

## OnePoint Alert



July 12, 2019

### **EPA Announces New Policy Encouraging “Effective Partnerships” Between EPA and States In Carrying Out Enforcement**

By [Bernard F. Hawkins, Jr.](#)

---

On July 11, 2019, Susan Parker Bodine, Assistant Administrator for EPA’s Office of Enforcement and Compliance Assurance (OECA), released a seven-page memorandum to the EPA Regional Administrators that “sets out expectations and procedures for enhancing effective partnerships in civil enforcement and compliance assurance work between the U.S. Environmental Protection Agency [EPA] and states that are authorized, delegated, or approved to implement federal environmental programs (hereinafter, ‘states’).” *Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work*, Susan Parker Bodine (July 11, 2019)(“EP Memo”) at page 1. The EP Memo withdraws and replaces an interim policy that had previously been released on January 22, 2018. EP Memo, fn. 7, page 2. The EP Memo addresses three key aspects of the recommended relationship between EPA and the states.

First, the EP Memo addresses “expectations and best practices for periodic joint work planning and effective communication between the EPA regions and states to further the goal of shared accountability for the consistent enforcement of the law.” EP Memo at page 1. The EP Memo explains that “[c]ooperative, periodic, and early joint planning and regular communication between the EPA and states is essential to promote enhanced, shared accountability 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 the lack of regular, bilateral communication.” EP Memo at page 2. The EP Memo sets out the type of joint planning and communication that OECA believes is appropriate. Discussions should address such items as strategic planning, joint inspections, with recommended best practices, and joint enforcement planning. EP Memo at pages 2-3. The EP Memo makes it clear that EPA regions should provide states with advance notice of inspections and should avoid duplicating inspections in most cases. EP Memo at pages 3, 4 and 5. OECA recommends that any disagreements between states and the EPA regions concerning enforcement activities in a state that cannot be resolved at the initial levels of recommended interaction (starting with career-level employees and managers) should be elevated in the manner set out in Part III of the memo.

Second, the EP Memo recognizes the primary role of the states in implementing authorized programs, while acknowledging the EPA’s ongoing responsibilities in limited circumstances, and outlining instances that may warrant direct federal action. The EP Memo provides that: “The EPA will generally defer to a state as the primary implementer of inspections and enforcement in authorized programs.” EP Memo at page 6. However, OECA identifies nine examples where EPA may elect to take the lead for enforcement. These examples are: (1) joint working arrangements in which the state has requested that EPA take the lead for enforcement; (2) violations that are part of a National Enforcement Initiative; (3) emergency situations or situations where there is substantial risk to human health or the environment; (4) situations where a state lacks adequate equipment, resources, or expertise; (5) situations involving multi-state or multi-jurisdictional interests or interstate impacts; (6) situations where EPA believes there are significant violations that the state has not timely or appropriately addressed; (7) situations where EPA believes there are serious violations for which the EPA’s criminal enforcement authorities may be needed; (8) state enforcement program review inspections to verify delegated program effectiveness; and (9) situations that involve enforcement at federal and state owned or operated facilities. EP Memo at pages 6-7.

Finally, the third section of the EP Memo outlines a process by which OECA prefers that disagreements between the EPA regions and states concerning enforcement matters will be resolved. The best practices outlined by the EP Memo include:

- 1) Issues should be resolved whenever possible at the EPA and state career management level.
- 2) If career management cannot resolve an issue, the matter should be elevated within thirty days for resolution by regional and state senior management.
- 3) If following elevation within the region and the state there remains a dispute between the EPA 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 or Commissioner will be afforded the opportunity to present the matter in dispute to the Assistant Administrator prior to a final decision.

EP Memo at page 7.

---

In conclusion, in the EP Memo, OECA is providing details on its preference for how EPA regions and the states should interact in planning for and carrying out inspection and enforcement activities in a coordinated fashion. The EPA regions are directed to provide significant deference to the states in taking the lead on enforcement activities within each state and the regional offices are instructed that they should normally avoid duplication of efforts (including inspections). However, OECA identifies nine examples of the types of actions where the EPA may retain a lead role for enforcement. Finally, the EP Memo provides a preferred pathway for how EPA regions and the states should seek to resolve disputes concerning how enforcement activities are being conducted within a given state.

[View on Website](#)

These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Internet subscribers and online readers should not act upon this information without seeking professional counsel.

## GET IN TOUCH



**Bernard F. Hawkins, Jr.**

**Partner**

T 803.255.9581

[bernie.hawkins@nelsonmullins.com](mailto:bernie.hawkins@nelsonmullins.com)