



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 24, 2023

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Report, *The EPA is Not on Track to Reach Its National Compliance Initiative Goals to Stop Aftermarket Defeat Devices and Tampered Vehicles*, Report No. 23-E-0006, January 25, 2023

FROM: Lawrence E. Starfield, Acting Assistant Administrator

TO: Sean W. O'Donnell, Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the recommendations in the subject final report. We share your view of the importance of our program to stop aftermarket defeat devices and are committed to implementing the corrective actions we have proposed. However, we were disappointed that the final report, like the draft report, neglected to recognize the accomplishments we have made and the deterrence achieved. Both the Office of Enforcement and Compliance Assurance (OECA) and the EPA regions have made significant progress in stopping the use of aftermarket defeat devices as part of a National Enforcement and Compliance Initiative (NECI).¹ Many of our successful efforts were highlighted in our October 21, 2022 initial response letter, including that EPA's enforcement program resolved over 130 aftermarket defeat devices enforcement cases from FY 2020-2022, obtained the first court ordered preliminary injunction against a manufacturer and retailer of defeat devices, obtained over \$49.5 million in civil penalties, and addressed over 539,000 violations, during the COVID-19 pandemic and the challenges it presented.²

That said, we are always open to finding ways to improve our efforts, including from OIG's evaluation of this important NECI. In the table below, please find our planned corrective actions and projected completion dates based on the recommendations OIG has put forward. We appreciate the time you and your staff have spent to reach agreement with OECA and the Office of General Counsel (OGC) on steps going forward.

	<i>Recommendation</i>	<i>Corrective Action</i>	<i>Target Completion Date</i>
1	Develop guidance for the regions that outlines how to interpret, track, and report metrics and	OECA will develop guidance for the regions on the six specific metrics that the OIG has identified as being	June 30, 2023

¹ The National Enforcement and Compliance Initiatives or NECIs were previously referred to as National Compliance Initiatives or NCIs.

² These statistics have been updated since our October 21, 2022 initial response letter.

	that defines vague terms used in the EPA’s <i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i> National Compliance Initiative strategic plan.	“vague.” Specifically, the OIG identified deliverables 1-3-3, 2-2-1, 2-2-2, 2-3-2, 2-3-4, and 3-1-2 as having vague terms.	
2	Update the EPA’s <i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i> National Compliance Initiative strategic plan so that the National Compliance Initiative goals can be achieved in the event of a pandemic or other challenge.	OECA will review the lessons learned related to conducting enforcement during the COVID-19 pandemic and will identify and incorporate appropriate changes into the FY 2024-2027 NECI template documents so that NECI goals can be achieved – to the extent practicable – in the event of a global pandemic or other challenge, such as a long duration natural disaster.	March 29, 2024
3	In collaboration with EPA regions, revise and reissue the strategic plan for the <i>Stopping Aftermarket Defeat Devices for Vehicles and Engines</i> 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.	3.a. OECA will compare the pounds of pollution prevented in each year of the NECI against the number from the preceding fiscal year. 3.b. OECA will incorporate post-training feedback received from regions at (1) an in-person vehicle and engines training and (2) in virtual training modules currently under development. 3.c. OECA will identify the mechanism used to acquire and implement post-training feedback from regions in the NCI Strategic Plan or the NCI Exit Strategy document.	November 29, 2024 March 29, 2024 September 29, 2023
4	Work with OGC 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 jurisdiction.	OGC will provide a training to OECA and the regions that is specifically focused on the legal requirements for sharing confidential business information and personally identifiable information with states. Recommendation 4 is also partially addressed by Corrective Action 5.a below.	March 29, 2024
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	OECA will implement the following three-part strategy to address state barriers related to inadequate data, insufficient training, and obtaining SIP	

	<p>complementary work by the states to stop aftermarket defeat devices and tampering.</p>	<p>credit for diesel I&M programs, as follows:</p> <p>5.a. In the NECI Strategic Plan or the NECI Exit Strategy document, OECA will direct regions to seek counsel from the Office of General Counsel on a case-by-case basis to determine whether the release of enforcement data is appropriate and consistent with applicable legal standards.</p> <p>5.b. OECA will invite all states to take an OECA-led training webinar and will document the states participating.</p> <p>5.c. OECA will provide the Office of Transportation and Air Quality (OTAQ) with the end-of-year enforcement data for this NECI and will encourage OTAQ to update their emission models to account for tampering.</p>	<p>September 29, 2023</p> <p>March 29, 2024</p> <p>November 30, 2024</p>
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CONTACT INFORMATION

If you have any questions regarding these comments, please contact Gwendolyn Spriggs, OECA’s Audit Follow Up Coordinator, at spriggs.gwendolyn@epa.gov.

- cc: Rosemarie Kelley, Director, OECA/OCE
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