance assurance discussion among the most senior state, Regional EPA, and EPA Headquarters leadership could be useful. • Creative worksharing and collaboration opportunities with EPA regional staff support. • Clear and regular understanding of the regular cycle of consultation and planning for compliance activities will also focus leadership's attention on the planning needed to accomplish established goals. The planning and goal setting work should reach high levels of management at both the Region and State. • Better align the time periods / coverage of PPA/PPG operational and financial obligations. Four year PPA's and PPG's that include program specific priorities and commitments on a different time frame (3 years, for example for the CWA 319 program) necessitate State extension and waiver requests that are time consuming for both the State and EPA. **Transition from National Enforcement Initiatives to National Compliance Initiatives:**

State	Contact	Date	Comments
MA			<u>These are working well – I specifically like</u> • We support the semantic change from national "enforcement" initiatives to "compliance" initiatives, and hope that it brings about a broader mind-set change as well. • Environmental outcome measurements and highlighting that compliance is the goal of these initiatives / measures. • Acknowledging the compliance assurance work can be effective in attaining environmental results/ outcomes. For example, that increased investments in SRF projects (in some cases prioritized because of compliance issues) can result in fewer overflow events from wastewater systems, and improved compliance. <u>There is opportunity for improvement, here is my suggestion</u> • The shift of focus to compliance as a goal should make it clear that the full menu of compliance activities includes more than compliance ***assessment*** actions, to ultimately address environmental improvements/ outcomes. Meaningful assessment (through data review and inspections) should continue, but credit should also be given to compliance assistance work. • If the shift from "enforcement" to "compliance" is to be effective and meaningful, appropriate metrics should be designed and utilized to measure these efforts. If the goal is to shift focus to compliance, we need to move beyond measuring performance by assessment output or activity measures. • EPA could acknowledge that meeting national compliance initiative measures (for example "reducing the number of nonattainment areas") may not be driven by traditionally required inspection output actions. Compliance initiative measures and outcomes may require additional resources or new approaches to provide assistance or influence behavior that are not traditional inspection and correction monitoring activities. The challenge will be to leverage compliance into improved environmental outcomes. • Explicit understanding from EPA that attaining environmental outcomes (reduced air pollution from largest sources, or keeping raw sewage and

State	Contact	Date	Comments
MA			contaminated stormwater out of our nation's waters, for example) may be best achieved through alternative programs such as education, compliance training, and grants, and thoughtful measurement strategies. These alternatives should be encouraged. Some should be considered in states' alternative compliance monitoring strategies as well as programmatic activities with appropriately reduced inspection activities. • Identifying a very small number of high level priorities for joint compliance work, with available resources identified would be helpful. Too many compliance priorities divert attention and make progress difficult to achieve in all areas, particularly given scarce state resources for traditionally required inspection outputs. Evaluate those top priorities with senior leadership at year end.
MD	Harry Hunsicker, Program Manager, Water and Science Admin., Compliance Program, MD Dept. of the Envir.	12/14/18	I have no issues with the final report. I think it is great. Susan Bodine is a trusted and well respected leader. I appreciate her Jan 2018 interim guidance memo. I have concerns with NCI's and associated metrics (whether they be outputs or outcomes) that are not based on accurate data or made without understanding how other areas of compliance and enforcement will be impacted in the specific State or Region. I am excited to have recently learned about ELMS (EPA's Lean Management System). I hope that this ECOS/EPA enforcement effort was/is part of EPA's 600 projects they are tracking in ELMS. That lack of vision or understanding is why MDE's Water Management Compliance Program, that I lead, has begun working on an Electronic Compliance Assurance Portfolio**(E-CAP).** This breakthrough **Lean** initiative/project will create an electronic management system that incorporates Lean/Six Sigma methodologies and metrics. It will provide a highly dynamic algorithm for targeting inspections and enforcement prioritization to return the highest rate of regulatory compliance. It will increase the efficiency of resource (staff) utilization reducing process constraints. The visual Dashboard reports accurate, clear and concise performance metrics using real time data and goes beyond traditional performance metrics(outputs). E-CAP will also be used a predictive tool when there is a need to determine impacts to performance measures/KPI's when changes to inspection and enforcement

State	Contact	Date	Comments
MD			strategies or policies are being considered-like placing a focus on reducing NPDES SNC cases by 50%. I have been involved at MDE with compliance/enforcement for 25+ years and know that any planned goal or objective (whether its EPA's or our own) will affect another area of compliance assurance efforts at some point and in some way.
NE	Jim Macy, ECOS Vice President and Director, NE Dept. of Envir. Quality	12/10/18	**Feedback on OECA January 2018 Interim Guidance memo:** <u>These are working well – I specifically like</u> • OECA is more engaging in trying to collaborate with states and tribes • The NCI initiatives are reasonable • Region 7 and our states already practice most of what is included in the memo • How should we measure progress? How to measure without more burden/reporting requirements to the states? • How does it fit in with state review framework and strategic planning from EPA? What are program oversight inspections and how do they differ from SRF inspections and analysis? <u>There is opportunity for improvement, here is my suggestion</u> • I recall more of a notification of the change from NEI to NCI – but I would not call this discussion particularly engaging or collaborative, just more of an outline of what is likely to be kept and what might not be a priority. It is not likely all of the states tied the discussion to this request for information. • States welcome the opportunity to build a collaborative and consistent model with OECA for investigations and enforcement. • It seems like there are a lot of moving parts to how work is outlined and communicated including all the branches of EPA and with Tribes and States. I also recognize that it is difficult to get input from the states in a timely and complete fashion. But a ONE EPA Voice is necessary for regulatory certainty.

