



ECOS

Resolution 98-9
Approved October 29, 1998
Coeur d'Alene, Idaho

Renewed November 23, 2001
By mail vote

Amended October 4, 2004
Oklahoma City, Oklahoma

Amended September 17, 2007
Sun Valley, Idaho

Amended August 30, 2010
Whitefield, New Hampshire

Revised September 18, 2013
Arlington, Virginia

Revised September 28, 2016
Wheeling, West Virginia

Revised April 27, 2020
All Members Call

Revised March 30, 2023
Arlington, Virginia

As certified by
Ben Grumbles
Executive Director

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, territories, and the District of Columbia that have received delegation (hereinafter referred to as "States") 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, States have developed and demonstrated expertise in operation of those programs enabling States to 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 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 States have bilaterally developed policy agreements which reflect those roles and which recognize the primary responsibility for enforcement action resides with 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 States' abilities to exercise enforcement authority, improve compliance, resolve environmental issues, and promote working relationships between U.S. EPA and States, and therefore impede States' abilities to further 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; and

WHEREAS, U.S. EPA's Strategic Plan directs the agency to promote Environmental Justice (EJ) and civil rights through strengthened civil rights enforcement in communities with EJ concerns; and WHEREAS, U.S. EPA's Office of Enforcement and Compliance Assurance has developed the July 11, 2019 policy titled "Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work," which sets out expectations and procedures for U.S. EPA to enhance effective partnerships in civil enforcement and compliance assurance work between U.S. EPA and States.

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

Encourages U.S. EPA and its Regions to fulfill U.S. EPA's commitment to generally defer to States as primary implementers of inspections and enforcement in authorized programs by:

- Performing its program oversight role in a manner that does not preempt individual States' regulatory actions if such state actions will achieve compliance and are protective of human health and the environment;
- Performing its program oversight role in a manner consistent with any policy and worksharing agreements, and not employing case-by-case or action-by-action review;
- Respecting established state enforcement response timeframes and procedures;
- Engaging in meaningful and consultative discussion with a state prior to any U.S. EPA decision to initiate enforcement action in the affected state, including in cases with EJ concerns.

Encourages U.S. EPA to meaningfully consult and coordinate with States in the settlement of any U.S. EPA civil and criminal actions;

Encourages U.S. EPA to work with ECOS and States to evaluate state and federal priorities and strategies in compliance and enforcement activities, especially in light of increased workload 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 States to correct and streamline compliance and enforcement data transfers and work collaboratively on any changes to reporting requirements;

Encourages 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;

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

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