



May 18, 2020

Ms. Susan Bodine
Office of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: National Compliance Initiative (NCI) for Drinking Water

Dear Ms. Bodine:

The Association of State Drinking Water Administrators (ASDWA) appreciates the outreach efforts by your staff on the National Compliance Initiative (NCI) for drinking water. ASDWA is the independent, nonpartisan, national organization representing the collective interests of the drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation who implement the Safe Drinking Water Act (SDWA) every day to ensure the protection of public health and the economy. ASDWA supports and represents the collective interests of the states, territories, and the Navajo Nation (Primacy Agencies) in their administration of national drinking water program requirements.

ASDWA appreciates the continued communication between OECA staff and ASDWA members and particularly, with the ASDWA Board of Directors. Despite these engagement efforts, ASDWA continues to have significant concerns about the potential effectiveness and implementation of the OECA NCI as currently drafted. The following comments are recommendations and feedback on the draft NCI strategy, "Reducing Noncompliance with Drinking Water Standards at Community Water Systems." During our discussions, ASDWA members pointed out several areas in the draft where the tone was problematic, and the content of the draft strategy fails to acknowledge and address the real challenges faced by Community Water Systems (CWSs). ASDWA recommends several changes to the draft strategy to reflect the realities of noncompliance more accurately for drinking water systems and the continued efforts of Primacy Agencies' drinking water programs to increase compliance with the SDWA. ASDWA's members support OECA's and OGWDW's efforts to improve compliance in partnership with the states, territories, and Navajo Nation.

When OECA first presented the NCI concept, states' questions centered around how OECA and the NCI can help water systems increase compliance with the SDWA. The current conversations

and this draft strategy indicate a shift from how EPA can “help” states with inspections and sanitary surveys to how EPA can step in to correct the inability of states to handle the administration of the SDWA. The focus in this draft strategy on increasing federal inspections of water systems is not likely to increase compliance for water systems in violation of the SDWA, as the draft suggests. To meet EPA’s goal of reducing by 25% the number of Community Water Systems (CWS) out of compliance with health-based standards, the NCI must involve resources and strategies that target systemic problems faced by CWSs. Common barriers to compliance are well documented, including in the March 2016 EPA Inspector General’s report,¹ yet noticeably absent from the discussion of CWS challenges in section 3 of the draft strategy. Noncompliance at systems with poor economic conditions in the community, an insufficient pool of qualified individuals to serve on the city council or water board, and/or other socioeconomic factors, will not be solved by additional inspections. Additional enforcement is not the solution, either. In some limited cases involving systems in persistent noncompliance, enforcement can be a tool for compliance, but only the states know when and where enforcement is the appropriate solution.

The Final NCI Strategy must be clear on the differences between the traditional sanitary surveys and the compliance inspections. In partnership with the states, EPA should add details in the Final NCI Strategy on how:

- a) systems are prioritized,
- b) dates and times for compliance monitoring activities are determined, and
- c) Primacy Agencies and EPA will reach agreement on which corrective actions are appropriate.

Since states have primacy, meaning leadership and accountability for executing the programs in their state, EPA-led inspections should not occur without explicit agreement from the state. ASDWA recommends that a two-year transition period for the new OECA inspectors and the inspections be included in the Final NCI State Strategy. ASDWA also recommends that EPA work with Primacy Agencies to develop a Standard Operating Procedure (SOP) for the inspections to guide NCI implementation and further clarify the similarities and differences between a sanitary survey and a compliance inspection. Deference should be given to state processes to avoid confusion for the water systems used to working within those processes. States should be given the option of leading these compliance efforts with EPA involved as agreed upon. Agreements need to be reached regarding the timeliness of producing inspection reports and addressing detected violations.

The draft strategy is somewhat disconnected from the enforcement targeting tool (ETT). Noting that the ETT has been mentioned in the draft, as well as in conversations between ASDWA and OECA, ASDWA recommends that the ETT be re-assessed as a tool for potential compliance and

¹ EPA Office of Inspector General, *Drinking Water: EPA Needs to Take Additional Steps to Ensure Small Community Water Systems Designated as Serious Violators Achieve Compliance*, Report No. 16-P-0108 (March 22, 2016), available at <https://www.epa.gov/sites/production/files/2016-03/documents/20160322-16-p-0108.pdf>.

enforcement. A much more appropriate and useful NCI effort would be a critical evaluation of the effectiveness of the ETT and an assessment of the usefulness of existing compliance and enforcement tools rather than increasing the numbers of federal inspectors. Additionally, deliverable 1.1.4 in the draft strategy seems to indicate OECA's willingness to move beyond the ETT list to identify systems that should be considered for increased compliance assurance attention under the NCI. ASDWA generally supports this concept, but Primacy Agencies need to be involved in the system identification and prioritization.

