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Philadelphia, Pennsylvania

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Alexandria, Virginia

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Austin, Texas

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Washington, DC

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St. Paul, Minnesota

Revised March 22, 2021  
Via Zoom Meeting

Revised March 27, 2024  
Austin, Texas

As certified by  
Ben Grumbles  
Executive Director

## **CLARIFICATION OF CERCLA SOVEREIGN IMMUNITY WAIVER FOR FEDERAL FACILITIES AND FEDERAL LANDS**

WHEREAS, current and former federal facilities and federal lands have some of the most pressing environmental problems, such as releases of hazardous substances, the presence of unexploded ordnance, the presence of and/or releases of radioactive materials, abandoned mines, and emerging contaminants; and

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

WHEREAS, the Environmental Council of the States (ECOS) represents states, territories, and the District of Columbia, and throughout this resolution the terms “states” indicates states, territories, and the District of Columbia; and

WHEREAS, ECOS believes the states’ regulatory role at federal facilities and on federal lands should be recognized and that any 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, the experience of many states is that assertions of sovereign immunity and CERCLA lead agency authority have delayed remedial actions at federal facilities and on federal lands, 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 communities, especially disproportionately affected, disadvantaged communities; and

WHEREAS, the 1992 Federal Facilities Compliance Act confirmed the federal government's obligation to comply with all solid and hazardous waste provisions to ensure federal facility compliance with all federal, state, interstate, and local solid and hazardous waste requirements, including penalties and U.S. EPA administrative enforcement orders under the Resource Conservation and Recovery Act; and

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

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

NOW, THEREFORE, BE IT RESOLVED THAT ECOS:

Requests that the Administration revise Executive Order 12580 to clarify that federal facilities and federal lands are subject to applicable or relevant and appropriate state regulations, even when more stringent than existing federal requirements, and are not shielded by sovereign immunity and lead agency authority; and

Encourages the U.S. Congress to act to support the states by implementing specific legislation that will without equivocation acknowledge state authority to oversee and concur with federal agency assessment and remedial decisions related to current, and formerly owned or operated, federal facilities and on federal lands.