

EPA POLICY ON OVERSIGHT  
OF DELEGATED ENVIRONMENTAL PROGRAMS

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PURPOSE

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The purpose of this oversight policy is to establish overall goals and objectives for Agency oversight of delegated programs. The policy describes the approach to oversight of authorized state programs toward which the Agency will strive. While implementation will require a transition period, this policy provides the framework for development or revision of program-specific oversight approaches, methods, and activities. This policy statement builds on and complements the Agency's delegation policy.

After delegation, EPA remains responsible and accountable to the President, the Congress, and the public for progress toward meeting national environmental goals and for ensuring that federal statutes are adequately enforced. EPA thus has the responsibility to oversee the conduct of delegated, inter-governmental programs, in order to enable excellence in the delivery of environmental protection services in the field. While the Agency has had oversight responsibilities for many years, the extent and importance of this function is greatly enhanced because of the increasing number of delegated programs.

Substantial progress has been made in carrying out effective oversight activities. However, criticism of EPA has focused on confusion regarding appropriate oversight methods and activities, and on the possibility of diminished environmental protection in delegated programs. The importance of EPA's oversight efforts requires that the Agency develop a comprehensive, consistent, and constructive approach to oversight of state programs. Such an approach necessitates both a continuing strong EPA presence and a workable State-EPA relationship that takes advantage of the particular strengths and capabilities of each, in order to deliver more efficient and effective environmental protection.

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SCOPE AND DEFINITIONS

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This policy specifically addresses EPA's responsibility for oversight of delegated state environmental programs. The policy does not address EPA's oversight of other state activities funded by EPA grants, although the principles and approaches discussed here may also be useful and appropriate in carrying out these other oversight responsibilities.

"Delegation" is the review and "approval" or "authorization" process by which EPA assigns to competent and willing states the responsibility to operate a program mandated by federal statute. Since delegation usually involves state governments, the discussion in this policy refers to states. However, in the few cases of delegation to local governments, as in the air program, references to states generally apply to local governments as well.

"Oversight" of delegated state programs is broadly defined as the set of activities conducted by EPA after delegation in order to ensure that state programs adequately pursue progress toward national environmental goals and enforcement of federal statutes, and in order to provide a national and regional description and analysis of the status of environmental quality.

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#### GOALS AND APPROACH TO OVERSIGHT

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It is the policy of EPA to conduct oversight of delegated state programs in order to:

1. Ensure adequate environmental protection, through continued development and enforcement of national standards, and use of direct enforcement action against polluters as necessary to reinforce state action and authority.
2. Enhance state capabilities to administer sound environmental protection programs, through increased communication and a combination of support and evaluation activities.
3. Describe and analyze the status of national and regional environmental quality, through continued collection and dissemination of information from state agencies and other major sources.

EPA's oversight responsibility to ensure that federal environmental laws are enforced is best pursued in ways that effectively share responsibility with delegated states, that minimize the need for direct EPA action or intervention, and that provide support for and participation by states. EPA needs to operate with states using clear rules and mutually agreed-upon criteria for action, and to be as responsive to states as possible. In delegated programs, EPA's success depends in large part on the success of state programs in effectively carrying out the work of pollution control and abatement in the field.

Enhancing state capacity for success requires a strong, predictable, and dependable system of support and evaluation. Given the nature of inter-governmental programs and the complexity of environmental protection activities, EPA cannot depend on review and evaluation activities alone to produce quality state programs. But federal assistance activities alone are also not sufficient to foster quality state programs, since that approach ignores states' responsibilities to meet commitments and enforce national environmental standards.

Support and evaluation activities are thus equally necessary, and should reinforce each other. Formal and informal evaluations of state programs should be supportive in terms of helping the states identify needs and means for improvement, while assistance activities should help the states meet agreed-upon priority commitments and objectives. Support and evaluation activities should focus on achieving quality state programs and performance, and on preventing and solving environmental problems in the field.

Fostering quality state programs is not a static activity, and will also vary across delegated states. Conditions in states change, and program activities must change to respond to new environmental problems and challenges. Consequently, the methods used to oversee state programs must change over time, depending on the maturity and complexity of national programs and on the capability of delegated states. But the goals and general approach described here should remain the same.

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#### POST-DELEGATION ROLES AND RESPONSIBILITIES OF EPA AND STATES

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It is the policy of EPA to pursue post-delegation roles of national program designer and spokesperson, ally and supporter of state programs, and ultimate enforcer of federal statutes and regulations, because that approach provides the best way to ensure excellence in the job of environmental protection. Of course, EPA also remains responsible for resolution of inter-state, national and international issues; and for carrying out research and development activities and national information collection and analysis.

