U.S. EPA ENFORCEMENT IN DELEGATED STATES

WHEREAS, protection of public health and the environment is among the highest priorities of government, requiring a united and consistent effort at all levels of government; and

WHEREAS, Congress has provided by statute for delegation, authorization, or primacy (hereinafter referred to as delegation) of certain federal program responsibilities to states; and

WHEREAS, States that have received delegation have demonstrated to the U.S. Environmental Protection Agency (U.S. EPA) that they have adopted laws, regulations, and policies at least as stringent as federal laws, regulations, and policies; and

WHEREAS, the States have developed and demonstrated expertise in operation of those programs enabling States to obtain and maintain such delegations; and

WHEREAS, Congress has also bestowed a fundamental responsibility on U.S. EPA to provide oversight of these delegated programs and to work cooperatively with input from the States to ensure that both State and Federal resources are used effectively to achieve high rates of compliance and to deter noncompliance; and

WHEREAS, U.S. EPA and the States have bilaterally developed policy agreements which reflect those roles and which recognize the primary responsibility for enforcement action resides with the States, with U.S. EPA taking enforcement action principally where the State requests assistance, is unwilling or unable to take timely and appropriate enforcement actions, or in actions of national interest, or in actions involving multiple state jurisdictions; and
WHEREAS, such actions by U.S. EPA outside of these policy agreements can substantially weaken the States’ ability to exercise enforcement authority, improve compliance, resolve environmental issues, promote working relationships between U.S. EPA and the States, and impede the States’ ability to further the States’ and U.S. EPA’s mutual goal of protecting public health and the environment; and

WHEREAS, U.S. EPA and states developed a State Review Framework to provide a fair and consistent level of core enforcement across the country with an option to assess compliance assistance and incentives.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Encourages U.S. EPA’s enforcement offices to perform their program oversight roles in a manner that does not extend into individual state regulatory actions if such state actions will achieve compliance with applicable state and federal law, are consistent with policy agreements, and are protective of public health and the environment;

Encourages U.S. EPA to require each Region to engage in meaningful and consultative discussion with each of their states prior to each U.S. EPA enforcement action taken in the affected state. The consultations should take place before any decision is made to move forward with any action;

Encourages U.S. EPA to meaningfully consult and coordinate with states in the settlement of all EPA civil and criminal actions.

Encourages U.S. EPA to perform its program oversight role consistent with policy and worksharing agreements rather than performing direct federal inspections or enforcement actions when the appropriate response is to defer to the state program;

Encourages U.S. EPA to work with ECOS and the States to address state and federal roles in enforcement and compliance activities, especially in light of increased work load and decreasing resources;

Encourages U.S. EPA to recognize a variety of approaches to monitor compliance and measure performance such as third party and self-certification programs, compliance assistance, and self-audit programs as core elements of state enforcement programs;

Encourages U.S. EPA and the States to correct and streamline compliance and enforcement data transfers;

Presses U.S. EPA to consistently implement throughout the country the principles set forth in federal statutes and policy agreements, including the June 1984 document, “Policy Framework for State/EPA Enforcement Agreements,” first reissued in 1986 and updated by each subsequent administration;

Encourages U.S. EPA and States to honor enforcement agreements signed by States and regions in accordance with the “Policy Framework for State/EPA Enforcement Agreements;”

Encourages U.S. EPA and States to continue to evaluate the State Review Framework as to its applicability for providing a consistent core enforcement program and enhancing compliance assistance and incentives; and

Encourages U.S. EPA to foster the States’ important role as laboratories for the development of environmental policy.