

# Environmental Enforcement To Focus On Climate Change and PFAS

JANUARY 24, 2023

The Environmental Protection Agency (EPA) has announced its proposed National Enforcement and Compliance Initiatives (NECIs) for fiscal years 2024–2027. EPA is proposing to add two new areas of enforcement focus: mitigating climate change and addressing per- and polyfluoroalkyl substances (PFAS) contamination. Those operating in the oil and gas industry, and those involved with refrigerants, should take note. Interested parties have until March 13, 2023 to submit comments to EPA on the proposed changes.

## What Are NECIs?

NECIs, formerly known as national compliance initiatives (NCIs), represent EPA's areas of enforcement focus. EPA selects NECIs every four years. When selecting NECIs, EPA considers the following criteria:

- The need to address serious and widespread environmental issues and significant violations impacting human health and the environment, particularly in overburdened and vulnerable communities;
- Areas where federal enforcement can help ensure national consistency, promote a level playing field, and achieve compliance; and
- Alignment with the Agency's Strategic Plan. EPA has stated that it aims to align the existing and future NECIs with two strategic plan goals: Goal 1: Tackle the Climate Crisis and Goal 2: Take Decisive Action to Advance Environmental Justice.

Currently, there are six NECIs in effect for FY 2020–2023:

1. Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants
2. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities
3. Reducing Significant Non-Compliance in the National Pollutant Discharge Elimination System (NPDES) Program
4. Reducing Non-Compliance with Drinking Water Standards at Community Water Systems
5. Reducing Toxic Air Emissions from Hazardous Waste Facilities
6. Stopping Aftermarket Defeat Devices for Vehicles and Engines

## Proposed Changes to the NECI for FY 2024–2027

EPA is proposing to continue initiatives #1–4 from the list above for FY 2024–2027. In addition, EPA is proposing to remove initiatives #5 and #6 from the list and replace them with two new initiatives: mitigating climate change and addressing PFAS contamination.

### *Adding Mitigating Climate Change and Addressing PFAS as New Initiatives*

The mitigating climate change NECI would focus on reducing (i) noncompliance with the American Innovation and Manufacturing Act, which regulates the import, production, use, and sale of hydrofluorocarbons; (ii) excess emissions from municipal solid waste landfills and oil and natural gas production facilities; and (iii) noncompliance with methane regulations. EPA says that although it has previously sought to incorporate climate-change considerations into existing initiatives, this NECI would present a new focus on climate mitigation, rather than climate resiliency.

As for addressing PFAS, EPA seeks to continue implementation of the 2021–2024 PFAS Strategic Roadmap. The PFAS NECI would focus on identifying PFAS exposures that are a threat to human health and the environment. EPA intends to emphasize pursuit of enforcement against parties responsible for such exposures. EPA says that it will focus enforcement efforts on PFAS manufacturers and federal facilities that may be a significant source of PFAS contamination. EPA further indicated that “it does not intend to pursue entities where equitable factors do not support assigning [*Comprehensive Environmental Response, Compensation, and Liability Act*] liability.”<sup>[1]</sup>

### *Returning Two Initiatives to the Core Enforcement Program*

EPA is proposing to send initiatives #5 (toxic air emissions from hazardous waste facilities) and #6 (vehicle defeat devices) back to the core enforcement program. EPA says it made significant progress toward reducing pollution from hazardous waste facilities through compliance training and enforcement cases and has addressed the most serious defeat-device cases through enforcement. This does not mean that enforcement in these areas will end. When an initiative is removed from the NECI list, it returns to what EPA calls its “core” enforcement program. EPA can be expected to continue to pursue significant violations in these areas, but we can expect to see fewer cases going forward.

### *What About Environmental Justice?*

EPA is not proposing a standalone NECI to promote environmental justice. However, EPA states that it has “fully incorporate environmental justice consideration into every existing and proposed NECI.”<sup>[2]</sup>

## Requested Public Comments

EPA is requesting public comment on the following:

- Which of the current national initiatives should continue into the FY 2024–2027 cycle, as is or modified, or be returned to the standard or “core” enforcement program at the end of FY 2023?;
- The proposed addition of two new NECI for addressing PFAS and mitigating climate change;
- Whether to add other new NECI to address coal combustion residuals pollution and/or reducing exposure to lead contamination; and
- Whether there are any other areas that EPA has not identified in the proposed rule that should be considered as NECI.

Parties interested in commenting on the proposed NECI can submit public comments identified by Docket ID No. EPA-HQ-OECA-2022-0981. All comments must be received on or before March 13, 2023. For more information on how to submit public comments or the impacts of the NECI on your business, please contact Jonathan D. Brightbill (Partner, White Collar, Regulatory Defense & Investigations/Environmental Litigation), Madalyn Brown (Associate, Environmental), or your Winston relationship attorney.

88 Fed. Reg. 2096 (January 12, 2023).

*Id.* at 2094.

3 Min Read

---

## Authors

[Jonathan D. Brightbill](#)

[Madalyn Brown Feiger](#)

---

## Related Locations

Chicago

Washington, DC

## Related Topics

Environmental Protection Agency (EPA)

Environmental Litigation & Enforcement

PFAS

Climate Change

## Related Capabilities

Environmental Litigation & Enforcement

Environmental, Social & Governance (ESG)

## Related Regions

North America

## Related Professionals

---



[Jonathan D. Brightbill](#)



Madalyn Brown Feiger

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*