Much of the work identified in the draft strategy is duplicative of EPA's Office of Water work or work that is already happening in the states and EPA regions. For example, every Primacy Agency already provides technical assistance, as mentioned in deliverable 1.3.1, and many Regions work with the Primacy Agencies to provide complementary resources for this technical assistance. ASDWA strongly recommends that rather than duplicating efforts, measures, reporting, and field work, OECA should focus on work under their purview and not overstep their oversight authority to overlap with, or obstruct, Office of Water's ongoing efforts.

ASDWA members are also interested in gaining more information about the SDWA-PWSS Inspector Resources Workgroup referenced in the draft, including the workgroup's composition and goals. ASDWA recommends State drinking water administrators be included in this Workgroup, to provide the states' perspective on what their needs (if any) are, as opposed to what others think the needs might be. Additionally, ASDWA requests that OECA share with ASDWA and Primacy Agencies the training materials, SOPs, credentialing requirements under EPA Order 3500.1, and any other materials developed by or for the Workgroup.

Despite repeatedly being referred to as a partnership effort between EPA and the Primacy Agencies, the draft strategy does not seem to support a true partnership. Partnership suggests equal involvement and equal implementation with the state drinking water administrators. With this draft, ASDWA members feel like they have been dictated to, rather than consulted with, and that the many problematic issues they have identified in every conversation with OECA do not appear to have been appropriately considered when developing this draft. ASDWA's members remain committed to supporting OECA's and OGWDW's efforts and to continue to work with EPA on the Final NCI State Strategy in so that we can jointly improve compliance in partnership with the states.

The enclosed markup of the draft strategy removes the problematic language and provides recommendations for substitute language shown in italics. ASDWA's suggested revisions alleviate some, but not all, of the states' concerns. But the issues such as who decides what systems to inspect on what date, if the inspections are joint, state-led or EPA-led, and how to resolve differences of opinion on what corrective actions are required are still problematic from a content perspective.

If you have any questions about these concerns or want to discuss them further, please contact me at aroberson@asdwa.org or give me a call at (703) 915-4385 (cell).

Sincerely yours,



J. Alan Roberson, P.E.
Executive Director
Association of State Drinking Water Administrators (ASDWA)

Cc: Larry Starfield – EPA OECA
David Ross – EPA OW
Rosemary Kelley – EPA OECA/OCE
David Hindin – EPA OECA/OC
Jennifer McLain – EPA OW/OGWDW
Mark Pollins – EPA OECA/OCE
Martha Segall – EPA OECA/OC
Anita Thompkins – EPA OW/OGWDW

Reducing Noncompliance with Drinking Water Standards at Community Water Systems

National Compliance Initiative FY 2020 – 2023 ASDWA edits, May 18, 2020

1. **SUMMARY OF THE NCI:** Each year thousands of community water systems (CWSs) - which serve water to the same people year-round - violate one or more health-based drinking water standards. In Fiscal Year (FY) 2018, nearly 28 million Americans consumed water provided by a CWS with at least one health-based violation. EPA will work with states, tribes, and territories with primacy (Primacy Agencies) to identify, prioritize and address an agreed upon subset of CWSs with known, ongoing noncompliance with the federal Safe Drinking Water Act (SDWA). Additionally, the NCI will seek to identify and address risks at CWSs *that have been challenging to address*. The scope and extent of noncompliance is probably greater than what is reported. As noted by EPA's Office of Inspector General (OIG) and the U.S. Government Accountability Office (GAO), reasons for underreporting of violations include the complexity of the rules, failure by systems to perform required monitoring completely or correctly, and resource-intensive data entry.¹ Without this data, EPA *Regions, EPA Headquarters*, and the public cannot fully assess the quality of water provided by these systems. In several recent high-profile cases, noncompliance with SDWA regulations was not reported to EPA, making it difficult for regulators to know whether the public was at risk. As EPA increases its presence under this NCI (e.g., conducts more inspections) to support Primacy Agencies, more violations *may be identified*. Thus, we may see an initial increase above the baseline number of CWSs in noncompliance, which will help us better understand the full scope of the problem. EPA's Office of Enforcement and Compliance Assurance (OECA) will coordinate with the Office of Water (OW) and the Regions to increase Agency capacity to use the full array of enforcement and compliance assurance tools and to supplement, where necessary, existing efforts by Primacy Agencies.

