



EPA Seeks Greater Autonomy for State Environmental Programs

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EPA has released its strategic plan for fiscal years 2018 to 2022 describing its top goals and priorities. One goal is to provide states with greater autonomy in implementing federal environmental laws. Most states are authorized to implement federal environmental programs within their boundaries in lieu of EPA doing so, so the plan is welcome news to the directors of most state environmental agencies.

The plan calls for greater cooperative federalism, a concept under which the federal government and state governments work cooperatively to solve common problems rather than have the federal government dictate what must be done. In the plan, EPA says that cooperative federalism “is not just about who makes decisions, but about how decisions are made and a sense of shared responsibility to provide positive environmental results.” To further this goal, EPA commits to “a series of initiatives to rethink and assess where we are and where we want to be with respect to joint governance. These initiatives will clarify the Agency’s statutory roles and responsibilities and tailor state oversight to maximize our return on investment and reduce [the] burden on states, while assuring continued progress in meeting environmental program requirements as established by Congress.”

Greater cooperative federalism has long been a goal of the Environmental Council of the States (“ECOS”), a national, nonpartisan association of leaders of state and territorial environmental agencies. While acknowledging that EPA has a valuable oversight role, ECOS has argued that states should be the primary enforcement authority for programs delegated to the states. It believes EPA should avoid reviewing a state’s permitting and enforcement decisions unless programmatic audits identify deficiencies in the state’s programs.

EPA says it intends to analyze its statutory responsibilities to determine ways in which to reduce the burden on states while still complying with its oversight responsibilities. Among other things, EPA says it will seek new ways to streamline permit reviews and approve state permitting programs when federal environmental statutes give it the flexibility to do so. EPA also says it will review ways in which to combine separate streams of grant funding for state environmental programs into one multi-program grant with a single budget, all of which is designed to provide states with greater flexibility to maximize environmental protection for their citizens.

EPA’s strategic plan also states that one of EPA’s goals is ensuring the agency adheres to the rule of law. EPA says the focus and purpose of enforcement should be on ensuring consistency and certainty for the regulated community. Decisions based on science are part of that effort. EPA says that “[t]he rule of law must also be built on the application of robust science that is conducted to help the Agency meet its mission and support the states in achieving their environmental goals. Research, in conjunction with user-friendly applications needed to apply the science to real-world problems, will help

move EPA and the states forward in making timely decisions based on sound science.”

EPA’s new strategic plan is markedly different than EPA’s strategic plan for fiscal years 2014 to 2018 issued under the Obama Administration. State environmental agencies will no doubt welcome EPA’s intention to work more as an equal partner than has occurred in the past.

Draft FY 2018-2022 EPA Strategic Plan (EPA Oct. 5, 2017).

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