



ECOS

Environmental Council of the States

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December 21, 2020

Dear U.S. EPA Agency Review Team:

Americans can be justly proud of our nation's environmental protection system. In the 50-year history of the major federal environmental statutes, the United States has made significant progress in achieving cleaner air and water and in cleaning up contaminated land. That success rests on a unique partnership between the federal government and the states. The U.S. Environmental Protection Agency (EPA) takes the lead in research and development, in setting national minimum standards, and in assuring that state programs are meeting those standards. The states are the primary implementers of the environmental protection programs, having taken on the delegated authority for the vast majority of programs under the federal statutes. Together, these complementary roles form the basis for our national enterprise for environmental protection.

While great progress has been made, significant challenges remain, and new threats emerge as the products we use in society evolve and as our scientific knowledge advances. As a nation we will continue to set new environmental goals, but those goals cannot be met unless we maintain and strengthen the effective partnership between the states and the federal government.

The Environmental Council of the States (ECOS) is the national nonprofit, nonpartisan association of state, territorial, and District of Columbia (hereinafter referred to collectively as "state") environmental agency leaders. The mission of ECOS is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States of America.

ECOS has more than 25 years of history of leadership on environmental issues of national importance and of playing a critical role in promoting a more effective relationship among and between state and federal agencies. ECOS provides a forum for proactive early engagement, collaboration, and exchange of views and experiences among states and with our federal partners. In that role, we facilitate state input to EPA on budget priorities and the development of regulations. We identify and highlight implementation challenges and offer solutions.

As the country transitions to a new federal administration led by President Joe Biden, ECOS stands ready to strengthen the state-federal partnership upon which our mutual success depends. We recommit to a constructive relationship with EPA and our other federal partners to promote the most effective and efficient accomplishment of our shared goals.

In this document, we offer for consideration a number of priority areas that states feel will be critical to the achievement of the best possible results in the protection of public health and the environment for the American people. Several of these issues are "fundamental" issues, or those that have faced policy makers in the past and likely will do so for years in the future. Others we see as current

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challenges for which new approaches and augmented efforts will be needed in the near term.

We welcome opportunities to discuss this letter, and to further share the views and concerns of our members. Dialogue or discussions can be arranged through ECOS Executive Director Don Welsh via email (dwelsh@ecos.org) or by calling (202) 266-4929.

FUNDAMENTAL POLICY ISSUES

Federal Financial Support for Program Implementation

Adequate federal financial support to states is key to the success of the national environmental protection system.

The federal environmental statutes enacted by Congress envisioned that states would assume authority for the programs and that the federal government would provide financial assistance to states for their implementation. States have in fact received delegation or authority for the overwhelming majority of eligible programs, and have been implementing them for many years.

States receive support for the operation of these programs through the State and Tribal Assistance Grants (STAG). In Fiscal Year (FY) 2002, the enacted funding level for these grants was \$1.1 billion. Eighteen years later, in FY 2020, the enacted funding level was also \$1.1 billion. In light of rising costs, these years of flat funding constitute a significant real reduction in available resources. This occurred while new regulations and new program requirements have added to the workload.

States supplement the federal assistance with general revenues appropriated by their own legislatures along with other revenue streams such as permit fees. ECOS' recent analysis of state environmental budgets shows that on average, 73% of the funding comes from states sources and 27% comes from federal support. States use these combined funds to carry out the core environmental protection functions such as permitting, conducting compliance inspections and enforcement, remediating contaminated sites, monitoring, and reporting, in addition to addressing local needs, such as assisting communities and businesses in meeting environmental responsibilities.

With the federal contribution remaining flat, or declining in real terms, states have struggled to meet these obligations and to keep up with new threats to public health and the environment. Economic impacts from the COVID-19 pandemic are already being felt by most states, and further impacts are anticipated. Reduced general revenues in the states, and particularly reduced revenue from permit fees, will compound the challenge for state environmental agency leaders. Furthermore, environmental permitting and oversight is a key component of rebuilding the economy.

The federal government must provide adequate financial support to state environmental agencies to establish sound financial footing following the pandemic and to ensure the long-term viability of the national environmental protection system. We must also make every effort to reduce or eliminate

ineffective or redundant requirements to focus resources on environmental results.

