

What EPA's New Policy on Greater Deference to State Agencies May Mean for Businesses

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The EPA recently issued a formal policy to avoid federal and state duplication of environmental inspections and enforcements. The policy, *Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work*, promotes greater transparency, communication and planning between the EPA and its state counterparts that are delegated authority under federal laws such as the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act (RCRA). EPA enforcement chief Susan Bodine stated that the policy mirrors “the dialogue we have had with our state partners on enhancing our work together . . . [it] clarifies roles and provides a clear roadmap that EPA and our state partners can use to more effectively achieve our shared goal of increasing compliance with environmental regulations.”

The recent decision reflects the Trump Administration's commitment to state autonomy and cooperative federalism. It also underlines the EPA's more limited role by allowing states to take the primary lead in inspections and enforcement actions. Based on this increased state responsibility, there may be greater variations across states and regions in their respective enforcement and interpretation of environmental laws. To account for these increased variations, the EPA will defer to a state or EPA region through a system of “cooperative inspection planning.” It works like this: when a state has an authorized program, it will serve as the primary implementer of inspections and enforcement for environmental issues. Additionally, a joint planning process will emphasize “no

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surprises" in communications.

To help curb state-by-state variations, the EPA preserves its concurrent authority over the state. This authority likely will also be used if there is a serious conflict between the two. The policy further details that the EPA will "generally defer to authorized States as the primary day-to-day implementer of their authorized/delegated programs, except in specific situations." A few key examples of specific situations where the EPA will continue to exercise primary enforcement authority are as follows: a state request for federal enforcement action; action as part of EPA's National Compliance Initiatives; emergencies and other situations that pose acute health or environmental risks; multi-state, multi-jurisdiction or interstate concerns; and enforcement at federal or state owned facilities.

This policy further solidifies the current administration's approach to giving states more autonomy. Considerations for businesses as this shift continues include:

- Fewer instances of inspections by the EPA where states have delegated authority. This has caused confusion and frustration in the past.
- It will be important to understand the particular state policies and practices as they impact businesses.
- In spite of efforts to have some consistency among the states, there will be more and more variation of environmental programs across the country. For businesses operating in multiple states it will be important to understand each state's approach to such things as permitting practices, policy interpretations, and enforcement considerations.

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