



# Environmental Council of the States

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October 22, 2021

Mr. Marc Vincent  
Mr. Timothy Roberts  
U.S. Environmental Protection Agency  
Office of Air and Radiation  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

## Re: Early Engagement on FY 2023 – FY 2024 National Program Guidance

Dear Mr. Vincent and Mr. Roberts:

ECOS members appreciate the opportunity to provide early input on the Office of Air and Radiation (OAR) FY 2023 – FY 2024 National Program Guidance (NPG). EPA's efforts to engage with states to enhance planning and communication in air program work will lead to improvements in our collective ability to protect human health and the environment.

Federal funding makes up about 27.53% of average state environmental agency budgets, and overall STAG funding has been flat for 19 years. Adequate federal funding and flexibility in the use of funds and in program implementation will be important to continued success in delivering results.

Additionally, joint governance under E-Enterprise for the Environment is a key tool for driving program modernization and coordinating needed investments in information systems. Support for technology infrastructure and the latitude for state pilot projects will accelerate the adoption of new more efficient tools to meet our shared goals. States also urge continued investment in data systems to improve the interoperability between state and federal databases. Better integration of the data systems can improve reporting, reduce regulatory burden, and improve data accuracy.

States specifically encourage continued support for the following E-Enterprise Projects:

- The Combined Air Emissions Reporting project which is working to streamline industry air emissions reporting to the National Emissions Inventory, the Toxic Release Inventory, the Compliance and Emissions Data Reporting Interface, and the Greenhouse Gas Reporting Program.
- The State Plan Electronic Collaboration System project which improves efficiencies across agencies by allowing state and local air agencies to electronically submit and track State Implementation Plans and Exceptional Events Demonstrations. ECOS encourages further expansion of the tool to include future improvements and additional types of air quality submissions, specifically for the Regional Haze Plans. ECOS also encourages OAR to continue to improve the Exceptional Events and Tracking System (EETS) for

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submitting exceptional events demonstrations to facilitate leveraging of state, local, and federal data that can be shared among state, local, and tribal agencies submitting exceptional events demonstrations for the same event, for example the 2021 wildfires.

- The Regulation Navigation (Reg Nav) tool project which continues to add interactive tools that allow owners, operators, and other industry personnel to generally determine the applicability and regulatory requirements of certain air quality rules to their facilities.

ECOS also recommends that EPA include language in OAR's National Program Guidance (NPG) that references the benefit of collaborative efforts to develop shared services, to streamline programs (including process improvement), and to modernize systems including electronic reporting. Specifically, ECOS urges EPA to:

- Include language in the NPGs that encourages state and EPA regional staff to pursue flexibility in state grant program implementation through the use of Performance Partnership Grants (PPGs).
- Reference support for states to include streamlining and modernization activities in grant work plans with regions and recognize that there may be tradeoffs in workload as a result.

Regarding the use of low-cost air quality sensors, ECOS recommends that EPA leverage the lessons learned by states for its own federal programs and operations. Specifically, ECOS encourages EPA to:

- Ensure that community science supported by EPA grant funding improves, rather than undermines, enforceable regulatory systems.
- Ensure that any increases in the number of Quality Assurance Project Plans (QAPPs) that EPA staff must approve does not contribute to delays in approving state QAPPs and Quality Management Plans (QMPs).
- Work closely with states to consider how to streamline existing monitoring requirements to focus on areas that have the most value, identify needed resources, and consider how the networks can be modernized to prioritize improvements that will best advance public health and the environment without adding unnecessary burdens to often understaffed air program offices.
- Consider increasing grant funding to state and local agencies to maintain and improve the national air monitoring system.
- Consider air program staffing needs when allocating funding to states.
- Distribute funding for air monitoring to states through Clean Air Act (CAA) §103(a-c), not CAA§105, in order to facilitate air monitoring in states where they may not be able to provide the 40% match required by CAA§105. This is especially recommended when the funding source is one-time funding.

EPA should also continue to expand federal funding and staff resources for air pollution training and efforts to develop, update, and provide training opportunities for air program staff.

In addition to the priorities outlined above, states encourage EPA to continue to focus measures on environmental outcomes rather than the number of inspections or evaluations. States also ask that EPA assess the impact of the pandemic on various metrics, and to be mindful of measuring metrics that are no longer priorities. Finally, ECOS encourages EPA to look to other associations for additional input and suggestions.

