



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

June 21, 2023

MEMORANDUM

SUBJECT: Effective Partnerships Between EPA and the States in Civil Enforcement and Compliance Assurance

FROM: Lawrence E. Starfield
Acting Assistant Administrator

TO: Regional Administrators
Regional Enforcement and Compliance Assurance Directors and Deputies
Regional Counsels and Deputies

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On February 17, 2023, Administrator Michael Regan issued a memorandum setting out principles and best practices regarding the relationship between the U.S. Environmental Protection Agency and our state partners.¹ The memorandum emphasizes that our success protecting the environment and public health depends upon effective collaboration between federal and state environmental programs.

Cooperative federalism relies upon the partnership principles set forth in the Regan Memorandum. EPA and the states serve “as co-regulators [with] a shared commitment to work together to protect human health and the environment, taking advantage of the strengths and capabilities of both federal and state authorities.”² Authorized states are responsible for the primary day-to-day implementation and enforcement of federal programs,³ while EPA retains concurrent enforcement authority, provides support for state capacity-building, and is responsible for overseeing state-implemented programs.

Effective partnership is essential in the enforcement context. As the Regan Memorandum makes clear, “[t]he Agency and authorized states have a joint responsibility to achieve and maintain high levels of compliance with the nation’s environmental laws by monitoring compliance and, when violations are found, taking action to return regulated entities to compliance and deter future noncompliance.”⁴

Today, I am updating EPA enforcement policies to reflect our continuing commitment to a strong relationship with the states and to promote effective partnerships in civil enforcement and compliance

¹ See [Principles and Best Practices for Oversight of State Implementation and Enforcement of Federal Environmental Laws](#) (Feb. 17, 2023) [hereinafter Regan Memorandum].

² *Id.*, p. 2.

³ For purposes of this memorandum, state “authorized” programs will include federal programs that are authorized, approved, or delegated for state implementation.

⁴ See Regan Memorandum, p. 4.

assurance work between EPA and states that are authorized to implement federal programs.⁵ The first part of this policy articulates best practices for periodic joint work planning and effective communication between EPA regions and states to further the goal of shared accountability for the consistent enforcement of environmental laws. The second part discusses the respective roles of EPA and states in implementing authorized programs. The third part sets out the process by which issues that may arise under this policy will be elevated.

I. PERIODIC JOINT WORK PLANNING

“Cooperative, periodic, and early joint planning and regular communication between EPA and states are essential to promote shared accountability and effective implementation by and between federal and state enforcement authorities. A ‘no surprises’ principle is the foundation of joint work planning and will minimize the misunderstandings that can be caused by a lack of regular communication.”⁶

If significant breakdowns occur in two-way communication between a state and EPA, the issue should be elevated to senior management in both organizations to reestablish healthy communication. The overall goal of joint planning is the sharing of enforcement responsibilities with a clear agreement on EPA and state roles in individual inspections and formal enforcement actions. Such agreements cannot be reached if EPA or a state is unaware of the actions of the other. Where agreement cannot be achieved, the matter should be elevated within EPA and the state for resolution under the issue-elevation procedures in Section III. Periodic joint work planning should at a minimum include strategic planning, joint inspection planning, and joint formal enforcement planning.⁷

A. Joint planning participants

Joint work planning should take place at various levels within EPA and state agencies. The timing, method, and preparation for planning communications will vary based on the EPA-state relationship, and the level of the participants will vary as appropriate to the items to be discussed. In this policy, “career managers” means the employees with day-to-day responsibility for an enforcement and compliance program (e.g., air enforcement managers). “Senior management” means the career employees with responsibility for multiple statutory programs, not necessarily limited to enforcement programs (e.g., Regional Enforcement and Compliance Assurance Division Directors, Regional Counsels, and Deputy Regional Administrators). It will be the responsibility of career managers to brief their respective leadership as appropriate.

As a practical matter, most discussions of work-sharing, inspections, and enforcement actions are likely to occur between EPA regional and state career managers. Effective collaboration and shared accountability require appropriate communication up and down the respective management chains

⁵ This policy replaces and rescinds the July 11, 2019 memorandum entitled *Enhancing Effective Partnerships Between the EPA and The States in Civil Enforcement and Compliance Assurance*, signed by then Assistant Administrator Susan Bodine. Although this policy is focused on EPA’s work with states that implement federal programs, EPA will also strive to follow these planning and communication practices when working with federally-recognized Indian tribes, territories, and local governments that implement federal programs. This policy does not apply to EPA administered programs that are not or cannot be delegated to the states.

⁶ See Regan Memorandum, p. 4.

⁷ This periodic joint work planning process is not appropriate for those emergency actions and criminal investigations described in Section II (3) and (8). EPA’s criminal program endeavors to consult and coordinate with local law enforcement authorities on criminal enforcement matters when appropriate.

within EPA and the states. This does not mean that every enforcement issue must be elevated to the highest possible level within an organization. It does mean that the more significant the issue, the more likely it will be appropriate to brief more senior officials.

