NCI-specific comments from States and Tribes

Air (NSR and Air Toxics)	**American Municipal Power (AMP) strongly supports EPA's proposal to de-emphasize the NCI category of Reducing Air Pollution from the Largest Sources by returning it to EPA's core enforcement program. Returning this area of agency activity to EPA's core enforcement program recognizes the dramatic strides in overall Clean Air Act compliance and air emissions reductions that the power industry has voluntarily achieved over the last 20 years, while ensuring that those improvements in air quality are maintained.** **New York City urges EPA to use its national and regional enforcement power to assist municipalities in addressing the environmental and public health issues they have the least capacity to address on their own: air pollution and greenhouse gases ("GHGs"). We agree that EPA should continue to dedicate significant resources to reducing hazardous air pollutants but urge EPA not to lessen its focus on reducing air pollution from new and modified large industrial facilities, as it has proposed. The City strongly opposes the return of the NCI reducing air pollution from the largest sources to the "core" enforcement program. EPA's focus on ensuring industrial facilities' compliance with the Clean Air Act ("CAA") is still paramount in reducing air pollution in New York City and beyond. There are inadequacies in EPA's current efforts that still required focused attention. Should EPA change its prioritization of this initiative, the ramifications for the City's air quality and efforts to reduce the emissions of greenhouse gasses ("GHGs") could bedrastic. The current NCI should remain in place.** **American Fuel & Petrochemical Manufacturers ("AFPM") supports EPA's proposal to return the current NCI titled "Reducing Air Pollution from the Largest Sources" to EPA's core program. AFPM agrees that EPA has largely achieved the goals of this NCI and notes the successes EPA claims have been achieved pursuant to this NCI.** **AFPM strongly disagrees with the characterization of illegal emissions from flares as a major source of emissions which was the justification for extending the HAP NCI. EPA's statement implies that flares operated at refineries and petrochemical facilities are a leading source of "illegal and excess emissions." To the contrary, flares operated by AFPM members are operated in compliance with EPA's existing flaring regulations, and their emissions are reported based on EPA-approved emission factors in EPA- or state-approved permits. EPA's claim ignores the plain text, structure, and legal presumptions built into EPA's flaring regulations.**

	Tom Ripp (private citizen): supports HAPs NCI. If EPA returns major source to the core, it should constantly monitor the issues to see if any particular sectors need greater attention. **NACAA supports this extension on HAPS. NACAA opposes returning major sources to the Core Program and eliminating it from the National Compliance Initiatives. This area of the Agency's effort remains unfinished, and the sources in question have continued harmful impacts on the health of Americans, the economy, and the environment. The proposal asserts that EPA has taken significant action under this NCI, but does not provide an analysis on which to form a conclusion that air pollution from large sources is no longer a serious concern. This NCI should be retained and a stronger commitment made to assuring compliance in this arena, either through federal action, assistance to state and local agencies, or through joint activity.** **EIP: We support EPA's continued focus on cutting hazardous air pollutants to support EPA's broader strategic goal of protecting vulnerable populations and improving air quality in areas that fail to meet Clean Air Act health based standards. Achieving these goals will require EPA to improve monitoring of hazardous air pollutants, reduce the amount of time it takes to initiate and resolve enforcement actions, and recover higher penalties that make it more expensive to violate the law than to stay in compliance.** **Anonymous: The EPA should not conclude the Air Pollution NCI. It is important to continue maintaining compliance and close existing gaps. There are still substantial examples of non-compliance in this area that needs to be addressed.** Supports an NCI that addresses non-attainment and nearing non-attainment. (**New Mexico**) General Support for continuing Air Toxics– provided close coordination with states. (**Region 7 states)** 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 a way to avoid a potential permitting error and associated enforcement action. (**AZ**) Supports focusing on reducing air pollution from the largest sources, including mobile sources (e.g., 2018 Tampering policy) with a focus on nonattainment areas. (**AZ**)