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Thank you for the opportunity to provide comments. ECOS looks forward to continuing the discussion during the development of the FY2023-24 priorities. If you have any questions about these comments, please contact ECOS Executive Director, Don Welsh, at [dwelsh@ecos.org](mailto:dwelsh@ecos.org) or 202-266-4920.

Sincerely,



Donald Welsh  
ECOS Executive Director

cc:

Jon Niermann, ECOS Air Committee Vice-chair and Chairman, Texas Commission on Environmental Quality

Betsy Shaw, Deputy Assistant Administrator, Office of Air and Radiation, U.S. EPA

Sonam Gill, Special Assistant, Office of Congressional and Intergovernmental Relations, U.S. EPA

Melissa Saddler, Director for State and Regional Partnerships, Office of Congressional and Intergovernmental Relations, U.S. EPA

Carolyn Hanson, Deputy Director, Environmental Council of the States

Kelly Poole, Senior Project Manager, Environmental Council of the States



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# Environmental Council of the States

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October 18, 2021

Ms. Melissa Sadler  
Mr. Dan Murphy  
U.S. Environmental Protection Agency  
Office of Congressional and Intergovernmental Relations  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

## Re: Early Engagement on FY 2023 – FY 2024 National Program Guidance

Dear Ms. Sadler and Mr. Murphy:

ECOS members appreciate the opportunity to provide early input to the Office of Congressional and Intergovernmental Relations (OCIR) regarding development of its FY 2023 – FY 2024 National Program Guidance. States value working with OCIR to enhance planning and communication in the National Environmental Performance Partnership System (NEPPS) program work, national grant work planning, and state shared governance of federally implemented programs which help lead to improvements in our collective ability to protect human health and the environment. The states offer the following input.

ECOS estimates that federal funding makes up approximately 27% on average of state environmental agency budgets, and overall STAG funding has been flat for 19 years and its purchasing power has diminished when considering inflation. initiatives. Much of the federal funding has focused on specific outcomes and projects without much attention to the crucial, seasoned state staff that execute vital support and analytic functions. Increased federal funding and flexibility in the use of federal funds in program implementation is important to continued success in delivering results. States encourage EPA to support state efforts to seek adequate funding for delegated program and infrastructure investments, support flexibility in implementing programs, collaborate through E- Enterprise for the Environment, and jointly work to modernize our technology infrastructure to enable all parties to continue to improve outcomes for all people.

Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs) are an important mechanism to provide flexibility in how states achieve their grant workplan commitments. It would be helpful if OCIR were to annually gather from regions examples of flexibility included in PPA and PPGs and share these flexibilities broadly with states and regions through a webinar or other means. Consolidated examples of PPA and PPG flexibilities adopted in state grant workplans could accelerate consideration of innovative practices more quickly. One example of a flexibility a number of states employ is Alternative Compliance Monitoring Systems (ACMS). Having a list of approved state ACMS approaches may make it easier for other states to adopt similar strategies to direct resources to priority compliance activities. Promoting flexibilities states have included in PPAs and PPGs may lead other states to consider increasing the number of Categorical Grants they include in their PPGs and PPAs and reducing the number of individual state grants EPA must manage.

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To streamline annual grant workplan development, states recommend EPA support establishment of electronic collaborative forums between regions and states that can be used to develop and negotiate grant workplans such as through MAX and SharePoint. States in regions that utilize online collaboration platforms for PPA and PPG workplan negotiations have spoken very highly of them. States hope that online collaboration platforms such as the ones used by EPA Regions 1, 5, and 8 become an option for all states.

Joint governance under E-Enterprise for the Environment is a key tool for driving program modernization and coordinating needed investments in information systems. EPA support for investments in technology infrastructure and for state pilot projects will accelerate the adoption of new more efficient tools to meet our shared goals. EPA's draft FY22-26 Strategic Plan notes that, "States and tribes are encouraged to use [E-Enterprise Workload Tradeoffs](#) to adjust grant work plans to focus on collaborative efforts related to work modernization." States appreciate this acknowledgement to consider workload tradeoffs to further modernization goals and encourages OCIR to provide outreach and support to EPA Regional Offices to support use of this tool as states negotiate their grant workplans with regions.

States also urge continued joint governance, coordination, and investment in data solutions to improve the multi-directional interoperability between state and federal databases. As examples, states encourage the modernization of drinking water information now managed through the Safe Drinking Water Information System (SDWIS) and of clean water and air information now managed through the Integrated Compliance Information System (ICIS). These modernization efforts can lead to reduced duplication, improved data quality, and less burdensome processes.