EPA's oversight responsibility is to ensure the even-handed application and enforcement of federal environmental laws, regulations and standards, and to provide states with the necessary assistance, tools, methods, and back-up support to solve environmental problems. The responsibilities of major EPA offices concerning delegated state programs are as follows:

### Headquarters Program Offices

EPA headquarters programs are responsible for developing national goals, standards, regulations, and policy, and for ensuring their consistent and effective implementation. To achieve these objectives, program offices establish overall program design and management, develop national program guidance, evaluate regional offices, and establish a framework for regional oversight of states. Headquarters program offices may also provide states with specialized assistance which cannot be effectively or economically supplied by regional offices. All such activities should reflect early and continuing consultation with regions and states.

### Office of Research and Development

ORD and its laboratory personnel are responsible for providing strong scientific, engineering and other technical support to headquarters programs, regions and states to solve environmental problems. Research and development priorities and projects should therefore be responsive to regional and state needs, as well as program needs.

### Regional Offices

Regional offices have an essential role in interpreting and adapting national program objectives and requirements to the needs and circumstances of individual states; in communicating with both states and headquarters offices, raising issues, suggesting solutions, and resolving problems with both parties; and in identifying multi-state needs for research, training, and so forth.

Regional offices are responsible for oversight of delegated state programs, including identification of state needs and problems, review and evaluation of state program performance, and provision of technical assistance and other appropriate responses, including direct enforcement action. Regional offices are best placed to tailor evaluations and assistance to address specific state needs and take into account past performance of state programs, within the context of meeting national environmental goals and requirements. Regions may either provide direct assistance to states, or identify, coordinate, and facilitate access to assistance located elsewhere, as appropriate.

Delegation gives the states the more visible, front-line roles involved in environmental program implementation: permit writer, inspector, enforcer, etc. States are responsible for direct implementation of authorized programs consistent with national strategy and policy; resolution of intra-state and statewide issues; putting federal grants and technical assistance to effective use; contributing meaningfully to the development

of national policy and strategy; and maintaining financial and program records that are sufficient to provide EPA with timely and accurate information necessary to evaluate state activities relating to national program implementation.

For each responsibility at the federal or state level, there is a corresponding responsibility at the other organizational level. This demonstrates the interactive nature of the relationship. For example, development by EPA of appropriate national priorities and objectives is dependent upon knowledge about pollution and compliance problems in the real world; this information is mainly collected and supplied by the states. For EPA to evaluate state programs and to determine where additional technical or other assistance is needed, states must provide accurate information and cooperate in program reviews. For states to effectively implement programs consistent with national strategy and policy, EPA must provide timely and useful guidance, and must negotiate realistic objectives and appropriate priorities.

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#### OBJECTIVES FOR IMPLEMENTATION

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1. Ensure continuing strong enforcement activity, with states as the first line of action and EPA as strong back-up for action when needed.
  - Delegated states have the lead responsibility for compliance and enforcement activities, and EPA expects delegated states to conduct strong compliance and enforcement programs. The Agency's enforcement role is shifting from a primary focus on performing inspections and taking enforcement actions to an emphasis on conducting review and evaluations and providing states with guidance and technical assistance, in order to assure adequate performance of state compliance and enforcement programs.
  - While delegated states have primary responsibility for compliance and enforcement, EPA cannot abdicate its responsibilities to the Congress to ensure that national goals and objectives are met. EPA also has a role in the enforcement area as a strong back-up to states to provide direct enforcement actions when needed. EPA will endeavor to assist state compliance and enforcement programs when requested, but the Agency may also take direct enforcement action in those cases where a state demonstrates it is not willing to establish a strong enforcement presence or is unable to do so due to a lack of necessary resources or requisite legal authority.

EPA should establish in advance with the states the general criteria or guidelines for when EPA will take independent enforcement action. Such criteria could identify, for example, cases involving national precedents or other factors of national significance, unusually large environmental impacts, imminent hazard situations, or state enforcement responses that are not "timely and appropriate." We must also coordinate our enforcement actions with states, notifying states in advance, and taking direct action in accordance with agreed-upon criteria and not in a way that appears to states as random and arbitrary or that duplicates state action.

EPA and the states should conduct annual joint planning for compliance and enforcement activities, in order to establish and coordinate priorities and strategies.

