



## States Weigh In On EPA's 'Most Serious Environmental Problems' And Enforcement, Compliance

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For years, the U.S. Environmental Protection Agency (EPA) has published a list of environmental issues it is focusing on for enforcement. Since 2010, this priority list has been named the National Enforcement Initiatives or NEIs. In December 2022, the EPA announced in its Updated Policy for EPA's Enforcement and Compliance Initiatives that the list had been renamed "National Enforcement and Compliance Initiatives" (NECI), explaining that "while criminal ... and civil enforcement ... remain the key tools to address serious noncompliance, hold polluters accountable and create general deterrence, the EPA also uses informal enforcement and compliance tools to advance the national initiatives . . ."

For the EPA and its delegated states, [the NECIs](#) guide "allocation of enforcement and compliance resources based on the need to address serious and widespread environmental issues particularly in overburdened and vulnerable communities." The goal, according to the EPA, is to "help ensure national consistency, promote a level playing field, and achieve compliance" with the goals of the EPA's [Strategic Plan to Enforce Environmental Laws and Ensure Compliance](#).

The EPA has issued NECIs for 2020-23 and has proposed the next round of NECIs for 2024-27.

The [NECIs for 2020-23](#) are:

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- Reducing risks of accidental releases at industrial and chemical facilities
- Reducing significant non-compliance with national pollutant discharge elimination system (NPDES) permits
- Reducing non-compliance with drinking water standards at community water systems

The [draft NEClS for 2024-2027 carry over four current initiatives and add two new ones](#). New initiatives include a climate change NECl, which will address greenhouse gas emissions, air pollution, and water quality effects, and an NECl to address per- and polyfluoroalkyl substances (PFAS). The public comment period ended in March.

Although none of the NEClS expressly addresses environmental justice concerns, the EPA stressed that when enforcing all NEClS, environmental justice concerns will be addressed and have “been built into every initiative to protect vulnerable and overburdened communities.” This is consistent with the Biden administration’s previously expressed pledge to focus much of the agency’s environmental enforcement in disadvantaged communities.

The EPA has received comments on the new NEClS that point out potential roadblocks to implementation, especially for those whose implementation depends on actions by states to which the EPA has delegated enforcement roles and on which EPA depends for a large part of its enforcement efforts. [Public comments by the Environmental Council of the States \(ECOS\)](#) warn that for “state agencies already experiencing heavy workload, limited resources, and competing regional priorities... [the] long list of NEClS creates a potentially larger workload burden and dilutes the impact of a focused effort.” For the PFAS-related proposed NECl, the ECOS noted that states are wondering “how EPA will promote compliance and enforcement efforts in these areas in the absence of national or state standards” and suggest that “proposed measures related to the NECl should be quantified and clearly tied to a regulation.”

For entities regulated by the EPA and state environmental agencies, the NECl list serves as notice of what aspects of business operations are more likely to be subject to regulatory attention, either because of the environmental media involved or where they are located, or both. As the saying goes, “praemonitus, praemunitus” – or “forewarned is forearmed.”