



May 22, 2007

Mr. Marcus Peacock
Deputy Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

SUBJECT: State Concerns on the Implementation of the Cross-Media Electronic Reporting Rule (CROMERR)

Dear Mr. Peacock:

444 North Capitol Street, N.W.
Suite 445
Washington, D.C. 20001

This letter provides comments gathered by the Environmental Council of the States (ECOS) regarding state concerns surrounding the implementation of CROMERR in their state agencies. ECOS worked collaboratively with USEPA throughout the development of the electronic reporting rule and we appreciate the willingness of USEPA staff to continue discussions about state concerns about the rule. I believe it is fair to say that the states and USEPA share the goal of a successful electronic reporting approach that assures secure transmissions of data and gives no cause for submitters to repudiate data submissions. The comments included in this letter do not form an official ECOS policy position and while states may have different specific concerns, the concerns discussed are common among states that have commented.

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A number of concerns have arisen as states begin to prepare and submit applications to USEPA for approval of their electronic document receiving systems. Given that CROMERR was supposed to be a performance-based and technology-neutral rule, it is discouraging that the application process appears to be prescriptive and favors specific technologies. Potential approaches discussed in the preamble to the rule are now being treated as requirements and it is debatable whether the very specific functionality being prescribed will result in an improvement. Authentication requirements for users (e.g., knowledge-based authentication) are onerous, costly to develop and implement, and require excessive personal information – to the point where states believe that regulated entities may find the requirements burdensome enough to forgo electronic reporting completely. This runs counter to federal and state efforts to go paperless and reduce reporting burden. The unwillingness of industry to participate in electronic reporting efforts would be a major blow to states that have committed significant time and resources to designing and implementing their own electronic reporting systems.

Robert W. King, Jr.
Deputy Commissioner
South Carolina Department of
Health and Environmental
Control
PRESIDENT

David K. Paylor
Director, Virginia Department of
Environmental Quality
VICE PRESIDENT

Stephen A. Owens
Director, Arizona Department of
Environmental Quality
SECRETARY-TREASURER

Stephanie Hallock
Director, Oregon Department
of Environmental Quality
PAST PRESIDENT

State environmental officials are also concerned that the application process for USEPA approval has not been as clear and consistent as requested by the states prior to the publication of CROMERR. The rule's preamble is being interpreted as requirements of the rule by USEPA's Technical Review Committee and is resulting in confusion and misunderstandings among applicants. To date, USEPA has not approved any state electronic receiving systems and it appears that state submissions numbers are low. Many states are hesitant to submit their applications after learning of USEPA's most recent rule interpretation and the difficulties other states are experiencing with the application process.

R. Steven Brown
Executive Director

As stated in previous ECOS comments about CROMERR, allowing states the flexibility to determine the most cost-effective or practical approach for their own circumstances is essential for CROMERR to be successful. We are not seeing this kind of flexibility being offered in the current application process.

I respectfully request that USEPA review the commitments it made to the states during the development of CROMERR and ask you to work with senior leaders from the states, OEI, OECA, and the General Counsel to ensure that states and USEPA can move forward with an effective application and approval process.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Linder". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael J. Linder
Chair, ECOS Data Management Work Group
Director, Nebraska Department of Environmental Quality

cc: Molly O'Neill, OEI
Granta Nakayama, OECA
Stephanie Daigle, OCIR