



March 13, 2023

Lawrence E. Starfield
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Via electronic submission

Re: Docket ID EPA-HQ-OECA-2022-0981; National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027

Dear Acting Assistant Administrator Starfield,

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on the National Enforcement and Compliance Initiatives (NECIs) for fiscal years 2024-2027. AMWA is an organization representing the largest publicly owned drinking water utilities in the United States. AMWA is supportive of the core objective of these initiatives - to protect human health and the environment by holding polluters accountable and ensuring compliance with current regulations. AMWA members work tirelessly and consistently to provide clean, safe drinking water to the public and appreciate actions targeted toward reducing water contamination.

AMWA has long asserted that it is most effective to control pollutants at their source, where they are highly concentrated, rather than remove them at the consumer's expense after entering a water body or drinking water source. The association believes EPA's enforcement initiatives across all its programs should focus on preventing pollution in the first place, which would have a cascading effect in reducing non-compliance in drinking water systems. Drinking water utilities are relied upon to remove contaminants they did not produce or use, so focusing resources on preventing the pollution in the first place would ease burdens on systems that may struggle with compliance issues.

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Environmental Justice

AMWA applauds EPA as it works to incorporate environmental justice in individual NEICs rather than making it a separate initiative. As EPA states, “Promoting environmental justice, on the other hand, is not specific to any one program or statute; it is a core principle of all of our enforcement and compliance work.” AMWA agrees and looks forward to working with EPA on advancing environmental justice and equity to ensure the delivery of high-quality drinking water to all.

Reducing non-compliance with drinking water standards at community water systems

EPA intends to retain the “Reducing non-compliance with drinking water standards at community water systems” as a NEIC for 2024-2027. AMWA supports this goal and believes it is often more effective to enforce current rules than it is to revise and create new regulations. Further rulemakings could have the unfortunate side effect of doing the opposite of the intent of this NEIC, which is potentially increasing the number of utilities out of compliance, as well as increasing the cost of compliance on systems of all sizes, costs which are ultimately borne by the ratepayers in the communities they serve. This could exacerbate the affordability issues, which are also in many communities, and an issue related to environmental justice. EPA should focus resources on helping systems in consistent non-compliance to identify the issue(s) and work with those entities to find a feasible solution. Consistent non-compliance with federal regulation further erodes the public trust in drinking water, but utilities in this position often need support and resources that EPA can provide. In the notice announcing the initiatives, EPA states it plans “to increase the number of inspections at systems serving overburdened communities and ensuring that communities know about health-based violations and steps to take to protect their health.” While these inspections may help identify the problem, EPA must also work with systems to identify and achieve solutions and should leverage the technical assistance programs funded by the agency’s Environmental Finance Center Grant program to do this as well as to access federal funding for this purpose.

EPA also indicates it will ensure compliance with the Safe Drinking Water Act section 1433, which “requires [community water systems] serving more than 3,300 people to develop risk and resilience assessments and emergency response plans which must include the risks posed by climate change and natural hazards on the infrastructure of the system.” While AMWA supports preparedness for these events, the association urges EPA to assess overlap between this and other requirements already imposed on water utilities. For example, many larger public water systems (PWS) are already required to do similar planning under the Risk Management Program. Additionally, EPA Office of Land and Emergency Management proposed last year the “Clean Water Act Hazardous Substance Worst Case Discharge Planning” rule, which again would duplicate these efforts and direct resources away from other more pressing actions. AMWA asks EPA to simplify this process to reduce burdens placed on PWS.

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities

EPA intends to also retain the “Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.” As stated earlier, AMWA’s position has always advocated for stopping pollution at the source before it enters waterways. AMWA supports EPA’s plan to reduce risks of accidental releases under the Risk Management Program (RMP) but also asks EPA to continue to recognize sectors that have done considerable work to reduce risk to near zero levels. The water sector, which AMWA represents, has a baseline accident rate from 2016-2020 of 0.02 accidents per facility.¹ In the most recent proposed revisions to the RMP, EPA recognized this extremely low risk and again exempted the water sector from certain requirements, particularly the Safer Technology Alternatives Analysis (STAA) requirements. Since EPA has already acknowledged the work done toward managing risk in the water sector, AMWA asks EPA to focus on sectors with the highest rates and/or repeated incidents.

Addressing PFAS Contamination

Another potential NECI EPA is considering is “Addressing PFAS Contamination.” AMWA supports EPA’s planned enforcement efforts on addressing entities that directly contribute to PFAS contamination and maintains that focus on holding polluters responsible and accountable for their actions. In the event PFAS does contaminate the environment, the association continues to support the idea that the polluter pays when it comes to environmental cleanup. Water utilities across the country currently, or soon will be required to, remove PFAS out of drinking water at the consumer’s expense. EPA must use proactive approaches to help ensure that those who pollute our natural resources are not allowed to pass the cost of cleanup onto public drinking water utilities and their customers. EPA should also look to address PFAS holistically, which includes looking at additional exposure pathways and alternative ways of reducing the public’s contact with PFAS. This NECI may be difficult for EPA to focus on during the 2024-2027 period as regulation will be consistently developing and changing as EPA continues implementing actions found in the PFAS Strategic Roadmap.

AMWA appreciates EPA’s commitment to enforcement discretions when it comes to CERCLA liability of PFAS cleanup, however, these discretions are not legally binding or durable throughout different administrations. The agency and the Administration should vocally support a targeted liability exemption for water systems. In the case of drinking water systems that are required to filter PFAS from their water supplies, a hazardous substance designation without a liability exemption could put these systems at risk after they dispose of water treatment byproducts at an appropriate landfill. Should that landfill ever be designated as a Superfund site because of PFAS contamination, the water system could be held liable as a potentially responsible party even if it followed all legal requirements when disposing of the byproducts.

¹ Regulatory Impact Analysis, US EPA, Safer Communities by Chemical Accident Prevention Proposed Rule. <https://www.regulations.gov/document/EPA-HQ-OLEM-2022-0174-0083>

Enforcement discretions alone are not enough to ease concerns among water systems that their ratepayers could potentially be forced to pay yet again to remediate PFAS contamination they had no hand in using or creating.

Reducing Lead Exposure

EPA has identified “Reducing Lead Exposure” as a potential NECI. AMWA recommends EPA refrain from including this in the 2024-2027 NECIs. While the association agrees that reducing lead exposure is a main priority, EPA is currently approaching the Lead and Copper Rule Revisions (LCRR) compliance date while also working toward the Lead and Copper Rule Improvements (LCRI). AMWA believes EPA should continue its current efforts toward reducing lead exposure and re-evaluate this as a NECI until the LCRI is finalized. EPA should continue efforts to reduce lead exposure through additional avenues like lead-based paint. AMWA has and continues to communicate compliance concerns to EPA with LCRR and potential LCRI requirements and hopes EPA will work to address these concerns to better ensure compliance and lead exposure reduction.

Conclusion

EPA should strive to enforce and ensure compliance of all regulations, as this is one of the most effective ways to ensure public safety and protection of public health. Those not in compliance should work with EPA to determine the quickest and most feasible route towards remediation. AMWA continues to applaud EPA when it takes actions to hold polluters accountable and believes that enforcing regulation is the main tool EPA must use to do so.

AMWA appreciates the opportunity to comment on NECIs for fiscal years 2024-2027. If you have any questions or would like further clarification on any of the information above, please contact Brian Redder (Redder@amwa.net), AMWA’s Manager of Regulatory and Scientific Affairs.

Sincerely,



Tom Dobbins
Chief Executive Officer

cc: Michele McKeever, OECA
Jennifer McLain, OGWDW
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