The benefits of the NCI are helping to ensure delivery of safe water to communities by improving SDWA compliance and fostering greater collaboration with Primacy Agencies to create a more effective national program. In carrying out this NCI, EPA Regions and Primacy Agencies will follow the established expectations OECA's [July 2019 Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work \(Partnership Policy\)](#). EPA recognizes that Primacy Agencies have many responsibilities under SDWA. Accordingly, EPA seeks to add value by working effectively with states, tribes, territories, local governments, and the regulated community in carrying out shared responsibilities and *appropriately* communicating *the* results .

¹ See OIG's March 2004 report titled "EPA Claims to Meet Drinking Water Goals Despite Persistent Data Quality Shortcomings" and July 2017 report titled "EPA is Taking Steps to Improve State Drinking Water Program Reviews and Public Water Systems Compliance Data." See also GAO's June 2011 report titled "Unreliable State Data Limit EPA's Ability to Target Enforcement Priorities and Communicate Water Systems' Performance."

2. PROBLEM STATEMENT

a. *Need for EPA expertise, authority, or resources to address noncompliance in this NCI.*

Despite the current efforts of EPA and Primacy Agencies, each year thousands of CWSs regulated under the federal SDWA violate one or more health-based drinking water standards (i.e., a maximum contaminant level (MCL), maximum residual disinfectant level, or treatment technique), which exposes millions of people to potential health risks. Based on data in the federal Safe Drinking Water Information System (SDWIS) and as reported by EPA for purposes of the Government Performance and Results Act, in FY 2018, nearly 28 million Americans consumed water provided by a CWS with at least one health-based violation. SDWIS recorded health-based violations at approximately 7% of the nation's roughly 50,000 CWSs. While not considered a health-based violation, in FY 2018, 30% of the nation's CWSs failed at least once to perform required monitoring and/or failed to comply with required reporting requirements. Monitoring and reporting failures may mask an MCL exceedance or a treatment technique violation or may be an indicator of a system lacking technical, financial or managerial capacity.

b. *This NCI aligns with the Agency Strategic Plan measures and priorities.*

This NCI is directly tied to Objective 1.2 (Provide for Clean and Safe Water) of the Agency's Strategic Plan. This initiative supports EPA's efforts to "work with states, tribes, territories, and local communities to better safeguard human health; maintain, restore, and improve water quality; and make America's water systems sustainable and secure, supporting new technology and innovation wherever possible." Strategic Measure 2 provides that by September 30, 2022, we reduce the number of CWS out of compliance with health-based standards to 2,700, from a baseline of 3,508.

Strategic Plan Objective 2.1 (Enhance Shared Accountability) calls for "enhanced collaboration with state[s] . . . using the full range of compliance assurance tools." Forty-nine states, five territories, and one tribe have primary enforcement responsibility under SDWA Section 1413 (primacy). EPA has direct implementation responsibility in Wyoming, Washington, D.C., and almost all Indian country (e.g., an area related to approximately 338 tribes). When a state, tribe, or territory has primacy, EPA maintains an oversight role and retains its independent enforcement authority.

EPA will continue to advance Goal 3.1 (Compliance with the Law) through the initiative. Addressing systems in noncompliance with the SDWA will be the primary focus of the NCI activities.

c. *This NCI addresses serious and widespread non-compliance across the country.*

EPA will work closely with Primacy Agencies to *jointly* target inspections and compliance assurance efforts to address SDWA noncompliance and public health risks. EPA will increase its own technical expertise and inspector capacity to support Primacy Agencies and maintain its direct implementation activities. An increased federal presence *may* help address systemic issues (*noting that systemic issues will likely be challenging to solve*), which will strengthen the public water system supervision (PWSS) program. Through collaboration, joint field activities and training, EPA can help Primacy Agencies build or enhance capacity in their PWSS programs. EPA will also compile and share best practices that Primacy Agencies employ. By establishing clear expectations for federal engagement nationally, EPA can work directly with Primacy Agencies and CWSs to improve compliance through activities like inspections, training and/or technical assistance. An additional goal of increased EPA presence nationally is to

augment Primacy Agency resources by helping to identify and address CWSs facing challenges. EPA will help build tools that the Agency and Primacy Agencies can use to identify the most pressing concerns at CWSs and focus limited resources where they can be most effective, sometimes addressing concerns early enough to prevent violations.