CWA (Munis, CAFOs, NPDES)	**American Water Works Association supports continued emphasis on "Keeping Industrial Pollutants Out of the Nation's Waters." EPA's most recent summary shows more than 25 percent of rivers and streams and approximately 22 percent of lakes that should support public water supply as a use, do not. The NCI focus should include consideration of targeting significant non-compliers where pollutant loading reduction is important to attaining designated uses. An emphasis should be placed on achieving compliance at facilities that impact downstream drinking water supplies.** **AMP agrees with EPA's proposal to transition the "Keeping Industrial Pollutants Out of the Nation's Waters" NCI to "National Pollutant Discharge Elimination System [NPDES) Significant Non-Compliance (SNCJ Reduction." We support EPA's rationale that the proper focus of this NCI should be on overall NPDES significant non-compliance, and not just on the NPDES compliance of sources of industrial pollutants.** **City of New York supports EPA's plan to return combined sewage overflows to its core enforcement program.** **Tom Ripp (private citizen) – supports returning to core; supports SNC NCI.** **National Groundwater Association: This initiative is not proposed to be extended but should be, particularly for contaminated stormwater. The Environmental Protection Agency recently released a report titled "The Influence of Green Infrastructure Practices on Groundwater Quality: The State of the Science"1 that raises concerns about the quality of stormwater regulated under the Clean Water Act being infiltrated to the subsurface and groundwater that may be used for local water supply. Stormwater control features that short-circuit the natural physical-chemical-microbiological protection of the soil and vadose zones are potentially problematic in contributing to local groundwater quality degradation for the benefit of protecting surface waters from the same contaminants and other contaminants that may be released through chemical reaction with the geologic matrix because of lack of natural treatment through soil zone percolation of the stormwater.** **The Industrial Minerals Association – North America supports the EPA's proposal to transition the NCI "Keeping Industrial Pollutants Out of the Nation's Waters" to "National Pollutant Discharge Elimination System (NPDES) Significant Non-Compliance (SNC) Reduction." NPDES permits are an integral part of the enactment of the Clean Water Act. These permits recognize that industrial pursuits can result in discharge.**

	These discharges can be managed under conditions specified within the permits so that our nation's waters are not unduly impacted or polluted. Bringing SNC permittees into compliance is, generally, an immensely beneficial initiative for the EPA. The Association believes shifting the initiative from "Keeping Industrial Pollutants Out of the Nation's Waters" to a more specific goal related to NPDES permits allows the EPA to address polluters across all industries. IMA-NA is pleased to note the guidance documents defining NPDES SNC permittees outline characteristics of multiple types of dischargers, including; industrial, POTW, and CAFOs which could result in an SNC classification. The Association believes this more holistic approach will result in better outcomes and higher numbers of non-compliant outfits being brought into compliance. **<u>National Association of Clean Water Agencies (NACWA)</u>- has also advocated consistently that sewer overflows are better addressed through the CWA permitting program rather than through enforcement mechanisms, and the Association is pleased that EPA now agrees that enforcement should be used only as a last resort. NACWA encourages EPA, through its revised NCIs, to take a more holistic approach to watershed impairments when considering potential enforcement actions moving forward. NACWA believes an adaptive, prioritized, holistic watershed approach, that addresses all sources of impairment and provides the flexibility necessary to address the reality of a changing world, is the only way to make significant water quality advances moving forward. The recent codification of EPA's Integrated Planning approach into the CWA, in combination with EPA's proposed new enforcement approach, will better enable EPA and clean water agencies to work together to address the most pressing environmental challenges in a more cost-effective and flexible manner. The proposed NCIs encourage adaptive management with existing decrees to allow clean water agencies to adapt "to changing circumstances and new information, such as the increasing commitment of cities to implement green infrastructure, changes in financial capability, or technological advances." NACWA applauds this approach.** **<u>National Association of Homebuilders:</u> EPA's NPDES significant non-compliance reduction NCI aims to increase NPDES permit compliance and reduce the rate of significant non-compliance by 50 percent by 2022. The largest number of NPDES permits are issued for construction stormwater sources – over 243,000 permittees covered under general permits across all states. Small construction operators, who build homes on individual building lots within larger residential subdivisions, typically disturb far less than one acre but require an NPDES Construction General Permit (CGP) because their construction and land clearing activities occur within a larger common plan of development (i.e., residential subdivision). These small construction operators constitute a disproportionally large number of NPDES CGP permittees but actually disturb a small area in comparison to large**