State	Contact	Date	Comments
NE			• Develop a system for working with the compliance work group and the planning workgroup of ECOS. Get the states and tribes to dedicate staff to this work so we have consistency. The staff doing this work need to know the PPA/PPG process. • Page 1 Para 3 - The Interim Guidance will be updated after the Compliance Assurance Collaboration Workgroup has finished its work. • As updates are made it will be important to ensure the Compliance Guidance is in sync with the Oversight Best Practices updates. • Page 2 - ECOS should track the performance of action items throughout the guidance. • Page 2 - Para 2(b) -The word "could" in the first line should be "will" to conform with the intent in Para 2(c) • Page 2 - Para 2(d) - States should have input on what "State" resources will be allocated to national coverage expectations - particularly where there are few to no federal resources provided to the state for a national initiative. • Page 3 - Para 2(c) - Need to define the expectations more clearly to provide the "certainty" articulated in Wheeler's Oversight memo. • Page 3 - Para 2(e) - It is not clear why this is appropriate. Needs further discussion between EPA and States. • Page 3 - Para 2(g) - The details need to be identified and agreed upon to provide the "certainty". Cant be a preference. • Page 3 - Para 2(i) - Need to define the process and how states are integrated into the decision making process. • Page 3 - Para 4 - The elevation should have opportunity for discussion between AA and State Director/Commissioner and one further elevation to Administrator and Governor.

State	Contact	Date	Comments
NE			• The evaluation and updates should occur with Annual report with changes discussed from Jan - Oct. October 1 for effective date of changes coinciding with PPA/PPG • Page 4 - Para 2 - Need to set target date similar to that of Region. **Transition from National Enforcement Initiatives to National Compliance Initiatives:** <u>These are working well – I specifically like</u> • More than 2 years (as long as 4 year cycle) on the NCI • Alignment with Agency strategic plan • Advancement of deference to states <u>There is opportunity for improvement, here is my suggestion</u> • Like the shift from Enforcement to Compliance – but the details of HOW this will work need further defined • Develop a consistent small business program, focus work on finishing the Reg Navigation tool for states and industry • Define the Level playing field statement – is this a states issue or regional issue or some of both? • How will early and meaningful input from the states be solicited? • Will this increase state reporting requirements?
NJ	Derek Hardy, Special Assistant to Commissioner Catherine McCabe	12/10/18	**Feedback on OECA January 2018 Interim Guidance memo:** 1. <u>These are working well:</u> a. NJDEP Enforcement and EPA are working closely together to share workplans. Quarterly meetings and frequent conference calls across multiple medias are held to facilitate discussions about upcoming inspections, enforcement actions, initiatives, emerging issues and policies. Where possible collaborations are created for the agencies to jointly address ongoing issues. These communications have helped to eliminate redundancies and thereby allowing the State to focus on additional areas of concern. Preparation of agendas in advance of joint

State	Contact	Date	Comments
NJ			meetings have led to more effective meetings by allowing staff to prepare in advance. b. State primacy as day-to-day implementer is helpful in managing the enforcement of regulated entities. Again, this allows the State to coordinate with partners to include local County Environmental Health Agencies, other states and the USEPA. Where and when needed, EPA's expertise has been requested. 2. <u>There is opportunity for improvement, here are suggestions:</u> a. In addition to focusing on Significant Noncompliance there needs to be a focus on Environmental Justice areas as well. b. "Find and Fix "should be broadened to not only address minor violations found during an inspection, but also explore other areas of possible noncompliance. c. Although frequent "in person" meetings are <u>preferred</u>, they are not always practical. Consideration needs to be given for agenda driven meetings, where perhaps video conferencing technology is used. d. Timely follow-up for action items addressed in meetings as mutually agreed upon. **Transition from National Enforcement Initiatives to National Compliance Initiatives:** 1. General Comment: EPA's rebranding of National Enforcement Initiatives as National Compliance Initiatives sends a clear message that is the goal, which NJDEP supports. However, dropping the word "enforcement" is inconsistent with OECA's mission (and its name) and sends a message that may weaken the deterrent effect of EPA's compliance mission. Like EPA, NJDEP both enforces regulatory requirements and provides compliance assistance, including multiple educational training events across the various media throughout the year as well as compliance advisories. These advisories highlight areas where low compliance rates have been found and provide a deterrent effect by advising the