EPA has identified "grants commitments met" as a key priority area to address under its 2018 Evidence Act requirements. EPA provides further information in its draft FY22-26 Strategic Plan on its "grants commitments met" Learning Agenda. States encourage EPA to work closely together as it develops an "ideal future state" and as it identifies "opportunities for improvements to EPA's grant program monitoring and tools to demonstrate environmental results more effectively on a national scale and to determine the extent to which these environmental results benefit underserved communities." EPA's draft Strategic Plan also notes, "The Agency plans to pilot a data collection tool with a subset of regions to ensure that it is a reliable instrument and that the data collected fulfills the anticipated need. ... EPA will involve internal stakeholders in the analyses to ensure the accuracy and utility of findings." States encourage EPA to consider states as stakeholders when assessing the pilot data collection tool and in planning to extend the pilot data collection tool more broadly. EPA's draft Strategic Plan also identifies Learning Agendas related to "drinking water systems out of compliance" and "air pollution benefits." For these three Learning Agendas, states encourage a holistic approach to data collection, considering potential new information needed alongside what reporting may no longer be needed, what information is not being utilized that could stop being collected, and what information EPA may already collect that could be shared more broadly. Collection, review, reporting, and management of data incurs costs to both states and EPA so conducting a complete review of needed and under-utilized information will allow resources to be better directed where they may be most effective.

States note that in September 2021, EPA responded to the Office of Inspector General of its plans to move to proactive Title VI/Civil Rights compliance reviews and to clarify through guidance how it will evaluate Title VI permitting and cumulative impacts when evaluating

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programs where EPA funds are provided. As EPA prepares new guidance and re-examines utilization of current tools, states encourage EPA to plan for outreach and training for state staff in addition to EPA regional and headquarter staff. ECOS also notes that the ECOS Environmental Justice Workgroup is an example of one forum where EPA may gain insights into state experiences as it seeks to provide effective civil rights programs. States encourage EPA to learn about state efforts to use data from the communities they serve in their decision-making process to promote equity and about state-led environmental justice mapping tools.

In addition to the priorities outlined above, states encourage EPA to continue to focus measures on environmental outcomes rather than outputs such as the number of inspections or evaluations. States appreciate that EPA has provided guidance that consider the impact of the pandemic on various metrics and continue to be mindful of lessons learned that may be applied moving forward, for instance expanding utilization of remote inspections. Finally, ECOS encourages EPA to look to other associations for additional input and suggestions.

Thank you again for this opportunity to provide early input on the OCIR FY 2023 – FY 2024 National Program Guidance. If you have any questions about these comments, please contact ECOS Executive Director, Don Welsh, at [dwelsh@ecos.org](mailto:dwelsh@ecos.org) or 202-266-4920.

Sincerely,



Donald Welsh  
ECOS Executive Director

cc:

Leo Henning, ECOS Planning Committee Chair and Director, Kansas Division of Environment  
Kim Shelley, ECOS Planning Committee Vice Chair and Executive Director, Utah Department of Environmental Quality

Robin Richardson, Deputy Associate Administrator, Office of Congressional and Intergovernmental Relations, U.S. EPA

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# Environmental Council of the States

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October 29, 2021

Ms. Jennifer Vernon  
U.S. Environmental Protection Agency  
Office of Chemical Safety and Pollution Prevention  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

## Re: Early Engagement on FY 2023 – FY 2024 National Program Guidance

Dear Ms. Vernon:

ECOS members appreciate the opportunity to provide early input to the Office of Chemical Safety and Pollution Prevention (OCSPP) regarding development of its FY 2023 – FY 2024 National Program Guidance. States value working with OCSPP to enhance implementation of the Toxics Substances Control Act (TSCA), the Pollution Prevention Act, Section 313 of the Emergency Planning and Chemical Right-to-Know Act (TRI), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) leading to improvements in our collective ability to protect human health and the environment. The states offer the following input.

ECOS estimates that federal funding makes up approximately 27% on average of state environmental agency budgets, and overall STAG funding has been flat for 19 years and its purchasing power has diminished when considering inflation. Much of the federal funding has focused on specific outcomes and projects without much attention to the crucial, seasoned state staff that execute vital support and analytic functions. Increased federal funding and flexibility in the use of federal funds in program implementation is important to continued success in delivering results. States encourage EPA to support state efforts to seek adequate funding for delegated program and infrastructure investments, support flexibility in implementing programs, collaborate through E-Enterprise for the Environment, and jointly work to modernize our technology infrastructure to enable all parties to continue to improve outcomes for all people.