Water Infrastructure Investment Needs

Replacing and modernizing our nation's aging drinking water and wastewater infrastructure continues to be a critical need in protecting public health and the environment.

Policy makers have known for some time that in many places around our nation, the infrastructure on which we rely to treat wastewater and provide safe drinking water is aging and in need of repair and replacement. Recent assessments indicate a need for infrastructure investments of more than \$271 billion for wastewater and more than \$472 billion for drinking water. Long-standing challenges such as eliminating sewer overflows and reducing sources of lead in drinking water have now been joined by efforts to identify and remove per- and polyfluoroalkyl substances (PFAS) from drinking water and wastewater.

The Clean Water and Drinking Water State Revolving Funds have been among the most successful and cost-effective programs enacted by Congress and carried out by the states and the EPA. The revolving loan programs allow every federal dollar to be leveraged into as much as three dollars of infrastructure investment. The Water Infrastructure Finance and Innovation Act and related programs provide additional resources and tools to meet this critical national need. States have worked to develop innovative strategies to deploying this funding and helping both large and small communities to pay for needed projects.

Distressed urban areas and small communities are particularly challenged to afford operation, maintenance, and replacement of these assets. Meeting our shared clean water and drinking water goals will require additional investment in these effective tools and continued state-federal partnership in developing innovative approaches to allow the funds to get to the communities that need them most. Federal research and development resources can be used to assist states in finding cost-effective treatment solutions for all communities, particularly small and economically challenged ones.

Investments in drinking water, wastewater, stormwater, and green infrastructure generate job growth, health improvements, and economic benefits. ECOS looks forward to working with the new administration to advance these critical priorities.

State-Federal Implementation

State and federal agencies must work together effectively and cooperatively in the implementation of environmental programs delegated to the states. Both the federal government and state governments have their own particular responsibilities in delivering environmental protection.

The federal government not only takes the lead in research and the setting of minimum national standards, but also assures the integrity of our system through oversight and accountability. ECOS and EPA have worked to improve the oversight process so that it is based on clearly defined measures applied through

consistent processes. We have worked together to better define roles and responsibilities and to provide for agreed-upon steps for elevation when disagreements occur. We encourage the continuation of these efforts to assure that deficiencies can be identified and corrected, processes that add no value can be eliminated, and disputes and differences can be resolved quickly.

States generally take the lead in program implementation including permitting, compliance monitoring, and enforcement, with the federal government retaining its own authorities in these areas. We have worked to reduce duplication of effort through early consultation and coordination on compliance activities and other program efforts where states and the federal government have shared responsibilities.

States and EPA have also made strides in “leaning” business practices to increase efficiency and reduce unnecessary steps. Resource constraints have always been a challenge, and the economic impacts of the recent pandemic will likely multiply that challenge for many states. More than ever, we must continue these efforts to efficiently deliver environmental results.

Each state faces its own unique circumstances, challenges, and opportunities. While working to meet consistent national standards, states also continue to need sufficient flexibility to address state priorities. Successful examples include the National Environmental Performance Partnership System, which recently celebrated its 25th anniversary, under which states can minimize administrative burdens and gain flexibility while maintaining the emphasis on measuring and reporting environmental results. The multipurpose grants that Congress has appropriated in recent years are especially helpful, particularly when distributed with the maximum ability for states to direct them toward priority needs.

In a number of individual instances, states and EPA Regions have negotiated innovative alternative strategies to meet program performance obligations in ways that were more efficient and/or more effectively addressed state-specific conditions. ECOS and the EPA should cooperate to catalogue these innovations and make them available in other states, regions, and programs where they might also apply.

Modernizing the Delivery of Environmental Protection

We must make the best use of new tools and advanced technologies to efficiently deliver better environmental results for the American people.

New technologies have dramatically transformed the way that society functions and the way in which we live our daily lives. States and EPA can harness these technologies to enable smarter, faster, and more effective environmental protection. Truly transformative improvements are only possible with close collaboration across the diverse partners who share responsibility for human health and the environment. States and EPA need committed leadership and cooperation from every quarter to spark and manage this change.