State	Contact	Date	Comments
NJ			regulated community that enforcement action will be taken to correct noncompliance if necessary. 2. <u>These are working well:</u> a. EPA's continued work to pursue and publicize NCI enforcement actions for serious violators serving as an effective tool for deterrence. b. The focus on widespread non-compliance issues across the country is key to leveling the playing field nationally, which is critical to states' economic competitiveness and ability to support robust environmental compliance programs. 3. <u>Suggestions for improvement:</u> a. EPA should serve as an intermediary to share Best Management Practices that states are implementing. Such an exchange would assist states to more efficiently address issues that have already been addressed by others. Where EPA has been helpful in this role is in assisting New Jersey and Pennsylvania to coordinate and improve compliance to prevent toxic air pollution from fumigation practices in Delaware River port communities. b. EPA should play a key role in promoting and implementing state-of-the-art technologies for communications with agencies, stakeholders, and the public.
OH	Laura Factor, Assistant Director, OH Envir. Protection Agency	12/10/18	Thank you for the opportunity to provide input on both of the Office of Enforcement and Compliance Assurance (OECA) memos, the Interim Guidance on compliance and enforcement matters and EPA's National Compliance Initiatives. **Ohio EPA's feedback on the OECA January 2018 Interim Guidance memo:** <u>These are working well – I specifically like:</u> **Surface Water** • Overall, the Office of Water at Region 5 does a very good job of coordinating on planning and communicating with the enforcement and compliance staff at OEPA.

State	Contact	Date	Comments
OH			**Drinking Water** • Region 5 OGWDW meets/calls regularly with state leadership. There are annual in person state director meetings. There are monthly calls with the state directors and there are semi-annual calls with Ohio. These calls work well. • Ohio EPA, DDAGW and Region 5 did not have any disagreements in program implementation or enforcement that required elevation. **Air Pollution** • There has been more open communication with Region V and they have been providing more notice on upcoming inspections and why they are inspecting facilities. • Region V has been asking the State for its opinion on rule interpretations. • USEPA has started to send out No Further Information letters when a company has submitted an answer to a 114 request and USEPA is not pursuing more information. • In June of 2018, Region V held its 1st compliance and enforcement conference with the Region V states which was a very useful meeting where compliance and enforcement issues could be discussed. These types of meetings allow the Region and State to work together to identify issues and how to address them. ***RCRA/CERCLA:*** ***Periodic Joint Work Planning*** ***Each Region should meet, preferably in-person, with the senior leadership in each of its States, as appropriate and agreed upon, based on needs and styles of the specific State-Regional relationship.*** • Both the CERCLA and RCRA Region 5 schedule routine meetings/calls. CERCLA 128 (a) part of CERCLA schedules routine meetings. An annual States meeting for CERCLA was just held. RCRA in the Region schedules quarterly calls and annual meetings with the states (these rotate between Chicago and Columbus). Our RCRA CA manager has quarterly calls with the Region regarding RCRA

State	Contact	Date	Comments
OH			Closures (i.e., unit specific clean up or "closure") and Corrective Action. • Regarding inspection, on the RCRA side, Ohio EPA and the Region do coordinate on inspections and it is the goal of both to ensure that any joint inspections are discussed to ensure each agency is aware of their specific role. Similar for permitting, Ohio EPA and the Region work closely, on issuing joint permits. Quarterly calls are held to discuss permitting issues or concerns that arise. ***State Primacy in Authorized Programs*** ***With respect to inspections and enforcement, the US EPA will generally defer to Authorized States as the primary day to day implementer of their authorized program, except in specific situations. US EPA believes that exceptions to this general practice should be identified through close communication and involvement of upper management of both Agencies.*** • We have worked well with both the RCRA and CERCLA programs in the region. The vapor intrusion pathway evaluations were a learning curve for both the Federal EPA and the State EPA. In Ohio, we all are operating on the same response timeframes for these. The CERCLA removal section has helped Ohio on many time critical and non-time critical removal. The RCRA group helped us with a third party geological review. <u>There is opportunity for improvement, here is my suggestion:</u> **Surface Water:** • Periodic Joint Work Planning on page 2. It is not clear who the Region will be meeting with from OEPA. The document calls for "senior leadership". Is this going to be the Director, Program Chief, or somebody at the management level? • Also, how detailed are these discussions going to be on specific inspections and enforcement actions? We do not see the need to have a facility by facility discussion with USEPA if the state already has a plan for getting the facilities off of the SNC list. **Drinking Water:** • State Primacy – Ohio EPA is awaiting formal primacy review and delegation of several rules such as SWTR and D/DBP

State	Contact	Date	Comments
OH			**Air Pollution:** • We would like Region V to set up a call with the State prior to issuing a 114 request or Finding of Violation to explain the results of their investigation and why they are requesting the information. The State needs to have a better understanding of what they are requesting and what potential violations are being alleged. The State might have information already. • The Memo is unclear on how a State requests to take the lead on a case. It is now our understanding that the State needs to write a letter requesting the lead and the letter needs to outline how the State plans to address each violation. The memo also doesn't specify if the state has to provide what a proposed penalty would be. This should be made clear in the memo. USEPA should clarify what they mean by a timely and appropriate response and what that is based upon. The State should not be held to some standard that USEPA doesn't hold itself to. It takes USEPA a long time to resolve cases and the States shouldn't be held to some arbitrary timeline. • If USEPA is asking the State for an opinion on a rule interpretation or if the State concurs with an interpretation than USEPA should provide all the information they have. It is often the case that the State does not have all the facts to make a complete determination. For example, the Region might give only their view and ask the State if they concur when in fact they also have the company's view as well but haven't provided that to the State. This could be valuable information in making a determination. States need to have all the facts as to why we are being asked to make an interpretation. • USEPA should provide the State's with a list of facilities they plan to inspect each Federal Fiscal Year and should provide the State's with periodic case updates after an FOV is issued. The State often does not know what the

