



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 11 2015

Commissioner Robert J. Martineau, Jr.
President
Environmental Council of the States
50 F Street NW, Suite 350
Washington, D.C. 20001

Dear Commissioner Martineau:

The purpose of this letter is to share with the Environmental Council of the States some high-level draft principles and best practices for efficient and effective oversight of state permitting programs. As described below, the United States Environmental Protection Agency has recently developed these draft materials and we are eager to obtain additional feedback on them from the states. We are requesting your assistance in designing an appropriate process to hear from ECOS' Planning Committee and other members of ECOS.

Background

In response to a 2011 Inspector General's report recommending better oversight of enforcement under the Clean Water Act, the EPA embarked on an effort to assess Headquarters and Regional oversight of major state delegated programs. Under a FY2013 key performance indicator established by then-Deputy Administrator Bob Perciasepe, the Office of Water, Office of Air and Radiation, Office of Solid Waste and Emergency Response, and Office of Enforcement and Compliance Assurance worked together to describe and compare oversight activities performed in the National Pollutant Discharge Elimination System, Clean Air Act Title V, and Resource Conservation and Recovery Act Subtitle C programs, respectively, noting that the State Review Framework for enforcement already had efforts underway on a parallel track. In this first phase, the participating offices identified, examined and explained differences between oversight practices in the three programs and, based on this learning, developed an initial set of common principles.

A second phase of work has recently been completed in which the draft principles have been further refined, and draft best practices for enhancing the efficiency and effectiveness of the oversight process of state permitting programs have been identified from across the EPA regional staff of the NPDES, Title V, and RCRA permitting programs. The best practices represent current practice in one or more Regional permitting programs that the other regions and national permitting programs believe all three programs should aspire to adopt. As part of this second phase, each program also reached out informally to seek feedback from their respective media association (e.g., ACWA, NACAA, ASTSWMO, etc.). These consultations were of

limited extent and were not designed to obtain consensus positions or endorsement by the media associations.

This effort falls under the Cross-Agency Strategy for “A New Era of State, Tribal, Local, and International Partnerships” which recognizes that good government, as well as tighter resources, requires that the EPA and states, among others, work together effectively in accordance with the principles of coordination, collaboration, cooperation, and accountability. Shared accountability is critical to ensuring that public health and environmental protections are delivered consistently nationwide. Shared accountability can be strengthened by focusing oversight on the most significant and pressing state program performance challenges, using data and analysis to accelerate program improvements and remaining mindful of overall program health and integrity.

Path Forward

In keeping with our overarching theme of shared accountability, we would appreciate receiving ECOS’ reactions to these general principles and practices. Oversight practices within the three programs of focus are in different places, responding to somewhat unique issues at any particular point in time, and reflecting their respective statutory obligations. No program currently operates fully consistently with all of the principles, nor employs all of the best practices. Our goal is that the consolidated principles and practices, incorporating ECOS input, can serve as useful guideposts to shape the direction in which each program progresses. There is also strong consensus that E-Enterprise solutions, which produce real time data as a result of improved business processes, electronic reporting, and/or advancing monitoring technologies, offer significant potential to transform oversight of permitting programs to greater levels of effectiveness and efficiency, and that states and the EPA must continue to work together to realize that potential.

Draft Principles

As noted above, no permitting oversight program is currently operating fully consistently with these principles, but there is common interest in coming into alignment with these principles over time. Issues unique to each program will influence the pace at which that alignment occurs. The principles are described as follows:

- The EPA/State program oversight process will be accomplished through clear, accurate, up-to-date, efficient, and effective policies, guidance, training, and tools for both EPA and state staff.
- The EPA will work with states to routinely review state-developed permits and state permit programs in accordance with established guidance to ensure legal authority, effective implementation, and national consistency.
- The EPA and state program authorities will use information gained through the oversight process to identify and implement necessary program improvements.

- Environmental results, as expressed in the EPA's National Program Manager guidance, annual commitments, and agreed-to priorities with the states, will provide the primary basis for yearly oversight activities.
- The EPA and the states will use established vehicles, wherever possible, (e.g., state grant commitments, annual state workplans) to identify, document, and address performance issues.
- We will look to continue to improve oversight programs over time with careful consideration of the perspectives of the EPA and states.

Draft Best Practices

These best practices are suggested methods to help permitting programs continue to enhance the efficiency and effectiveness of their oversight consistent with the principles listed above.

1. Develop, keep current, and make readily available on-line policies, guidance, and tools to support the EPA in its review of state-developed permits and permitting programs; examples include:
 - a. Maintaining checklists for preparing and reviewing permits and performing program reviews.
 - b. Summarizing novel/controversial issues for use in future permit reviews.
2. Establish a strong collaborative environment between the EPA and state permitting programs
 - a. Anticipate, plan for, and hold substantive communications well in advance of complex/controversial permits going to public notice
 - b. Hold regular conference calls with states to provide the national perspective, communicate new policies, and promote consistency and cross-fertilization of good ideas.
 - c. Share best practices with all permitting authorities.
 - d. Commit to regular meetings (face-to-face or by phone, as appropriate) between regional offices and their states.
 - e. The EPA will make results from program reviews available to the states and post them to the internet.
 - f. Ensure that follow-up on identified issues is performed in a timely manner and continues until resolution is achieved.

3. Enhance the effectiveness and efficiency of oversight by:
 - a. Targeting reviews to focus on the most environmentally significant permits and state-specific challenges, and reviewing fewer routine/noncontroversial permits.
 - b. Respecting and using existing state/regional relationships.
 - c. Conducting permit/program reviews at routine intervals, but with sufficient flexibility to acknowledge resource constraints, past performance, and known ongoing problems.
 - d. Allowing flexibility, when appropriate, in reporting requirements, provided necessary information is available when requested.
 - e. Using lean tools where possible to reduce the resources needed for oversight.
 - f. Planning continually for future challenges/opportunities, while leveraging/incorporating new approaches and technologies (e.g., e-Enterprise innovations).
 - g. Developing and delivering training programs for EPA and state permitting staff on EPA regulations and policies, tools for permit development, and expectations for program and permit submissions to EPA; timeframes for delivery should consider new permitting requirements and staffing changes.
 - h. Instituting strategies for retaining institutional knowledge.
 - i. Ensuring Program Guidance looks forward to future challenges and opportunities
4. Where possible, use a team approach to permit and program reviews to increase staff expertise, enhance overall productivity and awareness of trends in other programs, and increase accountability (where appropriate, use teams divided by geographic area).

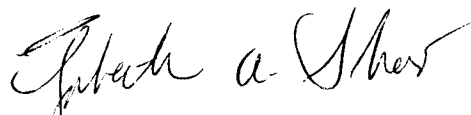
Our goal in seeking ECOS comments on these principles and practices is to get your reactions to these high level statements and, based on those reactions, refine the products to achieve a useful framework that will guide more specific activity with state media program organizations. Thus, we are interested in receiving comments on any of the individual principles and practices, suggested additions, or other improvements. We would also like your views on whether this framework, taken as a whole, provides a suitable basis for further work to improve the efficiency and effectiveness of oversight activities. We are requesting ECOS comments by April 15. The upcoming spring ECOS provides a potential opportunity for focused discussion on this subject, if

you would find that useful. We look forward to working with you to identify the best way to engage with ECOS on these draft principles and best practices so that we can achieve mutually beneficial environmental and programmatic results.

Sincerely,



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Office of Water



Elizabeth A. Shaw
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cc: Alexandra Dapolito Dunn
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