3. **SCOPE OF THE NCI:** Just as Strategic Measure 2 focuses on all CWSs, so too does this NCI. Accordingly, EPA will focus on CWSs serving more than 10,000 people, which is approximately 4,400 systems that provide drinking water to an estimated 83% of the population nationally, as well as those smaller CWSs serving up to 10,000 people that are in persistent noncompliance.² The NCI will seek to establish a minimum level of effort among the *OECA Regional staff* in drinking water enforcement and compliance assurance programs/resources. EPA's activities under the NCI will be consistent with SDWA and EPA's policies, including OECA's Partnership Policy, the enforcement targeting tool (ETT) described in the [2009 National Drinking Water Enforcement Response Policy \(ERP\)](#), [2018 Updated SDWA Section 1431 Guidance](#), and, with respect to EPA's direct implementation in Indian country, the [Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy](#). The NCI will make use of EPA's enforcement and compliance assurance tools to complement and supplement, where appropriate, Primacy Agencies' drinking water compliance efforts and continue the Agency's direct implementation activities. For instance, a Primacy Agency and EPA may identify a large CWS where a sanitary survey revealed significant deficiencies that remain uncorrected and, thus, a joint follow-up inspection may be an appropriate next step. Another example may be EPA enforcing a National Primary Drinking Water Regulation (NPDWR) for which a state, tribe, or territory does not yet have primacy and where EPA directly implements it. Further, EPA may be better positioned to attain increased compliance in situations involving federally-owned CWSs.

CWSs serve water to the same people year-round (e.g., in residences). Of the approximately 147,000 regulated public water systems nationally, almost 50,000 are CWSs. The challenges faced by CWSs vary across the country but include factors such as using sources with diminished water quality, aging infrastructure, naturally occurring or unregulated contaminants, decreasing or expanding populations, and droughts or flooding. Accordingly, the NCI will be structured to provide flexibility for Regions and Primacy Agencies to prioritize their local concerns and to allow EPA and its partners to focus resources where they will have the greatest impact on protection of public health.

4. **GOALS and MEASURES**

Goal 1. Ensure clean and safe water by improving compliance at Community Water Systems regulated under the SDWA.

Measure 1.1: Reduce by 25% the number of CWSs out of compliance with health-based standards, as per EPA's Strategic Plan. As of 2017, this means reducing the number of CWSs with health-based violations from roughly 3,500 to 2,700 by September 2022. EPA's OW and Regional Water Divisions

² For this measure, a CWS's noncompliance is "persistent" if it had an open (i.e., not returned to compliance) violation in three out of four quarters in each of the three most recent calendar years. This definition of persistent is consistent with the definition of a system with "a history of significant noncompliance" that EPA is using in its forthcoming report to Congress on "intractable water systems," which is required by Section 1459 of the 2018 America's Water Infrastructure Act.

have been *working with states on* these efforts. Through this NCI, enforcement and compliance assurance activities will help the Agency meet the health-based strategic measure.

Note: The initial baseline for this measure is third quarter FY 2017, which is the baseline OW uses for the strategic measure. For purposes of the NCI and to ensure consistency with EPA's various ongoing SDWA-related efforts, OECA will continue to track the overall number of CWSs with health-based violations.

Deliverable 1.1.1: By January 31, 2020, every Regional Enforcement and Compliance Assurance Division (ECAD) will develop and submit to OECA its initial NCI Action Plan (NCI Drinking Water Action Plan or Regional Action Plan) to advance the Goals of the NCI.

As described more in the Regional Action Plan template,³ OECA, in consultation with the Steering Committee and the NCI Executive Board, will review each Region's NCI Drinking Water Action Plan. Each Region's Action Plan must be consistent with this Strategy and the template the Steering Committee provided. Regional Action Plans may differ depending on the universe of CWSs and compliance issues in the Region. OECA expects the Regions will update their NCI Drinking Water Plans to reflect new information or changed circumstances over the course of this multiyear NCI. In other words, OECA expects the Regions' NCI Drinking Water Plans will be iterative.

Deliverable 1.1.2: Beginning in FY 2020, OECA and Regional ECADs will use the existing ERP as a starting point for discussions with Primacy Agencies under the Partnership Policy and for EPA direct implementation.

Ensuring consistent implementation of the ETT in the existing ERP to address priority CWSs and other systems of concern applies not only to Measure 1.1, but also Measures 1.2 and 1.4 below. Regional ECADs and Water Divisions should collaborate more closely to identify activities to be undertaken based on the ETT. Regions are also expected to coordinate closely with Primacy Agencies to discuss *the joint prioritization process for CWSs, as well as the* roles and responsibilities for employing compliance assurance tools like inspections and enforcement to address priority CWSs.