As OCSPP continues to work to implement TSCA as amended in 2016 and review some of the risk decisions made during the previous administration, ECOS urges ongoing and regular consultation and coordination in areas of particular concern to the states. This includes prioritization of chemicals for risk evaluation and the methodologies used to develop and implement risk determinations that take into consideration the most sensitive and vulnerable populations and ecological resources. As EPA gathers chemical information under TSCA, ECOS asks EPA to share confidential business information with states through information sharing agreements to ensure state partners can manage chemical risks within their borders. And as regulatory decisions are made, states urge EPA to exercise its statutory discretion to grant waivers to preemption of state and local regulations.

Three sets of chemicals of particular interest to states that EPA can help address under TSCA are PFAS, lead, and mercury. As EPA begins to implement the PFAS Road Map, ECOS urges OCSPP to authorize and issue significant new use rules for PFAS chemicals and to conduct

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robust and rigorous evaluations of new PFAS chemicals under the Premanufacture Notice program. States also support EPA under TSCA developing a robust, comprehensive, and transparent reporting and recordkeeping rule to help advance the understanding of and ability to act on PFAS. Additionally, as EPA is developing its new lead strategy, ECOS urges EPA to initiate regulatory action to address lead hazards associated with the manufacture, processing, and distribution of lead wheel balancing weights including measures for proper management of them. With regards to mercury, ECOS requests that EPA work to minimize potential preemption of effective state or local mercury reduction programs, expedite promulgation of a revised mercury reporting rule, and publish all mercury reporting information received.

As OCSPP develops its FY23-24 National Program Guidance, ECOS would like to see renewed efforts around pollution prevention and alternatives assessments. Specifically, states request that EPA seek appropriate federal funding for the State Pollution Prevention Grants and work with states to promote pollution prevention in all EPA and state programs. We encourage EPA to help coordinate across the state and federal levels to make sustainable and green chemistry a priority. We also encourage EPA to establish a Center of Excellence for Chemical Alternatives Assessment to promote chemical safety, human and ecosystem health, and economic competitiveness and innovation by advance alternatives assessment.

Within the TRI Program states would ECOS requests that OCSPP continue, as appropriate, to add additional PFAS and other contaminants of emerging concern to annual reporting requirements. States also ask that as annual TRI data is released that the data be put into context that explains what the data is and is not using terms and language that are understandable to the public.

With regards to FIFRA, ECOS urges OCSPP to ensure that pesticides, like all chemicals, be regulated to control those that pose an unreasonable risk to public health or the environment. ECOS also encourages EPA to coordinate with additional associations of state officials that work on pesticide and chemicals issues such as the Association of American Pesticide Control Officers and the National Association of State Departments of Agriculture.

Thank you again for this opportunity to provide early input on the OCSPP FY 2023 – FY 2024 National Program Guidance. If you have any questions about these comments, please contact ECOS Executive Director, Don Welsh, at [dwelsh@ecos.org](mailto:dwelsh@ecos.org) or 202-266-4920.

Sincerely,



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# Environmental Council of the States

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September 24, 2021

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Office of Enforcement Compliance and Assistance  
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Washington, D.C. 20460

## **Re: Early Engagement on FY 2023 – FY 2024 National Program Guidance**

Dear Ms. McKeever and Ms. Ragnauth:

ECOS members appreciate the opportunity to provide early input on the OECA FY 2023 – FY 2024 National Program Guidance (NPG). EPA's efforts to engage with states in enhancing planning and communication in enforcement and compliance assurance work will lead to improvements in our collective ability to protect human health and the environment.

Federal funding makes up about 27.53% of average state environmental agency budgets, and overall STAG funding has been flat for 19 years. Adequate federal funding and flexibility in the use of funds and in program implementation is important to continued success in delivering results.

Joint governance under E-Enterprise for the Environment is a key tool for driving program modernization and coordinating needed investments in data management information solutions. Support for technology infrastructure and the latitude for state pilot projects will accelerate the adoption of new, more efficient tools to meet our shared goals. The E-Enterprise Leadership Council (EELC) is supporting work on EPA's Compliance Learning Agenda (CLA). States appreciate engaging with EPA to identify key research questions. States are also interested in working with OECA on the Drinking Water Compliance Learning Agenda.