In addition to these day-to-day discussions, the senior management and leaders in each region should meet regularly—preferably in person—with their counterparts in a state, including, as appropriate, the EPA Regional Administrator and Secretaries or Commissioners of state environmental agencies. The frequency of these meetings and the participants should be appropriate to the needs and styles of the specific region-state relationship. These meetings should include a jointly prepared agenda and supporting materials circulated sufficiently in advance to allow for full preparation and participation.

B. Strategic planning

Joint planning should include a strategic element that goes beyond planning for individual inspections and enforcement actions. Strategic planning should include a discussion of: (1) the environmental compliance problems and needs in the state; (2) national, regional, and state compliance assurance priorities; (3) emerging issues; and (4) how the combined resources of EPA and the state could be used to address these needs. Strategic planning should also include a discussion of how EPA and the state may mutually build their respective capabilities to conduct inspections and develop and prosecute cases.

C. Joint inspection planning

EPA regions and the states should work together to identify which inspections EPA or a state will perform, consistent with the guidelines in Section II. Inspection planning will avoid duplicate efforts, improve efficiency, reduce unnecessary burdens on the regulated community, and provide EPA regions and states with more flexibility in setting and adjusting inspection targets and Compliance Monitoring Strategies. Cooperative inspection planning also helps EPA meet its oversight responsibilities to ensure compliance with federal statutes. The following best practices should be followed in the joint inspection planning process.

- 1) EPA regions and states should communicate as they develop their separate inspection priorities and commitments and should work together as appropriate on joint inspection priorities and commitments.
 - a) EPA regions and states should exchange and discuss their targeting rationales and draft inspection plans in advance. This should be more than a simple exchange of planned inspection lists for informational purposes. Instead, this discussion should create a shared understanding between EPA regions and the states of the purpose and objectives of their respective inspections.
 - b) In general, EPA does not provide facilities with notice of an inspection to a facility unless required by statute or regulation. EPA regions should, however, provide states with notice of individual inspections in advance of the inspection where the state agrees to keep that information confidential, especially because inspection plans tend to be dynamic, and it might have been some time since the planned inspection was discussed. EPA regions and states should invite each other to participate in inspections where there is value in both entities participating.
 - c) EPA regions and the states should avoid duplicative or overlapping inspections that would lead them to inspect the same facility for the same regulatory requirements within the same twelve-month period. Multiple inspections by EPA and the states may, however, be appropriate for

complex sites where the inspections will focus on different regulatory requirements or where multiple inspections otherwise serve a valuable purpose.

- 2) The inspection planning process should make the best use of both EPA and state resources and expertise. EPA regions and states should discuss how they will use their combined resources to meet national inspection coverage expectations under applicable Compliance Monitoring Strategies and statutory requirements, advance priorities and initiatives, and should consider the use of alternative Compliance Monitoring Strategies where appropriate.
- 3) Consistent with the “no surprises” principle between co-regulators, in investigations where EPA has the lead, EPA regions should share information requests and inspection reports for authorized programs with the state concurrently with sending them to the recipient.

D. Joint enforcement planning

Joint enforcement planning should identify which individual or classes of enforcement actions EPA or a state will initiate, consistent with the guidance in Section II. The following best practices should be followed in the joint enforcement planning process.

- 1) If EPA becomes aware of a tip or complaint in an authorized state, EPA will typically refer it to the state for follow-up. When a tip or complaint raises heightened concerns, EPA and the state should have a conversation regarding who should take the lead responding to that tip or complaint and what would be an appropriate response. If the state takes the lead, EPA asks that the state respond quickly so that a decision whether the state will bring an enforcement action can be made in a timely manner.
- 2) Joint enforcement planning should include regular, bilateral updates on the progress and outcomes of selected actions (e.g., National Enforcement and Compliance Initiative actions, new areas of state implementation, or important cases discussed during joint work planning). Joint EPA and state enforcement actions send a strong message to violators and should be considered where appropriate.
- 3) If the need arises for additional enforcement or compliance actions after making joint planning decisions in an action, EPA and the state should discuss the appropriate lead agency for these additional actions.
- 4) When EPA believes that a federal enforcement action is warranted in a state based on an EPA inspection or investigation, the Agency should communicate that intention to the state. The lead for addressing the noncompliance identified by EPA will typically remain with EPA.
- 5) EPA and the states should remain mindful of the requirements of confidentiality in enforcement actions. Care must be taken not to disclose enforcement-sensitive information which is or could be made publicly available — breaches of confidentiality will diminish the ability to work in an effective partnership. It may not be possible for EPA to share details of a planned enforcement action where a joint prosecution agreement or common interest agreement with the state is not executed

and where differences in freedom of information and evidentiary rules would make case-sensitive information vulnerable to release.⁸

- 6) Ongoing cooperation and assistance between EPA and the states is encouraged.

II. ROLES OF EPA AND STATES IN IMPLEMENTING AUTHORIZED PROGRAMS

While states and local governments have primary responsibility for compliance and enforcement actions for authorized programs, EPA retains responsibility and is ultimately responsible for ensuring “fair and effective enforcement of federal requirements and credible national deterrence of noncompliance.”⁹ An effective state/federal partnership is critical to accomplishing these goals, particularly given limited state and federal resources. When implementing this policy, EPA will consider existing Memoranda of Understanding between EPA and states regarding the respective roles for authorized programs.