Deliverable 1.1.3: By October 1, 2020, the Office of Compliance (OC), in consultation with the Steering Committee *and Primacy Agencies*, will identify enhancements to the ERP's ETT, which is one of EPA's ways of prioritizing systems for regulators' attention.

Deliverable 1.1.4: By January 31, 2020, working with OC *and Primacy Agencies*, the Steering Committee will present a conceptual proposal to the NCI Executive Board for using existing, publicly available data to identify which CWSs have potential to become serious violators, including a threat to public health, but ideally before these CWSs are otherwise identified in the ETT. The proposal will provide milestones for the development and testing of the prioritization tool. Assuming the test of the prioritization tool validates the value of this new tool over the status quo targeting efforts, new expectations for *Primacy Agencies and* Regional use of this tool will be established for FY 2021 or FY 2022.

³ The Steering Committee provided the November 6, 2019 template for the Regional NCI Drinking Water Plans to the Regions. The Steering Committee provided updated versions of the template on December 12, 2019 and again on January 9, 2020.

Measure 1.2: Reduce by 25% by the end of 2023 the number of CWSs in priority status (using the ETT) due to persistent noncompliance with monitoring and reporting requirements. Roughly 170 CWSs currently meet this definition. Underreporting can be a perennial challenge for smaller CWSs. EPA enforcement and compliance assurance efforts will complement OW's and the Regional water program offices' ongoing implementation work to meet the Agency's goals. Activities to meet this goal may include conducting targeted outreach and training to the regulated community on compliance topics using a combination of traditional and technology-based approaches.

Measure 1.3: In each fiscal year, develop and implement compliance assistance activities for CWSs that are the subject of this NCI, such as compliance assistance visits, training, and outreach to the industry.

Deliverable 1.3.1: In December 2019, OC, in cooperation with Region 6 and OW, initiated a circuit rider program to provide targeted technical assistance to small systems, based upon needs identified by the Regions and Primacy Agencies.

Deliverable 1.3.2: By September 30, 2020, OC, in conjunction with the Steering Committee and Primacy Agencies, will submit to the NCI Executive Board two proposed additional approaches to promote compliance with monitoring and reporting requirements for implementation under the NCI. Such approaches may be different depending on the state, tribe, territory and Region. One or more Compliance or Enforcement Alerts are expected to be generated.

Deliverable 1.3.3: By September 30, 2020, OC will begin beta-testing a web-based Compliance Resource Center to support EPA's and Primacy Agencies' efforts to return small systems to compliance.

Measure 1.4: Evaluate and, if necessary, address by the end of FY 2023 50% of the 4,400 CWSs serving over 10,000 people to ensure compliance with NPDWRs through a combination of:

(1) EPA's review of findings from Primacy Agencies' recent on-site reviews of prioritized systems; (2) *joint* on-site reviews (e.g. *joint* sanitary surveys and inspections) of prioritized systems; and (3) utilization of the full array of techniques and authorities to ensure SDWA compliance, as appropriate in accordance with the Partnership Policy and other applicable EPA policies and guidance.

Measure 1.4 under Goal 1 focuses on supporting efforts to ensure compliance and confirming that EPA and Primacy Agency compliance monitoring efforts are generally effective for larger water systems. Nationally, there are almost 4,400 CWSs serving over 10,000 people. Through close planning with our partners, EPA efforts will complement or supplement, but not supplant, Primacy Agency activities. Where EPA leads on-site reviews of systems regulated by a Primacy Agency, EPA and the affected Primacy Agency will discuss the appropriate requirements, standards, and process timelines for completing the activities.⁴ Examples include where EPA focuses on a narrow compliance issue or an area where a Primacy Agency *requests assistance* (e.g., due to challenges like staff turnover or shortages). If a Primacy Agency observes uncorrected significant deficiencies through its sanitary surveys, EPA inspections and other enforcement and compliance assurance tools may be appropriate.

⁴ Potential disagreements between EPA and a Primacy Agency regarding activities under this NCI Measure 1.4 should be addressed in accordance with Section III of the Partnership Policy (Process for the Elevation of Issues).