ED_002674_00000816-00016

State	Contact	Date	Comments
OH			Region is doing or if they are escalating enforcement. • The Regions should work more closely with the State's to identify areas where they can provide more outreach and training. For example, the Regions have experts in certain areas or who are experts on certain regulations. These individuals can provide the State inspectors valuable training on certain sectors or rules. **RCRA/CERCLA:** • At these meetings and/or conference calls, the Region and the State should discuss and share information on at least these important topics (e.g., compliance problems, planned inspections, explanations of planned inspections, how both the state and Region will combine resources to meet NCI, and any planned audits). **State Primacy in Authorized Programs** ***With respect to inspections and enforcement, the US EPA will generally defer to Authorized States as the primary day to day implementer of their authorized program, except in specific situations. US EPA believes that exceptions to this general practice should be identified through close communication and involvement of upper management of both Agencies.*** **RCRA** • USEPA (Office of Resource Conservation and Recovery) Headquarters has taken positions on airbag disposal/reclamation/recycling and has proposed an interim final rule absent input from the States. **ATSDR** • USEPA ATSDR would not comment on state guidance. Specifically, Ohio asked for ATSDR's assessment of Ohio's imminent response timeframes for TCE exposure via the vapor intrusion route (Ohio EPA asked if our proposed response actions to set concentrations/exposures was too fast, too slow, or just right). The toxicity specialists at ATSDR would not discuss general response timeframes to ensure protectiveness. Given the cost of implementing changes to toxicity values, it would be helpful for ATSDR provide guidance for either escalating or moderating response actions. The toxicity values they derive do have a level of protectiveness built in, however improved risk management/risk decision making/risk communication

State	Contact	Date	Comments
OH			would be welcome as states cannot afford to response to false positives that do not improve public health. Educating and informing the public is an important component for ATSDR. While zero risk may be desirable, implementation of toxicity values requires consideration of technical and practical feasibility. **CERCLA** • USEPA is typically the lead for National Priorities List (NPL /Superfund) sites in the Remedial Action (RA) and Operations and Maintenance (O&M) phases of work and Ohio is most often a support role using EPA grant funds. These sites require inspections to be conducted periodically for RA activities, Five Year Reviews, and long term stewardship inspections for remedies, Institutional Controls (ICs), Environmental Covenants (ECs), etc. • During development of ICs/ECS at US EPA lead sites, we recommend more outreach to the States. Copies of Fed-led IC/ECs should also be provided to the States. • US EPA occasionally requests that states conduct various inspections at NPL sites. These requests would be best timed to occur during planning for FFY activities. • US EPA reduced financial assurance (FA) for Remedial Action and O&M, at an Ohio site without notice to Ohio. While this only occurred once, it highlighted an area for improved communication. o U.S. EPA should request actual annual O&M costs from PRPs, and periodically ensure that Financial Assurance for O&M is sufficient. o U.S. EPA should consider optimizing O&M timeframe estimates to ensure better financial assurance estimates (*e.g.*, using plume modeling to update the projected number remaining O&M years). o U.S. EPA and the States should improve communication process regarding Financial Assurance as it relates to the transition O&M from U.S. EPA to the States. This would be of benefit to both agencies particularly in response to PRP bankruptcies, and would also aid the states in annual workload and budget planning.

State	Contact	Date	Comments
OH			1) Examples of the types of situations that could warrant EPA involvement in individual inspections and enforcement following close communication and involvement of upper management of both agencies include, but are not limited to: audits, emergencies, significant non-compliance issues, special equipment needs, state/fed owned property, sector wide compliance issues, program oversight inspections, requests for assistance, criminal enforcement). 2) When State and Region upper management do not agree, matters should be elevated to OECA Assistant Administrator for a decision. Ohio EPA input on the **FY2020-FY2023** [HYPERLINK "https://na01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fenforcement%2Ftransition-national-enforcement-initiatives-national-compliance-initiatives&data=02%7C01%7Ccraig.butler%40epa.ohio.gov%7Cd2c069a320e54d57cb2a08d64e5a94aa%7C50f8fcc494d84f0784eb36ed57c7c8a2%7C0%7C0%7C636782548293033309&sdata=ZaG1LaUt9Zk0OFcFI8tRfgbhu0zz9RN1XMLesY%2F1SXk%3D&reserved=0" \t "_blank"]: These are working well – I specifically like: • Ohio EPA's Division of Surface Water has been participating in one of the Compliance Initiative workgroups and has had an opportunity to highlight Ohio's Wastewater Compliance Assistance Unit. The Ohio EPA Compliance Assistance Unit works proactively with wastewater treatment plants to help them return to compliance (or maintain compliance) with their NPDES. This unit was established with CWA Section 104(g)(1), but has been funded by the state since the 104 funding was eliminated. • While not specifically identified in the memo, the drinking water measure to improve DBP compliance was changed to a "deep dive" on compliance. HQ's review of some state programs resulted in providing useful information on the cause and resolution of DBP MCLs to other states. Opportunities for improvement **Surface Water**:

State	Contact	Date	Comments
OH			• Under the NCI Selection Criteria – for Strategic Measure 4 (reduce impaired waters). Ohio has impaired water quality that is due to natural causes or something other than a point source (i.e. hydromodification, habitat alterations, nutrient associated with nonpoint sources). Enforcement against point sources is not going to fix the problem. It is suggested that this measure should track only improvement made to waters attributed to point sources. • Reestablish 104(g)(1) **Drinking Water:** • What the measures are or will be are not being communicated clearly. Ohio and Region 5 are not sure what measures are final and which are still being decided. • The measures need to be already tracked and available through the Federal Database. The measures need to on a review period that coincides with when data is reported. For example, measure inspections should only be done on an annual basis not a quarterly basis. **RCRA/CERCLA:** **Reducing Risks of Accidental Releases at Industrial and Chemical Facilities** • **USEPA to focus on the most serious situations of non-compliance, with a focus on the strategic plan objectives of addressing vulnerable populations and achieving a timely return to compliance. The EPA will enhance our use of compliance assistance and expedited settlement agreements to address the numerous smaller sources in urban areas.** <u>Opportunities for Improvement</u> • Recommend that USEPA improve timeframes from inspection to inspection letter. **Reducing Toxic Air Emissions from Hazardous Waste Facilities** **This NCI is in its first cycle and will continue to focus on addressing the most serious situations of non-compliance, prioritizing our work based on the Strategic Plan objectives of addressing vulnerable populations, reducing non-attainment areas, and achieving a timely return to compliance. USEPA continuing to build state capacity in this program.**

State	Contact	Date	Comments
OH			Working Well • Ohio has not yet adopted the hazardous waste organic air emission rules (*i.e*, AABBCC which covers process vents, tanks, surface impoundments, and containers). Facilities that are regulated by these rules also have air permits. In broad terms, the air permits address facility wide air issues while the AABBCC rules address specific items such as flanges, fittings, containers, tanks, etc. The region has been completing inspections at facilities regulated by AABBCC. Ohio and the Region have worked well together to resolving regulatory questions regarding AABBCC units in Ohio.
OK	Sharon Smith, Executive Secretary to the Director, OK Dept. of Envir. Quality	12/10/18	**Feedback on OECA January 2018 Interim Guidance memo:** **WATER QUALITY:** • See paragraph 2 on page 3. National Enforcement Initiatives can lead to issues involving who takes the lead on inspections and who takes enforcement (If needed). The approach we prefer (and have used) is to ask EPA to give the state delegated program the opportunity to do both inspection and enforcement, subject the exigency caveat, and EPA has done that. The wording on Page 3 does not clearly reflect that. • I would like to see the following additions (indicated by text in []) in footnote 2 on p. 3: "...(1) implementing a standard way to solicit State input into prioritization [and selection] of facilities...(3) routinely inviting States to [lead or] participate on NEI inspections..." • R6 and DEQ are already doing most of what is recommended in the guidance. Adding requirements on how DEQ and R6 work together may unnecessarily complicate our current relationship. DEQ and R6 conduct quarterly enforcement meetings at which time any issues with compliance are discussed face-to-face and that process works well for both the State and EPA. Additional requirements to exchange lists with explanations as to the value and need for an inspection is going to create redundant and unnecessary work for both parties and ultimately slow down the work being done. **LAND PROTECTION (RCRA):**

State	Contact	Date	Comments
OK			<u>These are working well – I specifically like:</u> • This is a good attempt to formalize the notion of cooperative federalism as it relates to compliance assurance programs. • Our RCRA program has a good, cooperative working relationship with its regional counterparts. <u>There is opportunity for improvement, here are my suggestions:</u> • As laid out, the memo establishes expectations for EPA to meet with senior leadership in states -as far as I can discern, this did not happen in our RCRA program; it if did, it was not clearly tied to this memo and initiative. When expectations are made, it is important that there is follow through and to provide the context, e.g., the memo. • Page 3 creates expectation that Regions will provide OECA progress report on work related to the memo and that they will solicit views from state on how well the guidance is working with areas for improvement. All of our RCRA interactions have been about the National Program Guidance not this new guidance. We are thankful that the region solicited input on the NPG but it may have been more impactful to have provided the additional context of the January 2018 OECA memo. • It would be nice to be copied on progress report(s) that the regions send to OECA. [HYPERLINK "https://www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives" \t "_blank"]: **LAND PROTECTION (RCRA):** <u>These are working well – I specifically like:</u> • The notion of transitioning to compliance from enforcement is in line with our agency mission and goals. A note of caution, this transition needs to be meaningful, not just a word change. The two words in the memo often seem interchangeable. For this change to be meaningful, the concepts of the difference should be clear. • The notion of enhanced use of the full range of compliance assurance tools is good; it is not clear whether these tools are fixed or whether EPA is

