



By Linda K. Breggin

Increasing Federal Outreach to States

This past summer, the Justice Department's assistant attorney general for the Environment and Natural Resources Division, John Cruden, announced a new staff position: counselor for state and local matters. The goal, according to the department's press release, is to "facilitate the joint efforts by the division and its environmental partners in state and local governments."

Andrea Berlowe, a 20-year ENRD veteran, was named to the position. She will focus on coordinating enforcement actions, Cruden told *E&E News*. He also explained that the position is designed to "make a pretty clear statement to the public and to states that we understand [and] recognize the importance of state and local governments," even though we "won't always be in agreement" on regulatory and enforcement matters.

Berlowe says she is in the process of assessing what is needed and establishing relationships with her counterparts in the National Association of Attorneys General and the Environmental Council of the States, but a large part of her job will be to learn more about state enforcement programs and serve as a resource. "Most importantly," she says, her goal is "to leverage limited enforcement resources to achieve the common goal of environmental protection" by increasing coordination

and communication among states and ENRD.

The decision to establish the new position was well received by the states. Robert J. Martineau Jr., commissioner of the Tennessee Department of Environment and Conservation and president of ECOS, said in an interview that the states welcome the opportunity for "more and easier communications," in part because ENRD's procedures can be a "mystery" to some state departments of environmental protection. Among the topics he and other state representatives may want to discuss with the new counselor at DOJ are the status of settlements and how to improve coordination on joint initiatives.

The establishment of the counselor position comes in the wake of similar efforts on the part of EPA and the states to increase communication and coordination on rulemakings. Martineau explains that approximately a year ago the ECOS leadership and EPA's general counsel developed the ECOS/EPA Legal Network, which brings together lawyers from state DEPs, EPA OGC, and regional counsels' offices to discuss pressing issues. According to Martineau, topics discussed on the quarterly teleconferences, which typically attract approximately 35 lawyers, have included water quality trading and the Clean Power Plan.

Berlowe says she plans to participate in forums such as the ECOS/EPA Legal Network teleconferences on a regular basis to learn as much as possible about existing state and federal cooperation. She is also coordinating with NAAG to identify possible collaborative initiatives, such as joint webinar training courses for assistant attorneys general on environmental enforcement and litigation.

Raymond Ludwiszewski, a partner with Gibson, Dunn & Crutcher

and a former EPA general counsel and associate deputy attorney general, says the counselor position "makes a great deal of sense." He notes that over time EPA's responsibilities have increased dramatically, while its resources have decreased — including funds not only for enforcement personnel but also for grants to the states. As a result, the states are more independent and have become increasingly important to ensuring that environmental laws are implemented effectively.

According to Ludwiszewski, it behooves the federal government to work closely with the states on both enforcement and rulemakings. For example, communication on rulemakings allows EPA to understand states' concerns more fully and could help avert problems later when the states must implement regulations.

Similarly, he points out that coordination on enforcement will help ensure in a time of limited federal enforcement resources that environmental regulations are enforced.

A new position and new programs are facilitating cooperation and coordination

Ludwiszewski also observes that increased communication will provide information to EPA and ENRD about state programs, some of which ultimately may be models for federal laws or programs, as has happened frequently in the past. Furthermore, Ludwiszewski says the federal government could eventually serve as a clearinghouse on state program best practices.

Whether or not these new approaches to state-federal coordination will yield tangible benefits in the short term, the effort to invest in and strengthen the core partnership that serves as the basis for environmental regulation and enforcement is a welcome development.

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