There are specific situations where EPA may choose to take direct action under its concurrent enforcement authority after following the processes in Section I. Examples of situations where EPA may choose to take direct action include the following:

- 1) **Specific situations where the state requests that EPA take the lead.** EPA may provide enforcement assistance as requested by a state or, at a state’s request, may take the lead over from a state in an enforcement action, sector, or geographic area under an EPA-state work-sharing arrangement.
- 2) **Violations that are part of a National Enforcement and Compliance Initiative.** EPA and the states should discuss work-sharing and how to make the best collective use of EPA and state resources and expertise to achieve the goals of the National Enforcement and Compliance Initiatives (NECIs). While NECIs are intended to address widespread noncompliance problems, such problems may not be present in each jurisdiction nor a priority for each state. States are not obligated to participate in NECIs, although EPA welcomes their participation. EPA is typically expected to take the lead in enforcement actions identified as NECI actions to ensure national consistency, and to promote a level playing field, while at the same time inviting individual states to join in a judicial enforcement case as it relates to facilities in that state. If a state proposes to take the lead in an NECI case, EPA should consider the state lead when the state agrees to seek compliance and enforcement outcomes consistent with EPA-led resolutions elsewhere in the nation. States and EPA are expected to share with each other periodic updates as well as the specific outcomes of the NECI enforcement actions for which they have the lead.
- 3) **Emergency situations or situations where a community’s health may be impacted by noncompliance.** In consultation and coordination with the state, EPA may take direct action or supplement state enforcement in these circumstances.

⁸ EPA also endeavors to safeguard Confidential Business Information and Personal Identifiable Information shared between states and EPA and will coordinate with states to prevent the inappropriate release of this information to the public.

⁹ See Regan Memorandum, p. 4.

- 4) **Actions to advance important national policy priorities.** In addition to NEICs, EPA may have overarching national policy priorities and goals where compliance and enforcement actions by EPA may be needed (e.g., lead contamination and environmental justice).
- 5) **Situations where a state lacks adequate equipment, resources, or expertise.** While the states have built capable environmental enforcement programs, EPA may take the lead in a case where the state does not have the equipment, resources, or expertise necessary to enforce an aspect of an authorized statutory program. In cases where states seek to build greater capacity, EPA and the state should consider working jointly on an enforcement action to build state capacity.
- 6) **Situations involving multi-state or multi-jurisdictional interests or interstate impacts.** EPA should take the lead in cases addressing noncompliance at facilities owned or operated by the same entity in multiple states or jurisdictions to ensure consistency and a level playing field, while at the same time inviting individual states with affected facilities to join judicial cases. Typically, EPA will take the lead in enforcement actions addressing significant cross-boundary impacts affecting other states or nations to ensure that cross-boundary impacts from noncompliance are resolved equitably.
- 7) **Significant violations that the state has not timely or appropriately addressed.** EPA may take an enforcement action where a state is not taking timely or appropriate action. This may be especially important where a community's health may be impacted by the noncompliance.
- 8) **Serious violations for which EPA's criminal enforcement authorities may be needed.** Because only a few states have active environmental criminal enforcement programs, most environmental criminal investigations are performed by EPA in consultation and cooperation with local law enforcement authorities.
- 9) **State enforcement program review inspections.** EPA has a responsibility under the federal environmental statutes to conduct inspections to verify the efficacy of authorized enforcement programs.¹⁰
- 10) **Situations that involve enforcement at federal and state owned or operated facilities.** EPA may take the lead or assist a state in an enforcement action at a federally owned or operated facility. EPA may also take the lead in an enforcement action against a state owned or operated facility where there are conflicts internal to the state that make state enforcement less effective.

III. PROCESS FOR THE ELEVATION OF ISSUES

Issues that may arise under the processes in Sections I or II should be elevated and resolved as quickly as practicable.¹¹ The following best practices should be followed:

- 1) Issues should be resolved whenever possible at EPA and state career management level.

¹⁰ This policy does not concern the situation where a state has not addressed State Review Framework deficiencies adequately. Communications regarding these deficiencies should take place within the structure of that process.

¹¹ EPA regions and states may continue to use the dispute resolution provisions in their existing bilateral agreements to the extent they are not inconsistent with this policy.

- 2) If career managers cannot resolve an issue, the matter should be elevated within thirty days for resolution by regional and state leadership.
- 3) If following elevation within the region and the state there remains a dispute between the Regional Administrator and the State Secretary or Commissioner, the matter should be elevated within sixty days to the Assistant Administrator for the Office of Enforcement and Compliance Assurance for a decision. The Regional Administrator and the State Secretary, Commissioner, or Director will be afforded the opportunity to present the matter in dispute to the Assistant Administrator prior to a final decision.

For situations involving emergencies or time-sensitive issues impacting human health or the environment, these best practices and corresponding timeframes may be expedited in order to prioritize an appropriate response.