State	Contact	Date	Comments
OK			soliciting ideas on new tools and approaches from states. Our expectation is that this new initiative will translate to a new model for oversight of state programs. A revised model would include key performance indicators with specific numerical performance standards, program evaluation related to state-specific actions and accomplishments without comparison to national averages, and a representative from another state participating on the review team. This would allow a state perspective during the review. This process departs from EPA's prescriptive enforcement models and brings a modern approach to review of the programs. <u>There is opportunity for improvement, here are my suggestions:</u> • Under NCI Selection Criteria for 2020-2023 cycle, one factor EPA will consider (b) is the "need for EPA expertise, authority or resources." We would like to suggest that the states also may have expertise and resources and that EPA should solicit input from the states. • Under the same section in (c), another factor EPA will consider is non-compliance problem that is "nationwide" or "so common" that a national focus is needed to ensure equity and protection across the county. Issues of national significance should have the input of the affected state and should be agreed upon by both the state and EPA to be actual issues needing resolution. The focus should be on addressing environmental harm. • EPA may want to consider the need to obtain buy-in from the public to ensure timely acceptance of future initiatives. For example, the initiative to "Keep Raw Sewage and Contaminated Storm Water out of our Nation's Waterways" is cited as a success, but the public may focus on the words "Fee Due to Unfunded EPA Mandate" that appear on some utility bills. Cooperative federalism principles need to acknowledge and consider key stakeholders – in this case, municipal governments – to ensure success in future initiatives. Stakeholder engagement may need to be added to the implementation strategy.

State	Contact	Date	Comments
OK			• EPA should strive to clearly articulate in the simplest terms possible and should define new terms. For example, "enforcement" and "compliance" appear to be interchangeable in the memo. Another example, it is not clear what is meant by "compliance assistance and compliance alerts." How do these compare and contrast with technical assistance and notices of violation? • The schedule established as Attachment 1 does not appear to have been adhered to as it relates to our RCRA program. It is not clear that we have had early and meaningful input as it relates to this new initiative. The region solicited ideas on the NPG under OLEM but not explicitly related to this initiative. So, it looks great on paper, but to make it meaningful, real follow through is needed.
TX	Stephanie Bergeron Perdue Deputy Executive Director, TX Commission on Envir. Quality	12/10/18	**Feedback on OECA January 2018 Interim Guidance memo:** The Texas Commission on Environmental Quality (TCEQ) agrees with the concepts outlined in the January 22, 2018 interim guidance memo. The TCEQ is pleased to report that its interactions with EPA Region 6 has followed most of these directives for cooperation with states for the last decade. The open communication and common goals between the TCEQ and EPA Region 6 has fostered a positive working relationship that includes mutual respect of our sometimes different regulatory approaches. The TCEQ believes the real strength of this guidance could come in the implementation between OECA and the authorized states. While EPA Region 6 generally defers to authorized states and stays in close communication as a regulatory partner, it has not been our experience that OECA consistently acts in that same cooperative manner for their investigations and enforcement actions. The TCEQ has been working with the new administration on building a similar relationship with OECA so we see this guidance as timely. The working relationship between EPA Region 6 and the State of Texas is a model of cooperative federalism that could be followed by all facets of EPA. [HYPERLINK "https://www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives" \t "_blank"]:

State	Contact	Date	Comments
TX			The Texas Commission on Environmental Quality has provided the comments below to EPA Region 6 contacts on [HYPERLINK "https://www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives" \t "_blank"]: "In general, and in line with Texas' comments for the last several years, we believe shifting from an "enforcement" to "compliance" focus at the national level is overdue. The Texas Commission on Environmental Quality (TCEQ) uses a broad range of tools to incentivize environmental compliance and transparency of the regulatory actions taken. These tools include some of following: a successful voluntary environmental self-audit program; environmental assistance focused on small businesses and municipalities; local and industry-specific outreach including workshops, townhall meetings, meetings with County Judges and Commissioners, and other public opportunities to better understand environmental regulations; and working cooperatively with Texas' industries, whenever possible, with the goal of continuous compliance. With that said, we remain concerned that this new national shift in terminology will not come with the necessary shift away from the metrics of logged enforcement actions and penalty collection to metrics of overall compliance and governmental transparency. The TCEQ also supports the extension from two to at least a four-year cycle for reaching national compliance goals. The current term of two years is too short to assume there has been a measurable change in any industry sector for overall compliance. This has caused the focus of success to be measured by the number of enforcement actions and the penalties collected, rather than compliance. The shortened term has also necessitated the carry-forward of goals across multiple periods in order to sufficiently focus on a target and have a meaningful metric of decreased non-compliance. The term "a level playing field" is mentioned multiple times in the August 21st EPA letter. To what level is this expectation achievable with all the states under EPA's jurisdiction? Moreover, to what degree will Texas have to compromise their current compliance approach, or increase their enforcement process to meet the EPA's expectations of a "level playing field"? Specifically, on page 3 of the EPA letter, No. 3 (3rd paragraph) states 'participation in implementing the NCI is voluntary, may include state action in lieu of EPA action … to maintain a level playing field'. How much flexibility will be given