	construction operators whose operations cover a much larger total disturbed area but have fewer permittees. To increase NPDES CGP permit compliance, EPA should focus compliance assistance efforts on these small construction operators, which often construct only a few projects a year and do not have the resources or staff of larger construction operators. NAHB has long urged EPA to develop a permit, separate from the 2017 Construction General Permit (CGP) for stormwater, that is specifically for small residential construction projects within a larger common plan of development. EPA should also encourage authorized states to develop a "find and fix" policy for minor construction stormwater deficiencies. A recent Environmental Council of the States (ECOS)-EPA Workgroup Reports defined "find and fix" as an inspection approach that identifies relatively minor violations, allows the operator to fix the potential violation, provide proof, and then the regulatory agency may provide assurances to the operator no subsequent penalty will be assessed. The Workgroup suggested that states and EPA "consider the use of find and fix as potentially an effective tool to quickly remedy minor violations." Although EPA does not conduct many stormwater inspections at construction sites, EPA could encourage delegated states who do conduct most stormwater inspections to develop a "find and fix" policy like the state of Arizona's program. **Anonymous: The EPA should not conclude the Water NCI. It is important to continue maintaining compliance and close existing gaps. There are still substantial examples of non-compliance in this area that needs to be addressed.** General Support for continuing NPDES– providing close coordination with states. (Region 7 states) SNC rate is not a great metric (did not offer alternatives – MO) We should continue to focus on data issues for SNC (Iowa) 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 funding under 104(g) (Ohio) States are supportive of an NCI that focused on "Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters." (ACWA) There is a good story to be told as we conclude CSO/SSO (Iowa)
Energy	**National Groundwater Association: This initiative should be transitioned to focus on impacts to the subsurface environment and groundwater. Compliance with environmental laws in these activities should include in their**

	compliance plans essential groundwater monitoring at key vulnerable locations of extraction sites, wellhead protection at sites involving wells for extraction, rapid response if contamination is found because the longer the contamination is left to infiltrate the more difficult and expensive it is to remediate. **NACAA: EPA proposes to transition the initiative "Ensuring Energy Extraction Activities Comply with Environmental Laws" to a focus on significant sources of volatile organic compound (VOC) emissions. These emissions continue to harm the health of Americans and are an obstacle to local and state agency efforts to clean up the air as they work to move their nonattainment areas into attainment status, particularly for ozone given the role VOCs play as precursors to the formation of that pollutant. NACAA would support the transition of this NCI into "Cutting Hazardous Air Pollutants" provided that, in acknowledgement that all VOCs are not always listed as hazardous air pollutants, resources are more effectively targeted to both problems. However, this merger should not reduce EPA focus and resources on either of these two critical challenges facing state and local legal obligations to implement the Clean Air Act and assure clean air for Americans.** **Anonymous: The EPA should not modify the Energy Extraction NCI as proposed. Changing oversight focus from the natural gas industry to simply large sources of harm to health will lose important control over the natural gas industry. Both natural gas oversight and human/health environmental health oversight are important priorities and should potentially be separate NCIs. Scrutiny of this industry is key to prevent non-compliance in the absence of direct EPA initiatives. Natural gas compliance is unique and needs specialization especially in the context of current substantial increases in demand. Since demand is likely to continue to increase in the near future, the NCI should continue to exercise oversight control on extraction activities that will also increase. Otherwise there is a serious chance for dangerous non-compliance.** TCEQ's oil and gas outreach and regulatory activities could be highlighted as a successful state's self-implemented compliance initiative. **(Texas)** We should consider the impact of fracking, esp. potential exposure of PFOAs to groundwater**. (Kansas)**
RCRA	**The Shoshone/Bannock Tribe wants EPA to complete the work it started with the Simplot Don Plant under the mining and mineral processing NEI. The SBT also requests to be included in any negotiations between EPA and Simplot, as they are adjacent to and impacted by the polluting activity, which has been ongoing for decades.** **Compliance Monitoring and Enforcement (CME) Task Force of ASTSWMO –The Task Force recommends that EPA continue to support implementation of the RCRA Air Emissions requirements by State programs; however, it does not recommend that those requirements be the focus of a continued NCI for Fiscal Years**