- EPA headquarters should focus on developing, with regional and state involvement, annual program strategies and priorities for targeting compliance and enforcement activities, including criteria for EPA priorities such as types of facilities or types of violations. EPA is also required to assure a continuing, strong nationwide enforcement presence, in order to correct specific instances of non-compliance and to promote voluntary compliance by the regulated community as a whole. Headquarters should work with regions and states to develop agreed-upon criteria for, and measures of, adequate overall state compliance and enforcement programs, including the level of compliance monitoring activities and the adequacy of state actions in specific instances of non-compliance.
- EPA regions will tailor national program criteria for an adequate state compliance and enforcement program to fit each state's unique circumstances, procedures and authorities, for the purpose of annual state program evaluations.
- o For EPA's enforcement role to be effective, states must provide the Agency with prompt and accurate information on pollution sources not in compliance and on state plans concerning enforcement actions; such information should be focused especially on mutually established annual priorities. Frequent and accurate state reporting of compliance information is extremely important for both EPA and the states. Having an accurate nationwide picture of compliance and enforcement activities improves our collective ability to assess our progress toward environmental protection goals and to make informed adjustments and improvements in national program direction and state implementation.

2. Clearly define program goals, priorities, and measures of success.

- Program offices must work with regional offices and states to clearly describe program goals, priorities, measures of success, and specific types of work to be performed by state agencies and EPA; and to provide annual program guidance that is timely and useful to delegated states. Clearly describing objectives and expectations for state environmental programs will increase the ability of state agencies to successfully implement program requirements, and will increase EPA's ability to provide appropriate assistance and evaluation.
- Program offices should involve states, to the maximum extent allowed by law, in the development of regulations, standards, program policy, and guidance that will affect program implementation by states. Early and continuing state participation is important in order to identify potential impacts on states, and to provide an operational perspective which can make the regulations much more effective and enforceable.
- Program offices should increase their ability to define measures of program progress and success in terms of environmental results, as well as in terms of programmatic results required by statutes or regulations, such as consistency, equivalence and adequacy of enforcement. This will enable oversight of states by the regions to focus more on program goals for environmental results and less on procedural details, thus allowing the regions greater flexibility to tailor national programs to fit individual state conditions and priorities. The states should be included in the development of measures of program success, in order to increase the effectiveness of these measures. Wherever possible, the Agency's Strategic Planning and Management System should focus on key environmental measures useful to EPA and the states for improving the effectiveness of the work. An example might be the reduction of emissions by a certain but verifiable number of tons per year, in addition to the more usual program performance measures such as numbers of enforcement orders issued.
- Program and regional offices must define, and specify in delegation agreements or other inter-agency agreements with states, which program areas or issues are to be routinely within the province of state decision-making in carrying out federal statutory requirements, and which are to be routinely shared in a specific manner with EPA. This will establish clear operating rules, will ensure efficiency at all levels, and will prevent unnecessary intrusion in state autonomy. Annual negotiated agreements between the states and EPA, such as grant agreements and

state-EPA agreements (SEAs), should establish agreed-on priorities, measures of program success, and formal commitments from each respective party.

3. Provide constructive evaluations of delegated state programs, focused on problem-solving.

- Evaluations should generally focus on overall program performance and identifying patterns of problems, rather than focusing on individual regulatory decisions by states. Individual actions will be reviewed selectively on an after-the-fact basis as part of an overall program audit or evaluation, in order to identify patterns of problems. EPA should generally avoid second-guessing state actions as they are being made. However, there may be some cases where EPA participation in an individual state program decision is appropriate because the decision is determined to have unusually large environmental impacts or national significance, or because EPA is required to participate by law; that category of issues or decisions should be carefully defined in advance.
- Evaluations should be based as much as possible on objective measures and standards that are agreed to in advance with the states. Evaluation measures should reflect the fundamental elements of national programs, delegation agreements, and the commitments in annual negotiated agreements with states, such as grant agreements and state-EPA agreements (SEAs). Evaluation feedback to states should focus on means of program improvement. However, proposed solutions to identified problems need to match the nature and extent of the problems, and should reflect individual state conditions and circumstances.
- Evaluations should be frequent enough to find problems early, and thus be able to stimulate change while the problems are still minor. Regularly scheduled evaluations should occur at least once a year, and should occur face-to-face in state offices, with written results. They should involve senior EPA and state managers, and should contain no surprises for the states regarding content or expectations.
- EPA should use experienced, skilled senior staff as much as possible to conduct evaluations of state programs. Evaluators with technical expertise, program experience, and operational field experience will be most effective in motivating improvement or maintenance of quality performance in state programs, since experienced EPA staff can provide more immediate and effective on-site consultation or targeted follow-up assistance. Programs and regions should recognize the importance of field experience in their short and long-term resource plans.



