



ECOS

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ENVIRONMENTAL  
COUNCIL OF  
THE STATES

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Executive Director &  
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November 20, 2017

Ms. Samantha K. Dravis  
Associate Administrator for Policy  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

*Via regulations.gov: Docket ID No. EPA-HQ-OA-2017-0600*

Subject: ECOS Comments on *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects*, in accordance with Section 41006 of the Fixing America's Surface Transportation Act (FAST-41) and feedback on whether any of the best practices are generally applicable on a delegation or authorization-wide basis to permitting under FAST-41

Dear Ms. Dravis:

The Environmental Council of States (ECOS), the nonpartisan, national association of state and territorial environmental agency leaders, is pleased to provide comments to the U.S. Environmental Protection Agency (EPA) in response to its request for feedback on whether any of the best practices are generally applicable on a delegation or authorization-wide basis to permitting under Section 41006 of the Fixing America's Surface Transportation Act (FAST-41).

ECOS appreciates this opportunity to comment. ECOS encourages EPA to consider closely input from states individually as well as from state media associations in addition to the comments offered here. States execute the large amount of environmental permitting actions that are conducted nationally. Many states have already sought to make permitting more efficient and improve service to the regulated community while preserving important environmental protection outcomes.

On January 18, 2017, the Federal Permitting Improvement Steering Council, published *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects*.

The best practices include:

- (i) enhancing early stakeholder engagement, including fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;*
- (ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;*
- (iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;*
- (iv) increasing transparency;*
- (v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;*
- (vi) developing and making available to applicants appropriate geographic information systems and other tools;*

(vii) *creating and distributing training materials useful to Federal, State, tribal, and local permitting officials; and*  
(viii) *addressing other aspects of infrastructure permitting, as determined by the Council.”*

States recognize healthy and vibrant communities and economies rely upon both effective environmental protection and resilient economic growth. ECOS published its Cooperative Federalism 2.0 “Achieving and Maintaining a Clean Environment and Protecting Public Health” document in June 2017. In this document, states recognize the need to work cooperatively with U.S. EPA in the development of shared services, implementation toolkits, and other key resources to facilitate permitting and reporting functions and to efficiently use resources to accomplish these tasks as well as shared functions. Most states are delegated or authorized to implement environmental programs in lieu of EPA-administered federal programs with states generally assuming the lead in issuing permits, conducting inspections, monitoring environmental performance, and enforcing requirements.

In the Federal Register notice, EPA notes that it regularly communicates with delegated and authorized programs regarding program implementation and oversight. On August 30, 2016, EPA shared “*Promoting Environmental Program Health and Integrity: Principles and Best Practices for Oversight of State Permitting Programs.*” The document includes a vision to establish the principles and best practices “for efficient and effective oversight of environmentally protective permitting programs while building the State-EPA relationships through high levels of trust, communication, and collaboration.” The document lists as guideposts for states and EPA to consult, collaborate, and cooperate with each other as co-regulatory partners. Specific tools and techniques to help permitting programs continue to be enhanced are included in this document and their application is expected to improve permitting programs.

Since 2014, states have worked closely with EPA and now tribes using a joint governance approach on E-Enterprise for the Environment. At its September 2017 meeting, the E-Enterprise Leadership Council (EELC) discussed and directed the formation of a permitting modernization initiative. As one of the early tasks in this new initiative, states, tribes, and EPA are collaboratively developing performance measures for determining the effectiveness of permitting programs, and supporting other measures and projects to improve the timeliness and quality of permitting programs and the ultimate environmental outcomes. This work will draw upon and be informed by many sources, such as extensive state, tribal and EPA experience in developing best practices for permitting programs, including the use of continuous process improvement and automation. It is expected that the E-Enterprise permitting initiative would complement the FAST-41 initiative. Given the common goals of states, tribes, and EPA with permitting and the FAST-41 program as well as other permitting initiatives underway, it will be valuable and important to ensure effective, regular and robust coordination, communication, cooperation and collaboration among the policy development and implementation efforts involving permitting process modernization under the FAST-41 led by the FPISC, E-Enterprise led by the EELC, application of the 2016 Permitting Oversight Document by EPA and the states, and other similarly-directed initiatives. To the extent that the principles and best practices applied within these initiatives are consistent and harmonized, permitting processes may be simplified and made more transparent and understandable, and may achieve greater environmental benefits at lower cost.