### **What information in OECA's past National Program Guidances (NPGs) have been most valuable to you? What could OECA include in our FY 2023-2024 NPG that would improve its usefulness in your work?**

ECOS supports the National Compliance Initiative (NCI) framework, which better reflects all efforts to improve compliance including compliance assistance, as well as the four-year cycle, which is consistent with EPA's Strategic Plan. With the FY2022 NPG being passed over, the four-year NCI cycle should be adjusted to be in sync with the FY22-26 EPA Strategic Plan and the adjusted two-year NPG cycle which will be next published for FY22-23.

The section on key activities to meet strategic measure targets is very informative. Adding specific details as to what or how specific data will be captured and the formula for the metric would be a valuable improvement.

EPA should have a greater understanding of and give more consideration to state and tribal data system capacity when measuring performance and effectiveness.

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As some NCI(s) are more regionalized than others, EPA should allow states to help define and choose from a list of two or three priorities.

**Given the Agency's focus on addressing environmental justice and climate change, are there programmatic efforts or performance measures related to these topics that are most important to include in the NPG?**

OECA should be thorough in its engagement with states and closely coordinate on implementation of environmental justice (EJ) policies.

EPA should follow the rule of law and develop NPGs that are consistent with the existing regulatory framework that is based in statute(s) as well as define the specific problems with evidence-based criteria. Measures to increase inspections and resolve violations in a more timely and effective manner should be realistic and balanced.

In terms of outputs, EPA and states should determine the baseline or historic record of the number of inspections performed, number of significant violations observed, and the number of enforcement actions taken in EJ areas vs. non-EJ areas. EPA should also consider priorities for inspections in EJ areas with its Compliance Monitoring Strategies (CMS) and support state-regional considerations of Alternative Compliance Monitoring Strategies (ACMS) that support this priority. In terms of outcomes, EPA might consider measuring unintended consequences such as displaced families or utility rate increases in relation to the number of enforcement actions issued to municipalities (e.g. NPDES Municipal surface water cases).

States appreciate additional flexibility to the Supplemental Environmental Projects (SEPs) policy and look forward to using SEPs as an available tool in settlements. SEPs are a restorative justice tool and should be encouraged, and outputs and outcomes measured, especially in EJ areas.

As with EJ, it is very important that the metrics around climate change are laid out very clearly. With both areas developing in the near future, states caution that additional reporting requirements can be burdensome to state agencies which are already tight on resources.

**What assistance do state, territory, local, and tribal co-regulators need from EPA to implement our shared environmental compliance and enforcement programs?**

States act as the primary enforcers of laws and rules that have been on the books for decades. This enforcement has made a positive change for environmental and public health protection in the U.S. Effective consultation and coordination with the states, consistent with Assistant Administrator Susan Bodine's July 11, 2019 memorandum, when federal inspections or enforcement actions are planned, will assure the best use of limited compliance resources, minimize friction, and reduce duplication of effort. States encourage EPA to involve states as partners in rulemaking and co-regulators rather than just stakeholders. States and EPA should develop a shared and achievable agenda as well as a tribal program that allows the tribes to share in the federal/state relationship as partners. Adequate federal funding and flexibility are the primary types of assistance that EPA can provide to states to accomplish our shared goals.

EPA can improve state and tribal capacity building through, not only in-person, but on-site, facility-based training programs. Joint inspections can provide a certain level of understanding or

perspective on how EPA and a state or tribe conducts its work but are not necessarily the best environment for training.

As compliance and enforcement work increasingly transitions to new technologies, we need to understand the capabilities and constraints that technology creates and the degree to which it might impede environmental or public health improvements. States urge continued investment in data systems to improve the interoperability between state and federal databases.

Better integration of the data systems to support a data sharing solution can improve reporting and reduce the number of Significant Noncompliance (SNC) listings that are the result of inaccurate data. EPA should afford states the opportunity to work with regions to gather information on how states currently track timelines for violations and how that data can be used to track changes in trends and then reported to EPA. Modernization and improvements to SDWIS and ICIS are critical, and the exchange of data to EPA from states and from EPA back to states needs to be established and simplified. States and tribes need EPA support for the allocation of additional IT resources/staff or funding to develop better tools that will ensure timely and accurate data entry of inspections and compliance and enforcement data. With SDWIS, states are eager to continue partnering with EPA to define system requirements, review system design and development plans, and test the software. States recognize the importance of funding resources for both EPA to develop a SDWIS alternatives analysis and options and for states to effectively transition to a new solution. With ICIS, it is critically important for EPA to continue including the state and local voice in the evaluation of alternatives and the design of a new solution. EPA, states, and local government programs will need resources to implement a new ICIS solution.

