



THE  
ENVIRONMENTAL  
COUNCIL OF  
THE STATES

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50 F Street, N.W.  
Suite 350  
Washington, D.C. 20001

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Tel: (202) 266-4920  
Fax: (202) 266-4937  
Email: [ecos@ecos.org](mailto:ecos@ecos.org)  
Webpage: [www.ecos.org](http://www.ecos.org)  
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PAST PRESIDENT

DATE: September 27, 2013

TO: Lisa Lund ([lund.lisa@epa.gov](mailto:lund.lisa@epa.gov))  
Chris Knopes ([knopes.christopher@epa.gov](mailto:knopes.christopher@epa.gov))  
Office of Enforcement and Compliance Assurance (OECA)  
U.S. EPA

RE: EPA's Draft "National Strategy for Improving Oversight of  
State Enforcement Performance"

VIA E-MAIL

States appreciate the opportunity to review and comment on EPA's Draft "National Strategy for Improving Oversight of State Enforcement Performance" dated August 27, 2013. On behalf of the ECOS Planning Committee, we offer the following comments.

In the draft strategy, the Office of Enforcement and Compliance Assurance (OECA) reflects a desire to work collaboratively with states on identified issues and envisions the strategy to be an extension of the State Review Framework, with a focus on solving important performance problems. OECA notes it developed the draft strategy in response to the Office of Inspector General (OIG) report on oversight of state enforcement performance (<http://www.epa.gov/oig/reports/2012/20111209-12-P-0113.pdf>).

On page 6 of the draft strategy, the document reads (**bold added for emphasis**):  
"...As part of these discussions, each region should have a plan, updated annually, for addressing identified significant state performance issues. The plan will provide information needed to serve as a basis for the OECA/Regional discussion, including identification of the issues (based on objective and comparable data whenever possible and by media if appropriate), and **corrective measures**<sup>[1]</sup> being taken or envisioned. ..."

The footnote citation reads (**bold added for emphasis**):  
"1 Corrective measures should be aligned with those identified in the escalation section of this strategy. They might include, but are not limited to, training, **work sharing**, increased communications, elevating to higher management levels, detailing resources, shared data collection, financial assistance for technology upgrades, standard operating procedure templates for states, active EPA inspections and/or enforcement in a state, withholding grant funds, and withdrawal of program authorization/delegation."

In the footnote, EPA provides examples of corrective measures that might be taken or envisioned to address identified significant state performance issues. "Work sharing" is specifically included as a "corrective measure."

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R. Steven Brown  
Executive Director

In March 2009, ECOS developed a fact sheet on "Opportunities for Directing State Grant Funds and Work Load Sharing." At the time, the impetus to look at work sharing was to consider creative ways to address the challenges of shrinking budgets, in particular at the state level. In January 2010, states and EPA discussed this concept further at the ECOS-EPA Senior Leadership Meeting as well as subsequent meetings. An EPA-State Worksharing Task Force developed a report, "Prohibitions, Areas of Caution, and Recommendations to Enhance Worksharing Opportunities," in July 2011

([http://www.epa.gov/ocir/nepps/pdf/task\\_force\\_report\\_prohibitions\\_areas\\_caution.pdf](http://www.epa.gov/ocir/nepps/pdf/task_force_report_prohibitions_areas_caution.pdf)). In March 2013, the EPA-State Worksharing Task Force also published the report, "Principles and Best Practices for Worksharing" ([http://www.epa.gov/ocir/nepps/pdf/task\\_force\\_reportbstpractices.3.26.13.pdf](http://www.epa.gov/ocir/nepps/pdf/task_force_reportbstpractices.3.26.13.pdf)).

In the March 2013 report, states and EPA agreed to worksharing principles including that "worksharing arrangements and follow-up activities must be mutually agreed upon and considered beneficial by both the EPA and the state" and "[s]tates have assumed responsibility through authorization or delegation to implement the majority of primary delegable federal environmental programs. When negotiating worksharing arrangements for state-lead activities, states should retain control over them unless explicitly relinquished to the EPA." The report goes on to provide best practices for worksharing activities including conducting inspections and pursuing enforcement actions based on the core principles.

In the draft strategy in the opening paragraph, EPA notes, "EPA relies heavily on authorized states to implement the day-to-day business of compliance and enforcement programs, with states contributing a majority of the staff and resources necessary to ensure protection of public health and the environment."

The report goes on to reflect on three elements of this strategy aimed at improving state enforcement performance over time. These are:

1. ***The Escalation Approach to Problem-Solving:*** A series of escalating steps intended to provide consistent guidance to the regions in their review of and response to state enforcement performance issues.
2. ***Plans for Addressing Significant Issues:*** EPA Regions and states should work together to develop plans to address identified significant individual state performance issues.
3. ***Transparency Efforts:*** Efforts intended to provide the public with timely, high quality information on state and federal enforcement performance can motivate government to improve.

In this draft strategy, OECA identifies work sharing as a "corrective measure" to be used for "identified significant state performance issues."

States view work sharing as a mutually beneficial opportunity rather than a punitive option to be used by EPA either directly or through indirect pressure. By linking "work sharing" to "corrective measures," this adds a negative connotation to work sharing that states do not intend or desire. As captured in the March 2013 report on work sharing core principles, work sharing is intended to benefit both the state and EPA and be a voluntary solution.

States recognize there could possibly be a role for work sharing as part of a solution for a state and region where there are performance concerns, particularly if they relate to human resources or training. However, characterizing work sharing as a corrective measure is not appropriate. To imply that work sharing is a measure to correct "significant" state

performance issues puts work sharing in a completely different context. Citing work sharing as a measure to correct "significant" state performance issues removes the voluntary intent of the work sharing concept. Work sharing was not intended to be a corrective measure, but rather a mutually agreed upon partnership between states and EPA as co-regulators.

We recommend EPA remove any language or implication in the report that identifies work sharing as a corrective measure.

Thank you for your consideration.

Regards,



Suzanne Bangert  
Chair, Planning Committee  
Deputy Administrator  
Division of Air & Waste Management  
Wisconsin DNR



Patricia W. Aho  
Vice Chair, Planning Committee  
Commissioner  
Maine DEP