

Principles for EPA Oversight of Delegated Federal Programs
Under ECOS Cooperative Federalism 2.0
Version 1.1, June 2018

In June 2017, ECOS published “[Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health](#).” That document contains several statements regarding the ways in which the U.S. Environmental Protection Agency (EPA) should oversee delegated program implementation in order to improve environmental outcomes and maximize efficiency. The following principles support and elaborate on the statements in the Cooperative Federalism 2.0 document.

1. **Transparent Environmental Protection.** States should gather, maintain, and share information transparently with EPA and the public on how human health and the environment are protected, based on nationally agreed-upon measures and metrics, regarding the activities states conduct and the environmental outcomes states achieve under federally delegated programs.
2. **Program-Level Approach to Oversight.** EPA should avoid routinely and contemporaneously reviewing individual decisions made by states pursuant to delegated authority. Unless otherwise required, EPA should instead oversee state implementation of delegated programs by conducting periodic retrospective reviews to ensure that state decisions are consistent and legally accurate. EPA and states should work together to develop review frameworks that ensure delegated programs meet regulatory requirements and satisfy grant criteria.
3. **Federal Support for State Delegated Programs.** EPA should help states meet their delegated program obligations by providing technical expertise, guidance, research, and funding. When asked, EPA should assist states with technical decisions and regulatory interpretation on individual permitting decisions. EPA should take the lead in coordinating among states and foreign nations where necessary to carry out federal environmental programs. Where states raise concerns about transboundary pollution, EPA should ensure that its oversight activities help to address those concerns.
4. **Regulatory Stability and Certainty.** Regulatory stability and certainty create benefits for the regulated community, states, and citizens by creating a sound foundation for investments in environmental protection and by supporting improved environmental outcomes. As a result:
 - a. EPA should make policy decisions through policymaking processes that allow for state review and comment, rather than through oversight of individual state decisions.
 - b. EPA should manage its internal decision-making processes so it can be clear, transparent, and as consistent as possible given regional differences.
 - c. EPA decisions should reflect coordination and agreement among all the relevant parts of the agency, including the National Program Manager offices and Regional offices.

- d. States and EPA should strive to make decisions on a reliable and predictable schedule, because delays and inaction increase uncertainty and make the regulated community more reluctant to invest in environmental protection.
 - e. States and EPA are co-regulators, and must therefore hold each other accountable for making decisions and taking actions in a timely manner.
5. **Effective Communication.** States and EPA should communicate with each other regularly to avoid surprises and delays, to address issues, and to share information. States and EPA should consider developing best practices for adequate communication.
 6. **Elevating Issues.** EPA and states should seek to resolve disagreements that arise out of oversight processes at the lowest staff level possible. EPA and states should also work together to ensure that their senior staff understand when and how to elevate federal-state disagreements that lower-level staff cannot resolve. These include disagreements about priorities, technical or policy matters, and timelines.
 7. **Deference to Delegated Decisionmaking.** States must demonstrate a high level of proficiency to receive EPA delegation to implement an environmental program. Once EPA delegates a program to a state, EPA should therefore defer to state program decisions unless EPA's programmatic reviews identify systemic problems, or unless particular circumstances compel federal action.