



June 18, 2013

THE
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COUNCIL OF
THE STATES

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The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2204 Rayburn House Office Building
Washington, DC 20515

RE: "CERCLA Bills" H.R.s 2226, 2318, 2279

Dear Congressmen:

The Environmental Council of the States (ECOS) is writing to support many of the concepts included in H.R. 2226 The Federal and State Partnership for Environmental Protection Act of 2013, H.R. 2318 The Federal Facility Accountability Act of 2013 H.R. 2279, and The Reducing Excessive Deadline Obligations Act of 2013.

As stated in our testimony at your hearing on May 17, ECOS supports the expansion of "consultation with states" as described in the bills. ECOS especially acknowledges that the bills directly address concerns expressed by the States in our ECOS Resolution on federal facilities operations under RCRA and CERCLA (attached; see especially the **bolded** items).

ECOS is a non-partisan, non-profit organization of the state environmental agencies and their leaders, who are our members.

We ask that you include this letter in the record on this matter. If there is anything else that ECOS can do to assist you in this matter, please do not hesitate to ask.

Regards,

Executive Director

Attachment

cc: Congressman Shimkus
Congressman Tonko

R. Steven Brown
Executive Director



Approved April 12, 2000
Philadelphia, Pennsylvania

Revised June 13, 2000
By mail vote

Revised April 4, 2003
By mail vote

Revised April 11, 2005
Washington, DC

Revised September 8, 2005
Kennebunkport, Maine

Revised September 22, 2008
Branson, Missouri

Renewed September 26, 2011
Indianapolis, Indiana

Revised March 20, 2012
Austin, Texas

As certified by
R. Steven Brown
Executive Director

ON ENVIRONMENTAL FEDERALISM

WHEREAS, the states are co-regulators with the federal government in a federal system; and

WHEREAS, the meaningful and substantial involvement of the state environmental agencies as partners with the U.S. Environmental Protection Agency (U.S. EPA) is critical to both the development and implementation of environmental programs; and

WHEREAS, the U.S. Congress has provided by statute for delegation, authorization, or primacy (hereinafter referred to collectively as “delegation”) of certain federal program responsibilities to states which, among other things, enables states to establish state programs that go beyond the minimum federal program requirements; and

WHEREAS, States that have received delegation have demonstrated to the U.S. EPA that they have the independent authority to adopt and they have adopted laws, regulations, and policies at least as stringent as federal laws, regulations, and policies; and

WHEREAS, states have further demonstrated their commitment to environmental protection by taking responsibility for 96% of the primary environmental programs which can be delegated to states; and

WHEREAS, because of this delegation, the state environmental agencies have a unique position as co-regulators and co-funders of these programs; and

WHEREAS, the delegation of new federal environmental rules (issued as final and completed actions and published by the U.S. EPA) to the states to implement continues at a steady pace of about 28 per year since spring 2007, for a total of approximately 143 new final rules and completed actions to implement through fall 2011; and

WHEREAS, federal financial support to implement environmental programs delegated to the states has declined since 2005; and

WHEREAS, cuts in federal and state support adversely affects the states' ability to implement federal programs in a timely manner and to adequately protect human health and the environment; and

WHEREAS, states currently perform the vast majority of environmental protection tasks in America, including 96% of the enforcement and compliance actions; and collection of more than 94% of the environmental quality data currently held by the U.S. EPA; and

WHEREAS, these accomplishments represent a success by the U.S. EPA and the states working together in ways the U.S. Congress originally envisioned to move environmental responsibility to the states, not an indictment of the U.S. EPA's performance; and

WHEREAS, the U.S. EPA provides great value in achieving protection of human health and the environment by fulfilling numerous important functions, including; establishing minimum national standards; ensuring state-to-state consistency in the implementation of those national standards; supporting research and providing information; and providing standardized pollution control activities across jurisdictions; and

WHEREAS, with respect to program operation, when a program has been delegated to a state and the state is meeting the minimum delegated program requirements, the role of the U.S. EPA is oversight and funding support rather than state-level implementation of programs; and

WHEREAS, under some federal programs the U.S. EPA grants to states the flexibility to adjust one-size-fits-all programs to local conditions and to try new procedures and techniques to accomplish agreed-upon environmental program requirements, thereby assuring an effective and efficient expenditure of the taxpayers' money.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Affirms its continuing support for the protection of human health and the environment by providing for clean air, clean water, and proper handling of waste materials;

Affirms that states are co-regulators, co-funders and partners with appropriate federal agencies, including the U.S. EPA, and with each other in a federal environmental protection system;