EPA, states, and tribes created the E-Enterprise for the Environment initiative to drive program modernization through collaborative leadership and joint governance. The E-Enterprise Leadership Council (EELC) is co-chaired by EPA’s

Deputy Administrator, a state environmental commissioner, and a tribal representative. This executive leadership is essential to driving meaningful change throughout our programs and organizations. E-Enterprise leaders have produced a Digital Strategy that presents a shared vision to better coordinate investments in information systems. The strategy provides a set of principles and strategic actions for building an environmental enterprise that is customer-centric, information-centric, and based on shared platforms and services. EPA, states, and tribes are using these principles to unlock access to quality data and deliver better environmental outcomes and more responsive services to the public and the regulated community.

The Digital Strategy is also providing important guideposts for process and information technology system modernizations in the drinking water, National Pollutant Discharge Elimination System, and air programs. These initiatives will replace aging data systems to help safeguard drinking water and protect the health of the nation's water and air resources. These modernizations are a high priority, and states and EPA need sufficient resources to see them through to completion.

Many state environmental agencies have also been working with EPA to pioneer the use of remote video compliance monitoring. Spurred in part by the challenges presented by the COVID-19 pandemic, states see this as a potential resource multiplier in enhancing their compliance monitoring capacity. Artificial intelligence, unmanned aerial vehicles, and advanced software tools provide a host of new opportunities to revolutionize environmental programs.

Harnessing the full potential of these technologies requires close collaboration and partnership. EPA, states, and tribes should renew and expand their commitment to E-Enterprise for the Environment. That commitment should include fully engaged executive leadership, cross-program participation, support for funding and resources, and operational flexibility to develop and test new tools.

Measuring and Communicating Environmental Results

The effective management of environmental programs, as well as the public's trust and confidence in the state-federal environmental system, rests on our ability to measure and communicate tangible environmental results.

Improvements in the quality of the air and water, reductions in the risk to human health, and increases in healthy and vibrant ecosystems are the reasons for our environmental protection efforts. Too often we have judged success on program outputs like number of permits issued or enforcement actions taken because those are easier to measure. Both decision makers and the public can be misled when outputs are equated with success.

ECOS Results is a suite of common measures for states to report and explain their progress toward environmental outcomes. Developed by ECOS in collaboration with the EPA, ECOS Results now includes the participation of 46 states reporting on some or all of the measures. This tool serves not only to enhance public understanding, but also provides Congress and stakeholders with straightforward and easily accessible measures to better understand progress.

The federal government has also developed many measures of both program outputs and results. The states and the federal government must continue the commitment to measuring results and communicating them clearly. These measures must be used by decision makers to guide resource choices toward programs that deliver the best results. These measures must also be communicated regularly and clearly to the public so that they have a better basis to judge progress and inform their choices as citizens.

CURRENT CHALLENGES

PFAS and Emerging Contaminants

New chemicals of concern, which may have previously been unregulated, present a significant challenge to the nation's environmental protection system. PFAS, a group of chemicals often called "forever" chemicals due to their persistence in the environment, are one major example of this type of threat to public health and the environment.

The research capacity of the federal government is an indispensable tool in setting standards and in developing long-term remedies. The existence of particular areas with significant levels of contamination often prompts states to seek to move forward with their own regulations in advance of federal standards. Early consultation and cooperation among states and EPA will promote the sharing of information and environmental data, as well as technical and regulatory approaches as they are being developed. Federal leadership in research and standard setting can promote the adoption of effective strategies and reduce the risk communication challenges associated with varying state standards. While drinking water standards are often a key area of focus, impacts on cleanup and remediation, stream health, and waste disposal are also important areas where EPA leadership is needed.

As new contaminants of concern are likely to continue to emerge, a regular and well-defined process for consultation and cooperation would help decision makers at all levels to more quickly initiate effective steps to confront issues as they arise.

Diversity and Environmental Justice

States feel strongly that our national environmental protection system must provide equal protection to all communities. States have been working to ensure that all communities have access to environmental data and other information that allow them to participate effectively in evaluating choices and decisions that affect their lives and neighborhoods.