In the past, ECOS has highlighted the value of ACMS and continues to support efforts to bring attention to or promotion of states to take advantage of ACMSs to focus enforcement activities on state priorities.

ECOS also requests that EPA involve states and tribes in revising or improving tools and algorithms that factor into both EPA and state/tribal priorities around inspection and enforcement. When requested by the states, EPA should also share information it receives from defendants in enforcement cases where state and EPA jurisdiction overlaps.

Lastly, EPA should continue to promote the 507 Technical Programs from the Small Business Environmental Assistance Programs (SBEAPs) and compliance assistance.

**As a result of COVID-19, what best practices or changes in practice are you considering incorporating into future compliance monitoring work?**

States are working to use new tools to be as efficient as possible with limited staff and resources. States appreciate EPA's partnership with ECOS to pilot the use of remote video tools for compliance evaluations. Where shown to be effective, these evaluations can be a resource multiplier that can expand our compliance monitoring coverage. Technical and legal guidance for the use of drones, as well as the ability to employ grant funding for their use, is another opportunity to bring new tools to bear in pursuit of improved compliance. The CLA work is a good step towards allowing the use of remote inspection techniques, and states seek to remain involved in that research. States have also begun to explore the use of virtual public hearings. State, tribes, and EPA should work together to identify opportunities for information sharing and

collaboration for the advancement of environmental protection such as through artificial intelligence and satellite imagery.

**Do states, tribes, and associations have any other comments on the existing FY 2020 – FY 2021 Office of Enforcement and Compliance Assurance (OECA) National Program Guidance for OECA to consider when drafting revisions for FY 2023 – FY 2024?**

As always, states value early and meaningful engagement as co-regulators.

EPA could assist the states by facilitating coordination in compliance actions that involve multiple federal agencies. For instance, ensuring or accelerating the completion of criminal cases referred to the U.S. Department of Justice or U.S. Attorney. Measures to reduce the average time from violation to correction do not account for the fact that other agencies (DOJ or state OAGs) are responsible for legal case work and resolution. The majority of unresolved violations are a result of that formal legal enforcement work and related processes and limited legal resources. EPA could support and work with states/tribes to develop examples or templates for “expedited” settlement agreements that do not require full and lengthy legal review by the DOJ or state OAGs. It could also consider creating an output measure that demonstrates the states or EPA’s capacity to identify violations and recommend formal enforcement. Likewise, the countermeasure to the DOJ/OAG delay would be to measure “informal” enforcement activities as they have a more direct relationship with environmental agencies’ responsibilities.

ECOS also requests that EPA revisit its SNC and High Priority Violations (HPV) criteria to better prioritize violations and enforcement.

Additionally, please see ECOS’s comments submitted during the FY22-23 early engagement period in 2020. They follow this letter as an attachment.

Thank you for the opportunity to provide comments.



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September 24, 2020

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ECOS comments from the FY22-23 NPG early engagement period.

## Re: Early Engagement on FY 2022 – FY 2023 National Program Guidance

To the Office of Enforcement and Compliance Assurance,

ECOS members appreciate the opportunity to provide early input on the OECA FY 2022 – FY 2023 National Program Guidance (NPG). EPA's efforts to engage with states in enhancing planning and communication in enforcement and compliance assurance work will lead to improvements in our collective ability to protect human health and the environment.

In recent discussions with EPA senior leadership and with Office of Management and Budget, ECOS has identified four priority issues: adequate funding, flexibility, E-Enterprise for the Environment, and technology infrastructure. These priorities will be reflected in much of the input we provide for your consideration in developing the NPG.

Federal funding makes up about 27% of average state environmental agency budgets, and overall STAG funding has been flat for 18 years. Budget impacts from the COVID-19 pandemic stand to impose further challenges. Adequate federal funding and flexibility in the use of funds and in program implementation will be important to continued success in delivering results.

Joint governance under E-Enterprise for the Environment is a key tool for driving program modernization and coordinating needed investments in information systems. Support for technology infrastructure and the latitude for state pilot projects will accelerate the adoption of new more efficient tools to meet our shared goals.