Affirms the need for adequate funding for both state environmental programs and the U.S. EPA, given the vitally important role of both levels of government;

Affirms that expansion of environmental authority to the states is to be supported, while preemption of state authority, including preemption that limits the state's ability to establish environmental programs more stringent than federal programs, is to be opposed;

Supports the authorization or delegation of programs to the states and believes that when a program has been authorized or delegated, the appropriate federal focus should be on program reviews, and, further, believes that the federal government should intervene in such state programs where required by court order or where a state fails to enforce federal rules particularly involving spillovers of harm from one state to another;

Supports early, meaningful, and substantial state involvement in the development and implementation of environmental statutes, policies, rules, programs, reviews, joint priority setting, budget proposals, budget processes, and strategic planning, and calls upon the U.S. Congress and appropriate federal agencies to provide expanded opportunities for such involvement;

Specifically calls on U.S. EPA to consult in a meaningful, timely, and concurrent manner with the states' environmental agencies in the priority setting, planning, and budgeting of offices of the U.S. EPA as these offices conduct these efforts;

Further specifically calls on U.S. EPA to consult in a meaningful and timely manner with the states' environmental agencies regarding the U.S. EPA interpretation of federal regulations, and to ensure that the U.S.

EPA has fully articulated its interpretation of federal regulations prior to the U.S. EPA intervention in state programs;

Believes that such integrated consultation will increase mutual understanding, improve state-federal relations, remove barriers, reduce costs, and more quickly improve the nation's environmental quality;

Noting the extensive contributions states have made to a clean environment, affirms its belief that where the federal government requires that environmental actions be taken, the federal government ought to fund those actions, and not at the expense of other state programs;

Affirms that the federal government should be subject to the same environmental rules and requirements, including the susceptibility to enforcement that it imposes on states and other parties;

Affirms its support for the concept of flexibility and that the function of the federal environmental agency is, working with the states, largely to set goals for environmental accomplishment and that, to the maximum extent possible, the means of achieving those goals should be left primarily to the states; especially as relates to the use of different methods to implement core programs, such as risk-based inspections or multi-media environmental programs, and particularly in the development of new programs which will impact both states and the U.S. EPA; and

Directs ECOS staff to provide a copy of this resolution to the U.S. EPA Administrator.



Resolution Number 00-9
Approved April 12, 2000
Philadelphia, Pennsylvania

Retained April 4, 2003
By mail vote

Retained March 17, 2006
By mail vote

Revised March 23, 2009
Alexandria, Virginia

Revised March 20, 2012
Austin, Texas

As certified by
R. Steven Brown
Executive Director

CLARIFICATION OF CERCLA SOVEREIGN IMMUNITY WAIVER FOR FEDERAL FACILITIES

WHEREAS, current and former federal facilities have some of the most pressing environmental problems, such as hazardous substances, unexploded ordnance, radioactive materials, and abandoned mines; and

WHEREAS, problems associated with some of these federal facilities pose substantial threats to public health, safety, and the environment; and

WHEREAS, ECOS believes the States' regulatory role at federal facilities should be recognized and that federal agency environmental cleanup activities are subject to and should receive the same regulatory oversight as private entities; and

WHEREAS, for many contamination actions the federal agencies assert Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) lead agency authority under Executive Order 12580; and

WHEREAS, state experience for many contamination actions has shown that assertions of sovereign immunity and CERCLA lead agency authority have led to inappropriate and/or inconsistent interpretation of state law and have not supported cleanup to the same standards as private parties; and

WHEREAS, assertions of sovereign immunity and CERCLA lead agency authority hamper consistent state regulatory oversight and responsibility to its citizens; and

WHEREAS, a clarification of Executive Order 12580 and/or federal legislation would aid states in implementing regulations which have been duly enacted by the states; and

WHEREAS, this resolution fully supports Policy NR-03i (specifically Section 3.5 on "Natural Resources") executed by the National Governors' Association.

**NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES
(ECOS):**

Requests the Administration revise Executive Order 12580 to clarify that federal facilities are subject to appropriate state regulations and are not unduly shielded by sovereign immunity and lead agency authority;

Encourages the U.S. Congress act to support the States by the implementation of specific legislation which will without equivocation acknowledge state authority and regulatory responsibility for oversight of removal and cleanup actions at current and formerly owned or operated federal facilities; and

Authorizes the transmittal of this resolution to the Administration, appropriate congressional committees, federal agencies, and other interested organizations and individuals.