	2020-2023. State input received suggests that another NCI topic would be of greater benefit to their programs. With respect to EPA's ongoing implementation support, the Task Force recommends that work being done by EPA programs and through Regionally-based initiatives to ensure proper implementation of the RCRA Air Emission requirements continue, along with robust outreach to the regulated community. And finally, due to the complexity of the RCRA Air Emission requirements, there is a continuing need for training of State inspectors. **The Task Force recommends that the next NCI cycle focus on evaluating non-hazardous wastes being managed at TSDFs. The Task Force notes that the majority of suggested alternative NCI topics received from States appear to support such an initiative or related initiatives (e.g., "implementation of waste analysis plans at TSDFs" and "LDR compliance at waste consolidation facilities").** **Tom Ripp (private citizen): I agree with the proposal to continue this initiative with the addition of reviewing treatment storage disposal facility (TSDF) compliance with treatment standards and reviewing the permits to ensure proper and legal permit conditions.** General support (Region 7 states) Didn't have early engagement opportunity (OK)
112(r)	**American Fuel and Petroleum Manufacturers (AFPM): BLS data also reveal that the refining and petrochemical manufacturing industries have the lowest injury and illness rates among major industrial sectors. Accordingly, EPA's rationale for the continuation of this NCI does not apply to AFPM's members: AFPM members are committed to the prevention of accidental releases and have invested tremendous sums to develop and maintain sophisticated Risk Management Plans. This is despite the fact that EPA's RMP rulemaking process is ongoing and therefore remains a source of regulatory uncertainty for AFPM members.If EPA ultimately decides to extend this NCI into Fiscal Years 2020–2023, EPA should focus its enforcement on those entities still operating entirely outside the RMP.** **Tom Ripp (private citizen): – supports this NCI.** **National Groundwater Association: This initiative should be expanded to include releases to the ground and subsurface. While frequency of these releases may have decreased over time, any release to the subsurface is difficult to recover and remediate, creating a liability and continuing potential health hazard that is expensive to ameliorate.**

Drinking Water	**<u>ASDWA</u> supports developing an NCI for drinking water if, and only if,** **(1) this does not trigger additional reporting requirements from state programs – EPA should use existing reporting requirements and publicly available data.** **(2) any predictive tools that are developed as a part of this effort include an action plan for identified problem areas and clear expectations for state actions – if a problem is identified or predicted, what will be the expected next steps and roles/responsibilities for EPA and the States** **(3) efforts are deployed with states that volunteer to partner with OECA on these future compliance efforts. Some states don't have the capacity to engage on this now. Concern expressed about pressing states for involvement when they don't currently have capacity.** **Recommend the following:** • **Work together with Office of Water and the strategic breakthrough measure – frame the NCI as cooperative with OW's measure;** • **Share and learn from states' existing tools – NCI should include a sharing of successful state tools;** • **Recognize states resource needs in this conversation – one-on-one system mentoring is too resource intensive. ASDWA would also support the quantification of the resource needs for increasing water system compliance with the Safe Drinking Water Act;** • **Focus on targeting the largest populations - measuring success should be based on population affected.** • **Acknowledge data discrepancies – EPA's data does not always match up with States' data - ASDWA would support an initiative that accounts for, identifies, and/or works to help address data discrepancies. ASDWA supports the development of tools that could help states deploy their time and resources more effectively and efficiently to increase compliance.** **<u>AWWA</u>: The FR summary is insufficient to guide an NCI or solicit informative public comment. Given SDWA's role in protecting public health, the NCI should focus on SDWA regulations that have the greatest potential public health consequences. There are recurring trends in compliance with respect to specific rules:** **1. Currently the disinfection byproduct rules are a particular compliance challenge.** **2. Historically the Total Coliform Rule has been responsible for the most SDWA health-based violations.** **3. Noncompliance tends to rise following the introduction of new rules (e.g., arsenic, disinfection byproducts, and surface water treatment rules).** **4. Monitoring and reporting violations are exacerbated by multi-analyte analytical methods (e.g., volatile organic compound and synthetic organic compound monitoring).**

