



EPA Asks States to Take the Lead in Environmental Enforcement

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Recently, EPA issued an Interim OECA Guidance on EPA and state roles on managing enforcement and compliance assistance. See, [Interim OECA Guidance on Enhancing Regional—State Planning and Communication on Compliance Assurance Work in Authorized States](#). While EPA is seeking to emphasize cooperative federalism in modifying the emphasis of the [1986 revised policy on state/EPA enforcement agreements](#), as provided in the first footnote of the Guidance, the policy issued on January 22, 2018, appears to make the states the primary enforcer of environmental laws and provides a secondary role for EPA in that regard.

As EPA implements this policy, it will be difficult to maintain a level playing field among the states, as EPA regions will differ in their approach to the challenges this policy may present. It will be up to EPA Headquarters to maintain and preserve that level playing field. Previously, EPA/state disputes were resolved at the EPA/state director's level, and less frequently by EPA Headquarters, but the policy conceives of EPA Headquarters resolving such disputes.

The EPA 2018 interim guidance on EPA and state enforcement and compliance assistance roles, together with EPA's recent announcement on pilot projects using "informal" enforcement actions to notify companies of a violation and provide the opportunity for compliance before EPA takes any significant enforcement steps, will likely decrease federal enforcement. Formal enforcement actions would only be taken if significant violations exist. The determination regarding the significance of a violation is open to flexible interpretation.

The apparent shift to state enforcement and the emphasis on compliance assistance are positive steps and hopefully will result in a consensus-based approach for the benefit of both the regulators and the regulated community. But it remains to be seen whether a level playing field between individual states and between individual companies can be achieved and maintained or whether this becomes a race to the bottom and puts companies focused on compliance with environmental requirements at a competitive disadvantage.

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