### **What other priorities or areas of focus, beyond the EPA Strategic Plan priorities and NCIs, should OECA identify in the FY 2022 – FY 2023 National Program Guidance and why?**

ECOS supports the new National Compliance Initiative (NCI) framework, which better reflects all efforts to improve compliance, as well as the four-year cycle, which is consistent with EPA's Strategic Plan.

A suggested additional area of focus for the up-coming national program guidance is to emphasize compliance efforts in environmental justice and low-income communities. While the NCIs are holistic in that they select NCIs in each media program, they are managed separately without consideration of the number of cross media considerations that have cumulative impacts on communities.

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ECOS Executive Director

Many states are working to address PFAS contamination. States are aware of and excited to use OECA's PFAS Analytic Tool and as EPA's offices move forward with the PFAS Action Plan, OECA will have the opportunity to be more involved with states in PFAS efforts (e.g. enforcing action levels based on the regulatory determination for PFOA/PFAS; action on PFAS under CRCLA, RCRA).

**What assistance do state, territory, local, and tribal co-regulators need from EPA to accomplish the shared compliance and enforcement goals and priorities in EPA's Strategic Plan and NCIs?**

Adequate federal funding and flexibility are the primary types of assistance that EPA can provide to states to accomplish our shared goals. For instance, when working to reduce Significant Non-Compliance (SNC) with NPDES permits, states often face problems with POTW's in small communities that are unable to afford the expensive upgrades needed to return to compliance. Additional funding and support for innovative technologies in these communities is required to achieve this goal.

States also urge continued investment in data systems to improve the interoperability between state and federal databases. Better integration of the data systems can improve reporting and reduce the number of SNC listings that are the result of inaccurate data. EPA should afford the opportunity for states to work with regions to gather information on how states currently track timelines for violations and how that data can be used to track changes in trends and reported to EPA.

States are working to use new tools to be as efficient as possible with limited staff and resources. States appreciate EPA's partnership with ECOS to pilot the use of remote video tools for compliance evaluations. Where shown to be effective, these evaluations can be a resource multiplier that can expand our compliance monitoring coverage. Technical and legal guidance for the use of drones, as well as the ability to employ grant funding for their use, is another opportunity to bring new tools to bear in pursuit of improved compliance.

States also support EPA's efforts to build on existing training programs and provide training that can be completed virtually. Resources such as the industry sector notebooks used by state solid waste offices provide for more comprehensive inspections and assistance with pursuing enforcement cases. Updates to these resources, including summaries of established industry standards in the case of the sector notebooks, help ensure inspectors are equipped with the current information needed to pursue cases in the fullest.

Effective consultation and coordination with the states, consistent with Assistant Administrator Susan Bodine's [July 11, 2019 memorandum](#), when federal inspections or enforcement actions are planned, will assure the best use of limited compliance resources, minimize friction, and reduce duplication of effort. States encourage EPA to involve states as partners in rulemaking rather than just stakeholders. Additionally, EPA could assist the states by facilitating coordination in compliance actions that involve multiple federal agencies. For instance, ensuring or accelerating the completion of criminal cases referred to the U.S. Department of Justice or U.S. Attorney.

**What are additional ways we should measure our effectiveness or define success?**

States feel that the current measures might be improved by creating a stronger tie between the measures and the NCI's, and a better focus on environmental outcomes rather than the number of inspections/evaluations.

Measures should provide attributes for calculating the average time of violation identification to correction, acknowledging that return to compliance dates can change as a case progresses from an inspection to a penalty action. EPA should clarify between violations and cases.

Measures that track compliance rates should take into account that new rules and changes to existing rules will affect the overall trend of compliance rates as agencies and regulated entities adjust.

Additional possible metrics:

- Improved compliance in environmental justice communities.
- Support given to state programs, such as the investment in information technology systems.
- Amount of time to completion of federal inspections.
- Measure of SNC reduction by formal enforcement action, informal action, or data cleanup.
- Number of facilities that return to compliance one year after a non-compliance inspection.
- Number of facilities that remain in compliance for three years or more years after the initial return to compliance.

**Do states, tribes and associations have any other comments on the existing [FY 2020-2021 Office of Enforcement and Compliance Assurance \(OECA\) National Program Guidance](#) for OECA to consider when drafting revisions for FY 2022 – FY 2023?**

Many states have concerns about additional federal inspections and enforcement in the drinking water program. The provision of technical, managerial, and financial training will likely result in greater improvement in compliance than an added layer of enforcement. The measure of inspections conducted in authorized states may add little to actual improvements in compliance, while creating the impression of deficiency in the state program. Additional federal inspections and enforcement may be warranted where deficiencies exist, but may be unnecessary where they do not. The metric currently used does not distinguish between the two.