	EPA has limited resources and should focus on violations that pose greater risk (e.g., a failure in treatment leading to high risk of microbial contamination) or a system that is consistently non-compliant. **EPA's summary of health-based violations in FY2018 shows that 93 percent of CWSs with health-based violations serve less than 10,000 persons. If EPA's compliance initiative is to impact SDWA compliance it will need to be focused on a large number of small water systems** **As EPA thinks about compliance alternatives to enforcement, the needs of the very small entities (CWS) should to be taken into account when identifying and selecting alternative approaches to enforcement.** **EPA should also review steps it can take to improve data quality in its violation status data systems.** **There are a number of existing programs on drinking water compliance. OECA should engage stakeholders including the water utility associations, state SDWA regulators, and representatives of local government to learn about when and how these resources can be useful.** **<u>Commonwealth of Virginia</u> – support this NCI.** **Tom Ripp (private citizen): This represents issues with the basic core program, not an initiative. An initiative should possibly focus on important subset(s) of health-based standards.** **<u>National Groundwater Association</u>:In 2018, of community water systems (CWSs) violating one or more health-based drinking water standards promulgated under the Safe Drinking Water Act (SDWA), 93 percent were small systems serving 10,000 or fewer people. Sixty-five percent of these small systems were regulated as groundwater systems. Major health-based violations were for arsenic, Inorganic chemicals, nitrate, radionuclides, total coliform, disinfectants and disinfection byproducts, lead and copper, and groundwater microbes. Additionally, small systems incurred violations for not monitoring or reporting correctly for arsenic, groundwater microbes, inorganic chemicals, lead and copper, nitrate, radionuclides, disinfectants, and disinfection byproducts, synthetic organic chemicals and total coliforms and volatile organic chemicals which may inadvertently hide more serious health-based violations.** **EPA should engage in further research on technologies that will enable the small water systems to comply in decentralized ways with less burden and cost. EPA should address how emerging contaminants will be accommodated in this approach when regulations are promulgated.** **<u>NC Child</u>: NC Child appreciates the EPA's proposed effort to increase compliance with drinking water standards among community water systems (CWS) through an NCI. To date, most North Carolinians receive their drinking water from community water systems. Community water systems ensure the flow of water to homes, schools, and**

	child care centers across the state. Ensuring that children have access to clean water both at home and in learning environments is essential for promoting their healthy development and growth. Infants who rely on formula get 100% of their nutritional intake from water. If that water is tainted with pollutants like lead, infants and toddlers receive a proportionally higher dose compared with older children and adults. Allow flexibility including focus on known troubled systems not inspection metrics of every water system; specify which aspect(s) of primary drinking water standard are focus; clarify if the NCI is going to include a review of the secondary standards (Texas) Supportive (Washington) Troubled by OW metric – perhaps it should be by population and no number of systems. (OK) Interested in hearing more (CT) Supports- they note that an NCI could help bridge connection between public health agencies and environmental (New England states)
Lead	**<u>City of New York</u> strongly support's EPA's proposal to make reducing children's exposure to lead a National Compliance Initiative. To support Action Plan Objective 1.9 ("Reduce Lead Exposure Through Enforcement and Compliance Assistance"), we recommend that EPA significantly increase resources in its Renovate, Repair, and Painting ("RRP") rule enforcement program, as uncontrolled construction dust is a major potential source of lead poisoning. EPA should hire more inspectors, especially in large metropolitan areas such as New York City where there is high number of renovation activities in older residential buildings.** **<u>AWWA</u> supports EPA following the National Drinking Water Advisory Council's recommendations which include "that EPA take the lead, working with other partners to establish a national, accessible information clearinghouse." In recommending a central information clearinghouse on lead, NDWAC pointed out that such a clearinghouse could: facilitate multi-media risk management; ensure distribution of consistent and up-to-date health information; improve risk communication practice; and better address hard-to-reach communities (like those for whom English is a second language). A "compliance" initiative with the goal of effective risk reduction requires integrated communication of lead risks and risk reduction strategies rather than a singular focus on compliance with public communication requirements on a statute-by-statute basis as is more typical of an "enforcement" initiative.**