EPA can help states in working to meet these challenges through support for improved monitoring, mapping, and toxicological information that will help us better understand impacts in all communities. E-Enterprise for the Environment offers an excellent forum for cooperative efforts among states, tribes, and EPA in developing these tools and technologies that meet the needs on the front lines of our programs.

Messages about environmental risk and regulatory requirements should be community specific and targeted to situations faced by individuals and communities.

EPA can assist states as they develop risk communication tools that meet communities where they are.

An important part of meeting these goals is ensuring that our environmental agencies reflect the communities for which they work. Innovative recruitment and hiring practices can promote inclusion. Joint efforts between environmental agencies and professionals with academic programs in high schools, colleges, and universities can be an important tool in attracting more people of all backgrounds into environmental careers. People in all communities want their children to be safe and healthy, and people from all communities should be involved in the mission of environmental protection.

EPA should work in consultation with states in developing tools and initiatives to address these challenges, and provide support to states as they advance justice, equity, and inclusion programs.

Risk Communication

Accurately characterizing environmental risks and communicating them clearly is critical to assuring the public that they are being effectively protected. The availability of many sources of information, including environmental data of differing levels of quality through social media and other internet platforms, places greater emphasis on the need to provide answers promptly and accurately.

Effective risk communication needs to be tailored to the needs of specific communities impacted by environmental threats. Priority should be given to expanding our capacity to collect, analyze, and explain risk information. Members of the public are rightly anxious for answers to their questions and concerns when confronted with an environmental risk. Cooperation between federal, state, and local officials is required to meet the public's expectation.

Rapid response teams comprised of state and federal experts with site-specific messages would increase our capacity to meet this need and to improve the public's understanding of risks.

Emergency Preparedness and Response

There are few areas of the nation that have not been impacted by storms, flooding, wildfires, or other emergencies that, in addition to public safety concerns, present threats to public health and the environment. State and local governments are the first responders, but preparedness and consequence management require close coordination and cooperation among local governments, state governments, and federal agencies such as EPA and the Federal Emergency Management Agency. While many states have more experience than they might like in meeting these emergencies, federal resources are often required when the scope of the emergency is large. Governments at all levels must be committed to the teamwork necessary to protect the public and to remedy the environmental impacts of these emergencies.

More than just preparedness and response, our national system must recognize and take advantage of opportunities to make our infrastructure more resilient. We need to improve the resilience of infrastructure to cope with increased pressures,

whether they come from changing land use patterns, local and regional circumstances, or weather and climate impacts. Regulatory barriers or administrative requirements that impede effective responses or prevent more resilient infrastructure choices must be removed.

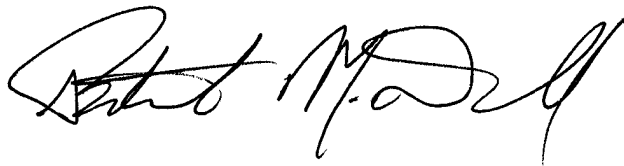
CONCLUSION

Overcoming the environmental challenges that we face, whether long-standing or more recently encountered, will require vision, innovation, and flexibility on the part of all of the partners in our shared national environmental protection system. We cannot hope to achieve the goals that we envision and that the American people deserve without adequate and sustainable funding. We must continue to improve our working partnership to remove pointless friction and wasteful duplication of effort.

At this unique time in our history, the pandemic we are fighting seems destined to spur long-lasting changes in how we live our lives and how we conduct business. Our environmental protection system will likely have to adapt to new patterns of interaction and changed systems for obtaining public input, inspecting regulated sources, and engaging our partners. We will need to consider the organization of environmental agencies and determine how best to deliver environmental results in this new setting. While these organizational issues may add to our shared list of challenges, adjusting old patterns may present opportunities to overcome some old problems.

ECOS is able to serve the states as a forum for the exchange of experiences and innovations and a resource to expand the capacity of state agency leadership. ECOS also has a long history of working with our partners at EPA and other federal agencies to provide collective feedback on budget priorities and on policies and regulations under consideration. We stand ready to continue that service to our members and to the public as we transition to new federal leadership.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is fluid and cursive, with a large initial "P" and "M".

Patrick McDonnell
ECOS President