Regions, *regularly consulting* with the Primacy Agencies, will prioritize for evaluation CWSs most vulnerable to noncompliance with health-based requirements and those challenged by significant deficiencies. This prioritization should consider factors like the following:

- a) CWSs that have not been inspected recently or subject to a sanitary survey within the last three to five years;
- b) CWSs frequently cited with significant deficiencies in prior sanitary surveys;
- c) CWS that have changed their source water (e.g., from groundwater to surface water);
- d) CWSs with historical or current action level exceedances under the Lead and Copper Rule or treatment technique violations under NPDWRs like the Surface Water Treatment Rules;
- e) CWSs with numerous or repeat monitoring and reporting violations or systems that have had health-based violations followed by monitoring and reporting violations;
- f) Indications of capacity issues such as failure to have a qualified operator based on information in SDWIS or based on information in the Primacy Agency's annual operator certification report;
- g) CWSs for which EPA has direct implementation responsibilities;
- h) Percentage of residents at or below the poverty level;
- i) Percentage of residents under the age of five or over the age of 64; and
- j) Other demographic information indicative of a CWS's vulnerability to noncompliance.

In advance of *joint* inspections or other activities done to meet this Measure, Regions must communicate with Primacy Agencies about planning and roles and responsibilities. After an evaluation, EPA *and* the Primacy Agency should discuss *and agree upon the corrective actions and* which agency will address any noncompliance or other potential concerns identified by taking timely and appropriate action.⁵ Assuming the test of the prioritization tool from Deliverable 1.1.4 reveals an effective tool, it will likely replace the use of the factors listed in a) through j) above in FY 2021, FY 2022 and FY 2023. Regions will still be able to consider additional factors when prioritizing CWSs under the NCI as needed.

Deliverable 1.4.1: Beginning in FY 2020, each Region will indicate in its NCI Drinking Water Action Plan the target percentages of CWSs serving over 10,000 people that EPA or the Primacy Agency will evaluate and, if necessary, address in FY 2021, 2022, and 2023 toward meeting Measure 1.4 by FY 2023.

Goal 2. Develop a sustainable drinking water compliance assurance and enforcement program in every Region to support our shared accountability with Primacy Agencies and Regions' direct implementation responsibilities in ensuring clean and safe water and to better serve all Americans.

Measure 2.1: Over the course of the NCI, increase to 50 the number of EPA personnel with credentials for conducting drinking water inspections as a regular part of their job.

To increase EPA's cadre of credentialed drinking water inspectors, EPA will be conducting the following activities in FY 2020:

⁵ OECA presumes that where appropriate there will be formal enforcement actions by EPA and Primacy Agencies to address noncompliance and public health risks (e.g., referrals to state attorneys general or U.S. Department of Justice, administrative orders under SDWA Sections 1414 or 1431) and to create a credible, visible general deterrent effect.

Deliverable 2.1.1: Starting in FY 2019, and continuing into FY 2020, the SDWA-PWSS Inspector Resources Workgroup will define inspection activities and develop/consolidate tools and resources for SDWA-PWSS inspectors.

Deliverable 2.1.2: By the end of FY 2020, each Regional ECAD shall have at least two credentialed drinking water inspectors.

Deliverable 2.1.3: Regional ECADs shall add inspectors each year until they achieve a minimum number of inspectors by the end of 2023.

Deliverable 2.1.4: By the end of FY 2020, OECA offices (OC, Office of Civil Enforcement (OCE), Federal Facilities Enforcement Office and National Enforcement Investigations Center (NEIC)) will increase their total credentialed drinking water inspectors to a minimum of six.

Deliverable 2.1.5: OC, in cooperation with the Steering Committee, will implement the national Credentialing Training Plan that fulfills EPA's training needs as identified by Regional ECADs and OECA Offices. The Plan includes:

- an on the job training and mentorship program that pairs inspectors-in-training with experienced, credentialed inspectors such that Regions can fulfill Deliverable 2.1.2 by the end of the year;
- identification of which inspectors, trainees, and supervisors will attend basic SDWA inspector/sanitary survey fundamentals training and when;
- discussion of Regions' needs with respect to refresher training for currently credentialed inspectors; and
- identification of likely attendees to the SDWA-PWSS Inspector Workshop for new and credentialed inspectors.

Deliverable 2.1.6: By May 15, 2020, OC will deliver two basic SDWA inspector/sanitary survey fundamentals training courses to provide foundational training for new inspectors as required by 3500.1 inspector credential requirements. Session 1 was held in December 2019. A second session will be delivered in cooperation with NEIC to meet the demand outlined in the Credentialing Training Plan.

Deliverable 2.1.7: By March 31, 2020, the Steering Committee will design a SDWA PWSS inspector webinar series for new and credentialed inspectors on technical skills. Webinars will be delivered at least once a quarter.

Deliverable 2.1.8: By June 30, 2020, OC, in cooperation with NEIC and the Steering Committee, will design and deliver an in-person SDWA-PWSS inspector training for new and credentialed SDWA-PWSS inspectors on core inspection and technical skills.

