

EPA Finalizes Policy Giving Enforcement Deference to States August 2019

The Environmental Council of the States (ECOS) continues pushing the Trump administration for greater consistency in EPA regional oversight of state programs, and recently worked with EPA to finalize its memo seeking to clarify the level of deference EPA staff should afford state regulators. In July, enforcement chief Susan Bodine issued the final version of a long-standing interim memo detailing when the agency will defer to states on inspections, enforcement actions and related matters. The policy clarifies roles and provides a clear roadmap that EPA and state agencies can use to more effectively achieve shared goals. The final version maintains the agency's interim document's mandate for EPA enforcement staff to defer to state decision-making in most cases, and for federal officials to work with states on most inspections, enforcement and compliance-assurance actions rather than doing so on their own.

The memo also expands on the interim document's list of specific examples where EPA *should* exercise primary enforcement authority, adding new explanations of how and why each scenario would require federal intervention. However, it is worth noting that the list is framed as "examples of situations that could warrant EPA involvement," leaving open the possibility that such situations could still warrant deference, or that cases not listed could nonetheless require direct federal action.

The nine examples are:

- a state request for federal enforcement action;
- violations that potentially require criminal enforcement;
- action as part of EPA's National Compliance Initiatives;
- emergencies and other situations that pose acute health or environmental risks;
- situations that states lack "adequate equipment, resources, or expertise" to address;
- multi-state, multi-jurisdiction or interstate concerns;
- "significant violations" that state authorities have not completely addressed in a reasonable time;
- inspections that are part of a federal review of a state's enforcement program; and
- enforcement at federal- or state-owned facilities

This is just another example of "cooperative federalism" in practice, where EPA is stepping away from enforcement efforts to allow states to oversee local actions.