



ECOS

Environmental Council of the States

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Sent via email to: fox.radhika@epa.gov, katims.casey@epa.gov, schafer.zach@epa.gov

Dear Assistant Administrator Fox:

ECOS greatly appreciates funds provided by Congress through the historic Bipartisan Infrastructure Law (BIL or the Act) to the U.S. Environmental Protection Agency (EPA) to support a number of new and ongoing programs, many of which are, or will be, administered by states. Overall, the BIL delivers more than \$50 billion to EPA to improve the nation's drinking water, wastewater, and stormwater infrastructure; provides \$5.4 billion in cleaning up legacy pollution at Superfund and brownfields sites; and increases resources to help reduce toxic pollutants, especially in underserved and overburdened communities. In addition, the Act includes \$4 billion to the Drinking Water State Revolving Fund (SRF) for emerging contaminants (EC); \$1 billion to the Clean Water SRF for ECs; and \$5 billion to Water Infrastructure Improvements for the Nation Grants to address ECs, according to an [EPA Fact Sheet](#).

As you are aware, the BIL EC funds will be provided to the states and to eligible communities through the states' traditional state revolving loan funds for clean water and drinking water, as well as to small and disadvantaged communities through the WIIN Grant: Small, Underserved, and Disadvantaged Grant program. It is imperative to look expansively at what would be considered eligible response actions, and to streamline the awarding, distribution, and reporting on such funds. While states understand that EPA needs time to develop guidance for BIL funding, we urge EPA to develop this quickly to allow as much time as possible for states to use the funds. States will need time to understand EPA's guidance, develop and implement plans, seek project proposals, obligate funds, and then draw down the funds.

The states are on the front line of addressing the public health issues facing communities by virtue of these contaminants' presence in public and private water supplies, fisheries, wildlife, and environmental media such as soil, groundwater, and surface water. The BIL EC funds will provide much-needed help to the states and communities with current and future EC challenges. Given states' important role in implementing such funding for BIL emerging contaminants, ECOS offers the following suggestions based on states' direct experiences addressing emerging contaminants with impacted communities.

Flexibility

States request that EPA support maximum flexibility for use of funding on investments associated with water infrastructure and activities necessary to respond to emerging contaminants, including remediation. This includes:

- Maintaining a broad focus on ECs. The Act calls for funds to address emerging contaminants through the clean and drinking water SRFs. Certainly, states are responding to identification of per- and polyfluoroalkyl substances (PFAS) in our

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communities. States are also responding to other emerging contaminants such as 1,4-dioxane and other contaminants and encourage EPA to maintain the broad scope Congress envisioned in the Act as it considers funding guidance.

- Focusing on remediation. In its [2021 PFAS Strategic Roadmap](#), EPA outlines its three goals in its integrated approach to PFAs: research, restrict, and remediate. The roadmap further suggests maximizing funding for investigations and cleanup; accelerating the deployment of treatment, remediation, destruction, disposal, and mitigation technologies for PFAS. It also aims to ensure that impacted communities receive resources and assistance to address contamination. States encourage EPA to permit and encourage these BIL funds to be used for remediation broadly to accelerate cleanups of PFAS and other emerging contaminants.
- Increasing funding for state administration of Clean Water SRFs. ECOS has previously suggested an increase in the Clean Water set aside, as noted in ECOS' fiscal year 2022 budget written [testimony](#) to the U.S. House of Representatives and state associations' [letter](#) to Congress. States encourage EPA to consider any additional funding flexibilities to support increase the clean water set aside to support state work.
- Allowing funding for contaminant sampling efforts. States request that EPA allow BIL funding to be used for sampling. States are finding that many local governments may be indirect sources of PFAS contamination by virtue of using AFFF-mandated foam at their airports, applying biosolids to fields, or operating compost piles or landfills. Funds should be available to help those communities sample for, mitigate, and remediate emerging contaminants associated with a local government's municipal responsibilities.
- Encouraging cross-program action, and flexibility on cost share. States strongly encourage EPA at the outset to explicitly indicate that states and communities have flexibility to leverage money from one program to another using BIL funds, and to make the approval for such leveraging more efficient. In the past, the [EPA Brownfields program](#) has allowed grantees to leverage and align other EPA financial resources (e.g., the CWSRF to clean up contaminated sites, the DWSRF for assessment and construction of drinking water infrastructure, etc.) and state funding sources to address water quality issues and grant match requirements at brownfields sites or to protect source water. States encourage EPA to affirm this approach with these dollars.

Allocations of Funds

When developing guidance for states and communities, ECOS requests that EPA consider a broad a range of "contaminant response activities" as eligible activities under these EC funding programs. The types of contaminant response activities that the states and communities are being challenged with include:

- Sampling of all public water systems.
- Sampling and testing various potable wells, waste management systems and environmental media including transient, non-community wells; private, residential wells; public airports and nearby potable wells; landfill leachate and groundwater; biosolids; wastewater; stormwater; and sanitary sewers.
- Conducting environmental investigations.
- Providing emergency, temporary water.

- Designing remedial actions, including new municipal water supplies, private well replacements, and water supply treatment systems.
- Remediating contaminated soil, sediment, groundwater and surface water – including on-and-offsite treatment and/or disposal.

ECOS believes the activities listed above should be included as eligible activities, in addition to traditional activities funded by state revolving funds and WIIN grants for small, underserved, and disadvantaged communities. State agencies also should be given the flexibility to directly use grants to conduct watershed studies, including water monitoring activities, to determine areas of concern for further investigation and source determinations.

Ease of Implementation

As states work to best allocate the funds and implement the policies from the Act, ECOS acknowledges that some states' staff need to coordinate between SRF programs and the environment and health agencies working on emerging contaminants. ECOS encourages this coordination, as appropriate, to effectively use the emerging contaminant funding and asks that EPA support it as well.

In addition, states ask that EPA clarify how funding may be used. For example, several states noted that they are paying for emergency bottled water with state funds in the case of an EC event as states have been told that funding emergency water is prohibited by either EPA policy or federal law under the Safe Drinking Water Act. States need to be able to both sample and respond to concerns if emerging contaminants are found at public water systems and private wells that pose public health concerns. ECOS requests that EPA clarify if this is a legal or policy determination, so that states may appropriately represent this activity in the states' intended use plans for EC funds. This also helps states better provide assistance and support to local communities providing safe water to their residents while working toward more permanent solutions.

States also note that the Small, Disadvantaged Communities Grants program, while a new program, could be improved and streamlined to make application and receipt of funding as easy as possible. The states are willing and ready to assist EPA in ensuring that the EPA can allocate almost half the EC BIL funds through the WIIN grant program.

The Justice40 initiative directs 40 percent of the benefits of covered programs to disadvantaged communities. States encourage EPA to work closely with us to develop measures to report on these benefits using existing data where available. EPA may wish to consider suggestions in the December 3, 2021, Council of Infrastructure Financing Authorities [letter](#) to EPA about the implementation of the Justice40 initiative with SRF funding. States also encourage EPA to work to determine an efficient means for states to share information on these funds with EPA without an overburdensome reporting tool.

ECOS appreciates the opportunity for states to engage with EPA on this important matter. If you would like to discuss this further, please feel free to contact me. Thank you for your attention.

Sincerely,



Ben Grumbles
Secretary, Maryland Department of the Environment
ECOS President