Environmental Council of the States
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The Honorable Susan Parker Bodine
Assistant Administrator, Office of Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via regulations.gov: EPA-HQ-OECA-2019-0204

Dear Assistant Administrator Bodine:

Members of the Environmental Council of the States (ECOS) appreciate the opportunity to provide comments on the EPA's April 2019 draft policy on "Enhancing Planning and Communication Between the EPA and the States in Civil Enforcement and Compliance Assurance Work."

Thank you very much for EPA's engagement in the ECOS-EPA Compliance Assurance Workgroup and for your ongoing consultation with the states on enforcement and compliance matters. We believe our joint work helps to form a solid foundation for promoting flexible state planning and implementation of delegated federal environmental programs. We particularly appreciated the early engagement you provided to ECOS on this draft policy.

ECOS has a number of comments on the draft policy:

- States appreciate the emphasis in the guidance on cooperative, periodic, and early joint planning and regular communication between EPA and the states and on a "no surprises" principle. Regularly scheduled meetings between EPA and state supervisors and field staff regarding planned inspections, priorities, and other issues have served many states well. Some states report recent improvement in communications in these areas. We support the emphasis of joint strategic planning discussions between EPA Regions and states (section I(B)), including the recommendation that these discussions include both senior management and career managers.

- In joint inspection planning (section I(C)), states are supportive of the concept of going beyond the sharing of lists to pursuing a shared understanding of the purpose and objectives of inspection activities.

- States recommend that EPA consider providing additional clarity in Section II of the guidance regarding the timelines and circumstances under which EPA would take direct enforcement action. Additional clarity may be helpful on what would constitute a "substantial risk to human health or the environment" (section II(3)) that would warrant direct action by EPA. Similarly, the provision describing EPA action in cases where states have not acted "timely" (section II(6)) could be further clarified, given that specific EPA-state enforcement agreements likely provide a definition of "timely," and that those definitions could vary among states and EPA Regions.

- Section II(2) of the policy reaffirms that participation by states in the National Compliance Initiatives (NCIs) is welcome but not obligatory. Where a state has determined that an NCI is not

a state priority, we recommend that EPA efforts to provide compliance oversight or enforcement action be discussed with the state in advance, consistent with the "no surprises" principle.

- States support the process in section III of the draft policy for elevating issues on a prompt schedule to EPA Regional and state senior management, and ultimately to EPA's Assistant Administrator for Enforcement and Compliance Assurance if needed, for resolution. The policy should clarify that when decisions are elevated to the Assistant Administrator level, the state and the EPA Regional Office will each be afforded access to the AA to present information and input. The elevation process will support the other elements of the guidance by reducing sticking points in discussions and negotiations.

ECOS appreciates EPA's efforts to meaningfully engage with states in enhancing planning and communication in enforcement and compliance assurance work. We recognize that this guidance is founded on cooperative federalism and reflects input from the ECOS-EPA Workgroup. We encourage that this guidance be a living document that reflects the experience of EPA and the states as it is being implemented.

Thank you again for the opportunity to provide comments, and please feel free to contact me if you have any questions.

Sincerely,

Donald Welsh
Executive Director
Environmental Council of the States