Deliverable 2.1.9: By June 30, 2020, and on an ongoing basis as needed under the NCI, OECA's OCE and OC, in consultation with the Steering Committee, will provide training to Regions on SDWA authorities such as Sections 1414 (enforcement), 1431 (emergency powers), 1445 (records and inspections) and ensuring compliance in Indian country.

Regions will maintain a minimum number of credentialed inspectors going forward. Increasing the number of EPA enforcement and compliance assurance personnel with the expertise to perform inspections will complement and supplement, not duplicate or supplant ongoing water program-led activities such as sanitary surveys. OECA will coordinate with OW on efforts to increase technical and rule-specific training. While the primary focus in FY 2020 is on internal standardization of inspector

training and practices, EPA will share training and tools with Primacy Agencies to support their enforcement and compliance assurance activities moving forward.

Through improved coordination and joint planning, EPA's enforcement and compliance assurance program can help ensure greater continuity in terms of field presence. For example, the federal SDWA regulations require Primacy Agencies to conduct sanitary surveys at CWSs every three to five years to evaluate eight elements related to the sanitary operation of the system (e.g., treatment, finished water storage). Sanitary surveys provide in depth, on-site compliance assistance. *When requested by the state, inspections* by credentialed EPA field staff can be used to identify uncorrected or undiscovered issues and may serve as an appropriate field check to follow up on targeted issues after a system was previously provided compliance assistance during a sanitary survey.

Regional Water Divisions, ECADs and Primacy Agencies should communicate regularly, including about specific CWSs that have failed to timely correct significant deficiencies and are in noncompliance. ECADs should prioritize these systems for inspections and, as appropriate, enforcement. More inspections allow regulators to visit CWSs more frequently to achieve greater public health protection. The Strategy Implementation Team has also observed that improved field readiness may also help EPA when working with other agencies to respond to flooding, hurricanes, fires or other disasters.

Measure 2.2: Over the course of the NCI, improve EPA personnel's ability to engage the public on drinking water compliance assurance and enforcement matters.

Across the various programs EPA handles, the Agency seeks to improve risk communication to provide individuals and communities with enough information to make informed decisions to protect their health and the environment. This is an issue not only for drinking water compliance assurance and enforcement, but also for other media and program areas. Accordingly, efforts related to Measure 2.2 will consider what the Agency is doing at a broader level for risk communication and community engagement.

Deliverable 2.2.1: By December 31, 2020, the Steering Committee will assess whether there is a need to design PWS-specific trainings for EPA personnel, including staff in Regional ECADs, on risk communication (e.g., risks associated with specific contaminants).

Deliverable 2.2.2: By December 31, 2020, the Steering Committee will assess whether there is a need to design PWS-specific trainings for EPA personnel, including staff in Regional ECADs, on community involvement (e.g., residents served by the CWS).

Overall, EPA will assess progress toward the goals and measures of this NCI and consider the need for potential course adjustments and other revisions. OECA, OW, and the Regions will continue to engage the Primacy Agencies, which will inform future updates.

5. REPORTING AND DEFINITIONS

Please refer to the SDWA NCI Semi-Annual Regional Reporting Template.

6. ASSESSING PROGRESS

The Steering Committee will assess progress with the NCI through close coordination with the Regional representatives of the Strategic Implementation Team and through the information provided by the Regions in accordance with the Semi-Annual Reporting Template.

The Steering Committee will provide status briefings on the Initiative to the NCI Executive Board and the OECA Assistant Administrator upon request.

7. AUTHORIZATION SUMMARY

All states (except for Wyoming and the District of Columbia), all the territories, and the Navajo Nation have been approved to exercise primary enforcement authority for public water systems in accordance with SDWA Section 1413. EPA directly implements the PWSS program in Wyoming, the District of Columbia, and Indian country (excluding most systems under Navajo Nation primacy). EPA also has primary enforcement authority with respect to individual NPDWRs if a Primacy Agency has not yet received approval to implement that rule. Most Primacy Agencies have adopted some form of every rule. EPA's rule-specific primacy is currently exercised mostly with the Revised Total Coliform Rule, for which approximately six states, three territories, and the Navajo Nation do not yet have enforcement authority.

