



ECOS

Resolution 13-2
March 6, 2013
Scottsdale, Arizona

Revised April 11, 2016
Nashville, Tennessee

Revised April 10, 2019
Arlington, Virginia

Revised April 6, 2022
Asheville, North Carolina

Revised August 30, 2023
Boulder, Colorado

As certified by
Ben Grumbles
Executive Director

THE NEED FOR REFORM AND STATE PARTICIPATION IN EPA'S CONSENT DECREES WHICH SETTLE CITIZEN SUITS

WHEREAS, federal environmental programs generally are authorized or delegated to states and territories; and

WHEREAS, in addition to authorization and delegation, states and territories are provided certain stand-alone rights and responsibilities under federal environmental laws; and

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) may be sued in federal court by citizens over the alleged failure to perform its nondiscretionary duties, such as taking action on state and territorial environmental agency submissions (e.g., State Implementation Plans under the Clean Air Act), promulgating regulations, meeting statutory deadlines, or taking other regulatory actions; and

WHEREAS, state and territorial environmental agencies may have information that would materially benefit the defense of a citizen suit or the reaching of a settlement, and may have interests that should be considered in the evaluation of a settlement; and

WHEREAS, on October 16, 2017, U.S. EPA issued a *Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements*; and

WHEREAS, on March 18, 2022, U.S. EPA repealed the 2017 directive and issued a new directive indicating the agency is “committed to fair, transparent, and efficient resolution of environmental claims brought against the EPA.” The directive includes instructions to U.S. EPA to: 1) publish Notices of Intent to Sue the Agency, petitions for review, complaints, and proposed settlements on EPA’s website; 2) maintain a public email listserv to provide notice when these documents are posted; and 3) make proposed settlements available for public review and comment for at least 30 days unless a different period of time is required by law; and

WHEREAS, state and territorial environmental agencies, are often not parties to these citizen suits, and

are usually not provided with an opportunity to participate in the negotiation of agreements to settle citizen suits; and

WHEREAS, the agreements U.S. EPA negotiates to settle citizen suits may directly affect state and territorial administration of regulatory requirements.

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

Affirms that states and territories have stand-alone rights and responsibilities under federal environmental laws, and that state and territorial environmental agencies are co-regulators, co-funders, and partners with U.S. EPA as defined by Congress;

Urges U.S. EPA to use administrative rulemaking procedures to make changes to environmental programs under its authority when a settlement agreement contemplates changes to public policy;

Urges U.S. EPA to devote the resources necessary to perform its nondiscretionary duties within the timeframes specified under federal law including addressing historic backlogs, especially when required to take action on a state or territorial submission made under an independent right or responsibility (e.g., State Implementation Plans under the Clean Air Act);

Specifically calls on U.S. EPA to notify the Governors of all affected states and territories, or their designees, as well as all affected state and territorial environmental agencies, of any citizen suit filed against U.S. EPA that alleges a failure of the federal agency to perform its nondiscretionary duties;

Specifically calls on U.S. EPA to provide state and territorial environmental agencies an opportunity to participate in the negotiation of citizen suit settlement agreements early on and in a meaningful way, timely notice of proposed citizen suit settlement agreements, and an opportunity to confer with U.S. EPA regarding such agreements, all of which is necessary in order to protect the states' and territories' rights and role in implementing federal environmental programs and for the administration of authorized or delegated environmental programs in the most effective and efficient manner;

Specifically calls on U.S. EPA to support or not object to the intervention of state and territorial environmental agencies in citizen suits when the state or territory deems it appropriate and necessary to do so;

Specifically calls on U.S. EPA to actively engage with states to develop implementation strategies or remedies that address the resolutions identified such that program impacts, timelines, and other state level limitations and requirements are accounted for;

Believes that greater transparency of citizen suit settlement agreements is needed for the public to understand the impact of these agreements on the administration of environmental programs;

Affirms the need for the federal government to publish for public review all settlement agreements, and to consider state and territorial comments and seek concurrence of any affected states and territories prior to the finalization of any such agreement; and

Encourages U.S. EPA to thoroughly respond in writing to all state and territorial comments received on proposed citizen suit settlement agreements, including consent decrees.