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## Another OIG Fly In EPA's Ointment

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Less than two weeks after the EPA published and asked the public to comment on its proposal to [add mitigating climate change and addressing PFAS contamination](#) as National Enforcement and Compliance Initiatives (NECI), EPA's Office of Inspector General (OIG) has once again become a fly in the agency's ointment.

In its [NECI proposal](#), the EPA concluded that significant progress had been made on two of the six ongoing initiatives – reducing toxic air emissions from hazardous waste facilities and stopping aftermarket defeat devices for vehicles and engines. The EPA proposed returning both to their core programs and replacing them with the new climate change and PFAS NECIs. With respect to the NECI for stopping aftermarket defeat devices for vehicles and engines, the EPA explained:

"Since the inception of the NCI in FY 2020, EPA has resolved approximately 130 cases, addressing over 460,000 violations. In FY 2022 alone, EPA concluded 41 cases with over \$19 million in civil penalties. The Agency has made significant progress on this initiative, addressed serious violations through enforcement actions reducing pollution and improving air quality, and raised awareness of the concerns. Accordingly, the Agency proposes to return work in this area to the core program in at the end of FY 2023."

On Jan. 25, the EPA's OIG weighed in with its own report titled "[The EPA Is Not on Track to Reach Its National 23-E-0006 Compliance Initiative Goals to Stop Aftermarket Defeat Devices and Tampered Vehicles](#)." After an

investigation from July 2021 to August 2022, the OIG found that the EPA has not achieved the vast majority of the 40 measures and deliverables it included in its original compliance initiatives. The OIG concluded, “Aftermarket defeat devices and tampered vehicles will continue to allow the release of excess emissions unless additional steps are taken to promote voluntary state efforts to complement the EPA’s NCI work.”

And now, the EPA is faced with the following five recommendations in the OIG’s final report:

1. Develop guidance for the regions that outlines how to interpret, track, and report metrics and that defines vague terms used in the EPA’s Stopping Aftermarket Defeat Devices for Vehicles and Engines National Compliance Initiative strategic plan
2. Update the EPA’s Stopping Aftermarket Defeat Devices for Vehicles and Engines National Compliance Initiative strategic plan so that the NCI goals can be achieved in the event of a pandemic or other challenge
3. In collaboration with EPA regions, revise and reissue the strategic plan for the Stopping Aftermarket Defeat Devices for Vehicles and Engines National Compliance Initiative. In addition, ensure the strategic plan includes quantifiable deliverables that are linked to known compliance-rate baselines that promote the success of the initiative, as well as a mechanism to acquire and implement post-training feedback from regions and states.
4. Work with the Office of General Counsel to provide training for headquarters and regional enforcement staff and to release enforcement data, as appropriate and consistent with applicable legal requirements, that states can use to target and deter the installation and use of aftermarket defeat devices within their jurisdictions
5. Use the OIG’s state questionnaire results, as well as feedback from regions and states, to identify and implement a strategy to overcome barriers and incentivize voluntary complementary work by the states to stop aftermarket defeat devices and tampering.

The EPA had responded on Oct. 21, 2022, to earlier versions of these OIG recommendations, disagreeing with all but the first. The OIG’s final report relates that none of the recommendations have been resolved.

It will be interesting, to say the least, to watch how this family squabble plays out and what the public has to say about it during the comment period.