



New EPA Policy Emphasizes Cooperative Federalism in Environmental Enforcement

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Part of EPA's FY 2018-2022 Strategic Plan is an emphasis on cooperative federalism in the compliance and enforcement process, with the goal being that states authorized, delegated, or approved to implement federal environmental programs take the lead in enforcing those programs. In furtherance of this objective, EPA recently issued a policy directive framing the desired roles of states and EPA in civil enforcement and compliance work (the "Partnership Policy").

The cornerstone of the Partnership Policy is communication and joint planning between states and EPA. During the joint planning process, EPA and each state agency are encouraged to collaborate to identify (1) the environmental compliance problems in the state; (2) national, regional, and state compliance priorities; (3) emerging issues; and (4) how the combined resources of EPA and the state could be used to address these needs. The joint planning process is a commitment by EPA to reach clear agreements with states on their respective roles in inspection and enforcement and to build rapport between EPA regions and state agency personnel.

Of particular interest to the regulated community, the Partnership Policy directs EPA regions and states to confer in developing their inspection plans to avoid duplicate inspections and reduce the burden on regulated facilities, with the intent being that a facility would not be subject to overlapping inspections for the same regulatory requirements within a twelve-month period. In terms of enforcement, the Partnership Policy continues EPA's policy of granting primacy to the states in enforcing authorized programs. Despite this general deference to state decisions, the Partnership Policy outlines nine examples where the regulated community may expect EPA involvement in the enforcement process:

1. a state requests EPA assistance;
2. violations that are part of an EPA national compliance initiative;
3. emergency situations where there is substantial risk to human health or the environment;
4. where a state lacks adequate resources or expertise;
5. situations involving multi-state or multi-jurisdictional interests;
6. significant violations where a state fails to take timely and appropriate action;
7. serious violations requiring EPA's criminal enforcement authority;
8. periodic review of state program efficacy; and

9. enforcement at federal and state owned or operated facilities.

Accordingly, facilities can expect their primary interactions with inspectors and enforcement authorities to be at the state level, but should be prepared for EPA involvement at all times, particularly if any of these nine scenarios are present.

For the regulated community, the Partnership Policy is a step toward more consistency across state and EPA actions. If the increase in communication and cooperation functions as planned, it should mean fewer discrepancies and conflicts among the respective positions taken by EPA and the states. Given their more local function and geographical proximities, state agencies often have closer working relationships with facilities than do their EPA counterparts. With the more open channels of communication between states and EPA under the Partnership Policy, the regulated community should use the opportunity to achieve increased compliance by working with their local state agencies to better understand EPA trends, initiatives, or hot-button issues deserving of extra care and scrutiny at their facilities.

[Memorandum from Susan Parker Bodine to EPA Regional Administrators: Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work \(July, 11, 2019\).](#)

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