8. ENGAGEMENT OF PRIMACY STATES, LOCALS AND TRIBES

Consistent with the Partnership Policy, EPA will work closely with Primacy Agencies as we implement the NCI. Recognizing that Primacy Agencies have built capable programs, EPA will generally defer to a state, tribe or territory as the primary implementer in approved programs. EPA may also provide enforcement assistance as requested by the Primacy Agency or take the lead in an enforcement action under a joint arrangement. However, EPA retains its concurrent enforcement authorities. EPA may take direct action when a Primacy Agency lacks the economic or technical capability or the will to take timely and appropriate action. *Note - how will this be assessed? How is EPA going to be determine when a Primacy Agency lacks the capabilities or the will? Too vague to leave as is*

9. SIMILAR AGENCY EFFORTS AND PROGRAMS

Drinking Water Health Based Measure

OW is working with the Regions to both increase the number of CWSs returned to compliance and reduce the number of CWSs with new violations to reach the Agency's Strategic Plan goal of reducing the number of CWSs out of compliance with health-based standards by 25% by 2022. The focus of current efforts is on the three NPDWRs comprising most violations: the Disinfectant and Disinfection Byproducts (DBP) Rule, the Ground Water Rule, and the Revised Total Coliform Rule. Actions include the annual PWSS state program review, file reviews, technical training on DBPs based on the joint EPA-Primacy Agency implementation analysis, the Ground Water Rule in-depth analysis, coordination with USDA-Rural Development, and quarterly data analytics.

Regional Drinking Water Compliance Assistance Efforts

The Regional Administrators are leading an effort to reduce the number of CWSs with health-based violations by improving the quality of Primacy Agency and EPA drinking water implementation activities. This effort is intended to address the Primacy Agencies' need for face-to-face training on the NPDWRs and conducting sanitary surveys (beginner and advanced). Many EPA Regions and Primacy Agencies also recognize the benefit of expanding and integrating water system optimization concepts into PWSS program oversight. Activities in this RA-led effort will include: *This section is problematic as some states need EPA-led training & some don't - needs to be rewritten so that states' needs are assessed first*

- Providing sanitary survey training;
- Increasing implementation of the Area Wide Optimization Program (AWOP) to enhance Primacy Agency and Regional ability to prevent violations or to resolve violations through operational changes;
- Providing NPDWR training to Primacy Agencies (*as needed, after consultation with the each Agency*) and water system staff based on specific compliance concerns; and
- Providing technical, managerial and financial capacity development assessments and training.

Evidence Act Implementation

The Agency has selected improving drinking water compliance as a new national project to implement the Evidence-Based Policy Making Act of 2018 (signed into law in January 2019). As further details become known, we may revise this NCI as appropriate.

10. KNOWN OR ANTICIPATED CHALLENGES TO MEETING NCI GOALS

There are several anticipated and known challenges with meeting the goals of this NCI. While the Water Divisions have traditionally invested in this area, the Agency's overall enforcement and compliance assurance presence has not been consistent or substantial. Many Regions have had few to no credentialed inspectors actively in the field to support Primacy Agencies. Considering the universe of regulated CWSs, the total number of violations and the direct public health impacts, there is comparatively little compliance assurance and enforcement activity under the public water system provisions of the SDWA at the federal level. (*problematic - Feds fund circuit riders, EFCs, etc., so there's lots being done*). This NCI represents both a resource shift and culture change for many Regions and Primacy Agencies in the use of inspection, enforcement and other compliance assurance efforts. Creating and strengthening the relationships among the Regional Water Divisions, ECADs, and the Primacy Agencies is a priority under the NCI. EPA seeks to foster improvements in the drinking water enforcement and compliance assurance program that will be sustainable beyond the timeframe of the NCI.

The *Federal* drinking water enforcement and compliance assurance program has historically been underfunded and understaffed. This NCI is going to require balancing the needs of the drinking water program with other Regional, programmatic and enforcement priorities. Headquarters staff will need to support this NCI and the drinking water program to ensure that it is a success and will be sustainable during and after the NCI. Further, EPA recognizes this NCI is ambitious and may not be fully accomplished by FY 2023.

EPA anticipates that increased focus on CWSs may result *in an increased in compliance with health-based standards*. An increase in the number of reported health-based violations would reflect that

with which we protect the public's drinking water, not that drinking water has become less safe. EPA also anticipates that activities undertaken as part of the NCI may, *in some cases*, shorten the duration of noncompliance.

Finally, the public may not themselves detect violations of drinking water standards that are not readily noticeable because the contaminants may produce no discoloration or odor. This makes accurate reporting a critical component of this NCI. In addition, many small drinking water systems lack the financial resources to properly run a drinking water system. This is not a problem that enforcement alone can resolve. Overcoming these two structural challenges will require creativity by EPA and Primacy Agencies.