State	Contact	Date	Comments
TX			to continue state-driven compliance efforts that are working toward the goal of creating a "level playing field" for regulated entities nationwide? If the TCEQ opts not to participate in the one or more of the eight modified implementations, what could be the impacts to Texas' Strategic Plans and modified agreements with EPA? The final general comment is the assertion of issues of "widespread non-compliance". The past use of this term by EPA has the TCEQ concerned on the level of evidence that may be used to arrive at this determination. Additionally, the states should be part of a coordinated discussion before a determination of any issue within its boundaries being judge as a widespread issue. Therefore, there should be an agreement on how the determination will be made for an issue warranting the tag of 'widespread non-compliance', and how that will be coordinated and communicated on the state-level. Please find more specific comments included in the following: • On page 3 of the EPA letter, and page 18 of the PPT, the EPA is considering adding drinking water as a NCI for FY 2020-2023. If this addition is made, there must also be a recognition of the challenges for states with drinking water compliance. There should be flexibility for states to be more efficient and agile with drinking water resources. There should be an allowance for focus on known troubled systems while moving away from straight inspection metrics of every water system. It would be beneficial if the NCI specified which aspect(s) of primary drinking water standard were being considered. Additionally, it would be helpful to clarify if the NCI is going to include a review of the secondary standards, recognizing that the EPA does not currently enforce on secondary standards. • On page 3 of the EPA letter, No. 3 (2nd paragraph) states that compliance assurance tools could range from general compliance assistance to inspections to informal and formal enforcement actions. We would support the use of more "informal enforcement". However, it is important that "informal enforcement" is defined for the states to provide meaningful comment. It would also help to identify which compliance "assurance" tools would be available to the states and identify if states will have flexibility in the tools that work best for each state.

State	Contact	Date	Comments
TX			• On page 3 of the EPA letter, No. 3 (4th paragraph) states that publicizing enforcement actions, both to the public and the regulated community, also is a critically important tool for deterring violations and ensuring a level playing field. While publicizing enforcement actions may be a preferred method, it would be useful to include a significant outreach component to help deter violations. The EPA should also provide supporting documentation demonstrating the reduction of violators and repeat violators along with enforcement metrics. Otherwise, the highlighted national shift from enforcement to compliance is not a meaningful one. If the results demonstrate an uptick on deterrence, then the state should consider utilizing the same approach, where appropriate. The missing outreach component squanders the opportunity to work with groups like trade organizations, that has in Texas' experience, delivered a much bigger impact for the effort. While not specifically mentioned as a NCI, the TCEQ's oil and gas outreach and regulatory activities could be highlighted as a successful state's self-implemented compliance initiative. With OECA's continuing interest in oil and gas enforcement actions, there is a gap with state compliance approaches creating inconsistent messaging to industries that want to 'come to the table' and openly work on compliance issues with their regulator. The TCEQ methods of on-site investigations, fly-over surveys, and off-site reviews should be highlighted as an alternative viable path, to other states and federal partners, for achieving the compliance initiatives while leveraging the use of technology to help focus investigative resources to more effectively identify potential sources of excess emissions."
WA	Ken Zarker, Manager P2 & Regulatory Assistance Section WA State Dept. of Ecology	12/7/18	**EPA Regions and States working together on compliance and enforcement matters.** **Air Quality Program:** <u>What's working well?</u> Open communications between WA State (Ecology Air Quality Program), local air agencies and EPA Region 10 continue to be maintained at staff and management levels. Washington Air Quality Managers Group meetings provide opportunities for dialogue, since all the Washington air agencies and EPA Region

State	Contact	Date	Comments
WA			10 participate in this group. Washington air permit writers in all agencies along with EPA meet routinely. Washington Ecology continues to receive useful feedback on major New Source Review permit applications and valuable participation and dialogue from EPA Region 10 modeling staff during modeling protocol review. <u>Opportunities for improvement:</u> As the Ecology-EPA Performance Partnership Agreements is redeveloped to reflect the new EPA strategic priorities and compliance initiatives, EPA Region 10 and Ecology should clearly identify specific areas where EPA processes are not consistent with Washington Ecology's implementation of its SIP Approved Program and as relevant, address them in the Agreement, thereby guiding discussions between staff in both agencies. EPA's expectations need clarification regarding permit processing timelines and duplicative reporting burdens to the regulated community. The EPA FY 18-22 Transformation Strategy includes "strategic objectives" such as a 6-month limit for permitting decisions and eliminating regulatory burden by 10,000,000 hours. EPA should clearly identify federal regulatory burdensome permitting processes that result in duplicative reporting, and propose an approach to reducing this duplicity that is consistent with WA Department of Ecology's authority. Some of the recent federal proposals did not involve adequate communication/consultation or enough comment/review time for states to be able to bring their expertise and perspective to the table. **Water Quality Program:** <u>What's working well?</u> • We have good communication with Region 10 on compliance and enforcement issues. • WA has a longstanding compliance assurance program that involves dedicated staff, routine internal compliance assessment meetings (DMR reviews), quarterly Enforcement Work Group meetings with OECA representation, and monthly coordination meetings between OECA staff and our designated statewide