4. Ensure timely identification of state program needs and state environmental problems and conditions.

- Identification of state needs and problems should be accomplished through a combination of methods, including joint planning, annual priority-setting in negotiated agreements, periodic evaluations, routine reporting systems, and frequent communication.
- Frequent communication with state staffs facilitates early identification of problems, needs, and concerns of state agencies; allows timely response and follow-up by EPA to such problems and needs; and reinforces program goals and objectives. Emphasis should be placed on informal and face-to-face communication with state staffs as well as formal and written communication. Frequent communication is important even when state programs are doing well, since local situations can change rapidly.
- Timely and reliable reporting by states on the activities of state programs and the status of state environmental conditions is essential in order to keep EPA well informed on the progress of national programs and the status of national and regional environmental quality. Reporting systems should focus on key activities or indicators that make the biggest difference in the success of state programs and the quality of the environment. Such information should be useful to both EPA and the state agencies for improving the work. EPA should use program activity information and environmental monitoring data to report to Congress, plan future strategies or changes in the work to be performed, and identify current operational problems that need program-wide attention.

Reporting requirements should be worked out in concert with the states, since the resulting information should be of significant use to the states in managing their programs, as well as to EPA in monitoring the progress and success of national programs. Requirements should be as consistent and predictable as possible, since radical changes in reporting requirements and new mid-year demands for data are difficult for the states to accommodate. Any special reporting requirements should be proposed as part of the annual program planning process in order to minimize mid-year demands for information.


- EPA should provide an opportunity for periodic state evaluations of EPA's performance in providing assistance and meeting commitments. This will provide EPA with valuable additional feedback on state needs and concerns and on areas for improvement in national programs. Such evaluations by states can coincide with regular evaluations of states by regional offices, and should be circulated to program offices as well.

5. Utilize a range of responses to state program performance and state needs, focused on preventing large mistakes and solving identified needs.
- EPA has some strong sanctions if a state does not operate an adequate program, such as taking back delegated responsibilities or reducing or cancelling grant funds. But a more constructive approach is to prevent problems from occurring in state programs, by developing program guidance that is more timely and useful to states, establishing joint EPA/state program planning, and enhancing state technical and management capabilities.
  - EPA must respond quickly and appropriately to identified state needs and problems. Program and regional offices must, in conjunction with states, develop a range of possible responses, from tools and assistance to direct action, and must clearly define when and how such responses will be used. EPA's possible range of responses includes technical, management or legal consultation, training, initiation of a special study, increased or decreased grant amounts, targeted program evaluation or audit, more frequent evaluations or audits, formal or informal communication, revision of program guidelines or manuals, laboratory testing, field environmental monitoring, direct technical assistance, and direct enforcement action, among others.
  - Possible tools provided by EPA include detailed, up-front guidance where needed on how program work should be performed. Each program must simplify and standardize its regulatory work as much as possible in order to maximize efficiency and consistency, while still providing room for appropriate flexibility in state implementation. This can be accomplished through development of standard operating procedures or other kinds of "how-to" manuals, developed with extensive state participation. The work can then be delegated to states more easily, and areas of responsibility defined for state agencies.
  - If EPA believes that a state program has been ineffective, the Agency must consult with the state before taking action, to give the state a chance to explain and/or correct the problem. All available solutions to state problems short of taking back the program will be tried first.

- ° Ultimately EPA is prepared to take back a delegated program in case of clearly unacceptable performance by a state, which shows lack of good faith or capacity on the part of the state to correct the problems. Taking back delegated responsibilities must, however, occur in a consistent and predictable manner, under pre-defined conditions and circumstances and in accordance with federal law.
  
- ° EPA should also encourage quality state programs and innovative solutions to pollution problems by rewarding success whenever possible. EPA should develop and use a variety of responses to excellent state performance, such as publicizing state progress and accomplishments; conducting less frequent evaluations or audits (but not less than some minimum level); or providing technical or financial assistance to quality state programs for innovative projects that address state problems and help achieve national goals. Program and regional offices should develop and carry out an organized program to identify and transfer good ideas from one state to another. This is an important form of assistance which also gives national recognition to innovative solutions and successful state programs.

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I expect this oversight policy to be carried out by all EPA headquarters and regional personnel. It will demonstrate our desire to work with and assist states in a positive manner to successfully implement delegated programs, while at the same time retaining our commitment to maintain high national environmental standards through appropriate sanctions and independent action, as necessary. The success of our efforts to protect the environment will depend, to a great extent, on the success of delegated state programs. You will have my full support in your efforts to carry out the oversight policies in this statement.

 APR 4 1984  
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William D. Ruckelshaus Date  
Administrator