FAST-41 infrastructure permitting projects are tracked now on a public dashboard. In review of these existing measures, one of the metrics related to Project Schedule considers “completed” applications received. States have conducted business process improvement (BPI) events using Lean, Kaizen, and other methods and actions to streamline processes. For instance, in a joint 2006

report on improving state agency processes, ECOS and EPA identified common permitting process “wastes” that accumulate steps, approvals, and activities over time. States note that process improvement approaches target increasing speed, reducing complexity, and improving quality, which relates to frequency of errors in documents and consistency of language. Eliminating these non-value added activities may significantly reduce the permitting timeframe. States have found that re-engineering the process to simplify work flows, develop common work practices, and apply IT services speeds permitting.<sup>1</sup> This is one example of work states have already taken the lead and where states may be able to share valuable expertise as states and EPA seek to continually improve permitting activities and tracking.

More recently, in August 2017, ECOS compiled an inventory of state environmental agency permitting tools and resources in a *Green Report*, highlighting the innovative steps states are taking to more effectively assist businesses and protect the environment. Examples include guidance like pre-application services (“wizards” or checklists), ombudsman and assistance programs, application tracking technologies, and e-Permit forms.<sup>2</sup> There is also a spectrum of permit submission processes, from a full paper form to fully integrated electronic applications. While the list is widespread, below are some replicable approaches that exemplify the breadth of states’ modernization efforts.

1. Permit pre-application meetings services, checklists
2. Expedited or “fast-track” permit services
3. Initial administrative review and notification of missing permit information
4. Permit application tracking
5. Expanded use of general permits
6. Parallel/coordinated state and federal review of permits
7. E-permit forms and environmental portals

In referencing the January 18, 2017 Federal Permitting Improvement Steering Council best practices, EPA notes that its Federal Register notice posted on October 31 “...satisfies EPA's obligation under FAST-41 to solicit public participation on the FPISC best practices.” States encourage EPA to build on this public comment period for additional dialogue with states on current permitting practices and continual improvement efforts states have already undertaken such as the examples offered here and those that have been the most effective.

States also encourage close collaboration with EPA as the application of any of the permitting best practices on a delegation or authorization-wide are considered so that state and regulated community needs broadly are best met in a seamless manner. The application of best practices should follow the model established in the August 2016 Permitting Principles and Best Practices to consult, collaborate, and cooperate with each other as co-regulatory partners.

Again, thank you for the opportunity to comment and look forward to continuing to collaborate closely with EPA in regards to application of permitting best practices on a delegation or

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<sup>1</sup> Working Smart for Environmental Protection: Improving State Agency Processes with Lean and Six Sigma, U.S. Environmental Protection Agency and Environmental Council of the States, 2006, <https://dom.iowa.gov/sites/default/files/documents/2015/08/primer.pdf>.

<sup>2</sup> Streamlining Permitting: An Inventory of State Environmental Agency Online Tools and Resources, Environmental Council of the States, August 2017, <https://www.ecos.org/wp-content/uploads/2017/08/Permitting-Practices-Inventory-1.pdf>.

authorization-wide basis. Please feel free to contact me or Alexandra Dunn, ECOS Executive Director and General Counsel, 202-266-4929 or [adunn@ecos.org](mailto:adunn@ecos.org) with any questions.

Regards,

A handwritten signature in blue ink, appearing to read "Todd Parfitt". The signature is stylized with a large, prominent loop at the end.

Todd Parfitt  
Director, Wyoming Department of Environmental Quality  
ECOS President

cc: Henry Darwin, Assistant Deputy Administrator and Chief of Operations  
ECOS Members  
Pat Stevens (WI), ECOS Planning Committee Chair  
Bill Ehm (IA), ECOS Planning Committee Vice Chair