State	Contact	Date	Comments
WA			enforcement lead. We want to maintain our communication at this level. We want to use this existing relationship and strengthen it versus creating a new chain or process for communicating. <u>Opportunities for improvement:</u> • We need to know how EPA plans to address federal and tribal facility permits to ensure compliance in an effective manner. • We need better communication around compliance and enforcement cases where EPA/OECA is the lead. Our team often provides data and information on facilities as a first step, but there is very little or no communication back from EPA once EPA staff have started their investigation and enforcement processes. • A one size fits all approach to compliance and enforcement does not work well for us because we have many different permit types and a large and diverse permit portfolio. **Hazardous Waste and Toxics Reduction Program** <u>What's working well?</u> • The State and EPA R10 Quarterly Meetings are very useful for the HWTR program as well as EPA Region 10 states. This forum provides for collaboration at all levels in each organization from senior management to staff. The primary focus is to monitor implementation of the RCRA PPG, tracking EPA's GPRA measures, reviewing compliance and enforcement issues, and discussion of regional implementation issues. This forum is a key regional strategy to communications, including the development of the All States meetings. • Communication about sites referred for criminal investigation seems to have improved. There is more back and forth discussion of the issues and the state has been better informed about EPA interest in the referred facilities and their progress in investigation. (Item 2i under State Primacy in Authorized Programs.) <u>Opportunities for improvement:</u> **Periodic Joint Work Planning (**Item 2e) Planned Program Audits are discussed and planned well in advance of the EPA planned

State	Contact	Date	Comments
WA			program audits (e.g. State Review Framework). WA and EPA Region 10 are following the suggested process outlined in the guidance. • WA State and EPA coordinate effectively to identify issues and work on continuous improvement and use lean practices to evaluate and improve the program. EPA works to recognize the unique aspects of Washington's RCRA program while ensuring alignment with the national program requirements. Our program has participated in SRFs for permitting, compliance and enforcement and quality management. • The SRF process allows for regional recognition of WA State's process for the compliance and enforcement program under our state authorization. For example, in WA State, the inspectors make the violation determinations while on site and when returning to write up the inspection report. It is our understanding that in the EPA process, the inspector doesn't make violation determinations but rather does extensive documentation of observations while on site, spending more time documenting how they know what they have noted. Because of such differences in process, our inspection documentation doesn't always line up with EPA's inspection documentation. These different styles are identified in the State Review Framework. • EPA and Ecology share information related to the planned facility inspections (Item 2b). Ecology is particularly interested in continuing our dialogue for meaningful discussions about the value and need for the inspections, priorities, and capacity. Respectful and open dialogue related to the companies or facilities that EPA opts not to inspect that we request would be appreciated. This collaborative approach allows for our unique priorities and perspectives to be valued as we implement the state's program. **State Primacy in Authorized Programs** is generally working well. Improvement can occur in actions that consistently address widespread noncompliance problems in a sector/program to address facilities in multiple states (Item 2f). EPA Region 10 actively recognizes that multi-state and cross-boundary issues exist among the R10 states, but integration of the National Enforcement Initiatives depends on the particular EPA sector of

State	Contact	Date	Comments
			interest and resource allocation. States often have the ability to provide a quicker response if required, but appreciate the opportunity to provide input and coordination on any national initiatives applicable to Washington State.
WY	Todd Parfitt, Director WY Dept. of Envir. Quality	12/7/18	Thank you for the opportunity to provide additional input on the development of the collaborative partnership approach to compliance assurance. Regarding the interim guidance, Wyoming supports EPA's objective to improve environmental protection through shared governance and enhanced collaboration with State partners using the full range of compliance assurance tools. More specifically, Periodic joint planning is fundamental to the success of this effort and states should be aware of any perceived deficiencies well in advance of any review or audit. We are pleased with the recognition of state primacy in the guidance and feel the identified criteria for EPA involvement are reasonable given the required communication and coordination. As to the transition from NEI to NCI we are encouraged by the recognition that enforcement and penalties are not the only path to compliance nor the measure of a compliance programs success. Recognizing the EPA's responsibility to select NCIs we ask for flexibility in the selection of facilities for inspection. States are often in the best position to understand local environmental priorities, risks, and threats to health. In many cases, these facilities are not from sectors identified in the national strategy, but are the most in need of oversight in the state. We are encouraged by the recognition of compliance assistance as an essential component of a successful compliance program. The enhanced use of the full range of compliance assurance tools section also mentions "new ways to measure progress and success. EPA needs to recognize that the addition of any new data metrics or data analysis will require commensurate support for additional state resources. Thank you again for the opportunity to contribute to the development of this effort.

State	Contact	Date	Comments