	Commonwealth of Virginia – support this NCI. **Tom Ripp (citizen) does not support** **National Groundwater Association: Use of consumer education to increase compliance for the drinking water lead and copper rule should focus on small systems. Of the 13, 699 violations of the lead and copper rule in 2018, 95 percent of the violations were at small systems serving 10,000 or fewer people, of which 86 percent were at groundwater systems. While small systems may represent fewer people, they represent more locations having compliance problems.** **National Association of Homebuilders: NAHB agrees with the Lead Action Plan's approach to address all potential sources of lead and encourages EPA to ensure the NCI address all potential sources. EPA should also focus educational efforts on property owners of pre-1978 target housing, who are often unaware of the RRP requirements to hire a properly certified renovation firm for renovations in homes that may contain lead-based paint. NAHB offers several other suggestions around enforcement of the lead-based paint RRP rule.** **Children's Environmental Health Initiative, Nicholas School of the Environment, Duke University, Durham, NC 27708 Submitted a scientific paper on *Geospatial Analysis of Effects of Aviation Gasoline on Childhood Blood Lead Levels.*** **NC Child: North Carolina, public health officials have been working for more than 30 years to eliminate childhood lead poisoning – and their progress is noteworthy. Child blood lead levels have dropped dramatically population-wide. Unfortunately, some pockets of high exposure still remain – often in lower-income neighborhoods where older housing and buildings mean that old lead paint and lead pipes are still in use. Leaving legacy lead in place where children can be exposed can have terrible consequences. For this reason we support the EPA's proposed multi-agency lead initiative, focused on tackling lead contamination in all environmental media - with particular attention to vulnerable communities. Strengthening the EPA's enforcement of federal lead-based paint laws can help address the issue of childhood lead poisoning from sources in the home both in North Carolina and across the nation.** **Drinking water remains a secondary source of lead exposure among children, accounting for about 20 percent of children's lead exposures. In North Carolina, the state does not require testing water in child care centers or schools for lead, unless a child is found to have elevated blood lead levels** Supports lead – they note that an NCI could help bridge connection between public health agencies and environmental agencies. (New England states)

	ACWA/ASDWA call, the participants did not voice interest in additional NCIs nor did they request deletion of any of the current ones – not consistent with the written comments on supporting Keeping Raw Sewage…
Other	**<u>NACAA:</u> A mobile source NCI could focus on vigorously assuring compliance with mobile source emission standards and fuel standards. This could include 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 non-road 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 impact states as far away as the Midwest. Finally, a mobile source NCI could examine excessive rail idling, which not only wastes fuel and causes odors, but also causes emissions of diesel particulate and ozone precursors. Diesel emissions are directly harmful to human health by exposing surrounding communities to cancer risks and these emissions exacerbate ozone problems, especially in "extreme" and "severe" areas where every feasible reduction is needed.** **<u>National Tribal Air Association</u> – also asked if we would consider mobile sources.** **<u>Tribal Pesticide Program Council</u> (TPPC) In recognition of the mostly unknown status of FIFRA compliance on Tribal lands for the 550 federally-recognized Tribes that are not covered by cooperative agreements, in EPA's 2016- 2017 National Program Managers Guidance, EPA prioritized an activity to "monitor compliance and initiate enforcement in states and tribal lands where the EPA has direct implementation authority, placing emphasis on commercial applicators." As communicated by OECA to the TPPC, the purpose of the compliance monitoring was to determine if patterns of non-compliance exist on Tribal lands to enable EPA to appropriately direct its limited enforcement resources. However, despite the value of this initiative for EPA to determine the status of FIFRA compliance on Tribal lands, EPA discontinued this initiative after one year and insufficient data was collected to enable EPA to estimate FIFRA compliance rates on Tribal lands. Given the disproportionate risks posed by the use of pesticides and the potential harm for farm workers, families, our food supply, and the environment, the TPPC respectfully requests that EPA reinitiate the FIFRA Worker Protection Standard (WPS) compliance inspections priority on Tribal lands.** Asbestos is an important issue (Iowa) Protect Coastal Waters (Cesspools, Stormwater) (Hawaii)