EPA should continue to leverage ongoing work through the state capacity development programs, which take proactive and preventative actions to reduce or prevent non-compliance. Encouraging partnerships and consolidation are a way states can work to reduce non-compliance and are proactive measures to prevent non-compliance. EPA should continue to promote water system partnerships and develop tools for water systems and states to increase the implementation of partnerships and consolidation.

States encourage EPA to continue to expand the area-wide optimization program (AWOP's) scope and restore the funding of EPA staff and contractors to help facilitate the development of new AWOP tools at the national level.

It would be helpful if EPA could identify, collect, and publish to states where alternative compliance monitoring strategies (ACMS) are in use, in what media, and what is included in the ACMS. This would

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allow other states to be aware of where EPA has approved various approaches and the number of states pursuing such in air, water, and waste programs.

States often use different terminology for letters to companies with violations, such as Notice of Violation, or Notice of Non-Compliance. EPA might clarify whether such terms are equivalent or create standard definitions for how actions should be entered in EPA databases. Significant variability in what violations states historically reported to EPA has created or misrepresented the baseline metrics and we encourage EPA to complete a re-baselining of state reporting of violations to ensure the strategic measure is accurate and consistent.

Thank you again for the opportunity to provide comments.

A handwritten signature in blue ink that reads "Donald L. Welsh". The signature is written in a cursive, slightly slanted style.

Donald Welsh  
ECOS Executive Director





# Environmental Council of the States

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(202) 266-4920 | [www.ecos.org](http://www.ecos.org)

October 1, 2021

U.S. Environmental Protection Agency  
Office of Water  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

## Re: Early Engagement on FY 2023 – FY 2024 National Program Guidance

Dear Ms. Best-Wong:

ECOS members appreciate the opportunity to provide early input on the Office of Water (OW) FY 2023 – FY 2024 National Program Guidance (NPG). EPA's efforts to engage with states in enhancing planning and communication in water work will lead to improvements in our collective ability to protect human health and the environment.

Federal funding makes up about 27.53% of average state environmental agency budgets, and overall STAG funding has been flat for 19 years. Adequate federal funding and flexibility in the use of funds and in program implementation will be important to continued success in delivering results.

Additionally, joint governance under E-Enterprise for the Environment is a key tool for driving program modernization and coordinating needed investments in information systems. Support for technology infrastructure and the latitude for state pilot projects will accelerate the adoption of new more efficient tools to meet our shared goals. States also urge continued investment in data systems to improve the interoperability between state and federal databases. States specifically encourage continued support of the Safe Drinking Water Information System (SDWIS) modernization effort. SDWIS is a critical underpinning of protecting public health under the Safe Drinking Water Act, and states are in need of a data management solution.

In addition to considering these core priorities, states encourage EPA to continue to focus measures on environmental outcomes rather than the number of inspections or evaluations. States also ask that EPA assess the impact of the pandemic on various metrics, and to be mindful of measuring metrics that are no longer priorities. ECOS supports investment in critical water, wastewater, and stormwater infrastructure, including efforts to enhance capacity of small and disadvantaged communities to meet water infrastructure challenges. Finally, ECOS encourages EPA to look to other associations for additional input and suggestions.

**Ben Grumbles**

Maryland Department of  
the Environment  
ECOS President

**Myra Reece**

South Carolina Department of  
Health and Environmental Control  
ECOS Vice President

**Chuck Carr Brown**

Louisiana Department of  
Environmental Quality  
ECOS Secretary-Treasurer

**Patrick McDonnell**

Pennsylvania Department of  
Environmental Protection  
ECOS Past President

**Donald Welsh**

ECOS Executive Director

Environmental Council of the States

Thank you for the opportunity to provide comments. ECOS looks forward to continuing the discussion during the development of the FY2023-24 priorities. If you have any questions about these comments, please contact ECOS Executive Director, Don Welsh, at [dwelsh@ecos.org](mailto:dwelsh@ecos.org) or 202-266-4920.

Sincerely,

A handwritten signature in blue ink that reads "Donald A. Welsh". The signature is written in a cursive style with a clear first initial and last name.

Donald Welsh  
ECOS Executive Director

cc: Kristie Moore  
Jared Martin