

Overview of EPA's Consideration of Comments on the Draft Policy Titled: *Enhancing Planning and Communication Between the EPA and the States in Civil Enforcement and Compliance Assistance Work*

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In January 2018, the Office of Enforcement and Compliance Assurance (OECA) issued an Interim Guidance document to help move the Agency toward a more collaborative partnership between the EPA and states, with the expectation that the guidance would be later updated. On May 13, 2019, OECA published a draft replacement policy titled *Enhancing Planning and Communication Between the EPA and the States in Civil Enforcement and Compliance Assistance Work* in the Federal Register for a thirty-day public comment period. OECA has changed the name of the policy to reflect the goal of effective partnership with states. The final policy is now called *Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assistance Work*.

This document provides an overview of the EPA's consideration of comments received. Several commenters suggested that the policy include additional details or decisions on a number of implementation issues. The aim of the policy is to articulate broad expectations and best practices for effective partnerships between the EPA regions and states. The EPA believes that implementation issues are best resolved on a case-specific basis through discussions between individual regions and states, rather than trying to address them in a national policy.

The policy states that the EPA will generally defer to a state as the primary implementer of authorized programs. It also provides examples of situations that could warrant EPA involvement including "significant noncompliance that the state has not timely or appropriately addressed." Some commenters requested that the EPA provide more clarity on what is meant by "significant noncompliance" and "timely or appropriate." The *Enhancing Effective Partnerships Policy* is not intended to alter or replace existing program or statute specific guidance or policy. What is "timely and appropriate" must be considered on a case-by-case basis depending upon the specific facts of the matter. Specific discussions between the region and the state should include a discussion of cases where timeliness or appropriateness is at issue, consistent with the "no surprises" principle. The EPA has, however, changed the phrase "significant noncompliance" to "significant violation" to avoid confusion with the use of that term in existing policies.

One commenter requested that the policy more explicitly state that it should be applied to local governments, federally-recognized Indian tribes, and territories that have received approval to implement federal programs. The EPA recognizes that local governments, federally-recognized Indian Tribes, and territories are partners with states and the EPA in ensuring environmental protection. The authorization status of these entities is more varied than with states and joint work planning may not be as applicable as with states. However, the EPA will strive to follow these partnership practices when working with local governments, federally-recognized Indian tribes, and territories in the implementation of federal programs.

Some commenters requested clarification on the applicability of Section III of the *Enhancing Effective Partnerships Policy* with respect to elevation of issues. The policy has been modified to reflect that the *Enhancing Effective Partnerships Policy* is intended to provide a process for elevating disputes that cannot be resolved at the Regional Administrator/State Commissioner level, not to supplant dispute resolution procedures that may exist in current bilateral agreements. Section III has also been modified to reflect that both the state and region would be afforded the opportunity to present information and points of view to the Assistant Administrator of OECA should an issue be elevated.