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From: Alexandra Dapolito Dunn
Sent: Tue 5/16/2017 12:57:17 PM
Subject: ECOS' Letter on EO 13777
[ECOS Comments on EO 13777.pdf](#)

Hello colleagues:

Wanted you to receive this directly.

Thank you for the opportunity to participate in this important work.

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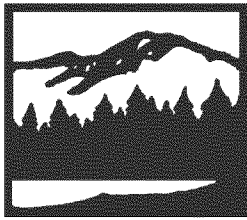
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See my research: <http://ssrn.com/author=1356207>

Save the Date! ECOS' State Environmental Protection (STEP) Meeting, 7/17/17,
Washington, DC, www.ecos.org

May 15, 2017



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Re: *Comments on Executive Order 13777: Enforcing the Regulatory Reform Agenda, 82 Fed. Reg. 17793 (4/13/17), Docket ID: EPA-HQ-OA-2017-0190*

Dear Ms. Dravis:

The Environmental Council of the States (ECOS) is pleased to respond to the U.S. Environmental Protection Agency's (EPA's) request for input on the President's February 24, 2017 *Executive Order 13777: Enforcing the Regulatory Reform Agenda*. As the nonpartisan national association of state and territorial environmental agency leaders, ECOS has a unique opportunity to offer perspective on environmental regulatory reform. We believe the conversations that will come out of this, and related inquiries, have potential to make our system of environmental and public health protection more efficient, effective, and outcomes oriented.

Over the last 45 years, states have become the primary implementers of federal environmental statutes through cooperative federalism – today, states have assumed over 96 percent of the delegable authorities under federal law. States are a critical part of achieving our nation's environmental and public health goals, and carrying out mandated responsibilities in innovative ways that show proven results to the public. As states have daily experiences with the complexity of the federal environmental regulatory system, we are well positioned to offer suggestions for regulatory reform, modernization, and streamlining.

Attached are 19 regulatory reform recommendations to begin this dialogue with you. To prepare this list, ECOS reviewed our existing Resolutions and previous compilations of regulations identified by states as burdensome or less effective than possible. Our recommendations are in three categories:

- Outdated, Unclear, or Burdensome Reporting Requirements
- Opportunities to Modify Requirements to Advance State Flexibility and Authority; and
- Regulations that Hinder Infrastructure Investment.

We are aware that in many states are preparing their own responses to the Executive Order, and that EPA will receive much more extensive, and differing, recommendations.

States are committed to ensuring our nation's system of environmental regulations is modern, efficient, protective of human health and the environment, and that it shows measurable results. We thank you again for seeking our input, and we look forward to continued conversation with you about this important matter.

Regards,

Alexandra Dapolito Dunn
Executive Director & General Counsel
Environmental Council of the States

**ECOS Response to Executive Order 13777:
Enforcing the Regulatory Reform Agenda
May 15, 2017**

Outdated, Unclear, or Burdensome Reporting Requirements

1. Cooperative Agreements and Superfund State Contracts (CERCLA)

ECOS recommends EPA eliminate the reporting requirements outlined in 40 CFR Subpart O, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions. This regulation contains detailed requirements for the content of these reports including an explanation of work accomplished, comparison of the project completed to the project schedule and explanation of any discrepancies, comparison of estimated funds, etc. State staff are already in regular communication with EPA staff on the work being done under these grants and agreements, making these detailed reports unnecessarily burdensome.

2. Total Coliform Rule (SDWA)

ECOS recommends EPA eliminate the option to forgo fecal coliform testing after a total coliform positive sample as outlined in the Total Coliform Rule 141.21(e). This provision is seldom used, if ever, since unlike the situation when the rule was initially written, the most commonly used analytical methods automatically generate an E.coli result along with the initial total coliform result.

3. Consumer Confidence Reports (SDWA)

ECOS recommends EPA consider eliminating the consumer confidence report (CCR) requirement, described in 141.153(d)(4)(i), that mandates only whole numbers to be used for reporting levels and maximum contaminant levels (MCL). This would allow the units in the CCR to correspond to the units used for the MCL and make it easier to reconcile CCR values with actual test results taken by the water system.

4. “Once in, Always in” Policy (CAA)

ECOS recommends EPA provide an exception to the “Once In, Always In” policy provisions that apply major source requirements after a source reduces and maintains its level of hazardous air pollutants (HAPs) emissions below major source thresholds and equivalent to maximum achievable control technology (MACT) if the reduction is made through the use of pollution prevention measures that are permanent and enforceable through permit conditions. The current policy creates no incentive for industry to reduce emissions if they will still be subject to the MACT standard. Revising this policy will promote pollution prevention as envisioned in the 1990 Pollution Prevention Act as well as reduce administrative and reporting burdens.

5. Cross-Media Electronic Reporting Rule (Multi-Media)

ECOS encourages EPA to expedite corrective action to the CrossMedia Electronic Reporting Rule (CROMERR) that would that would make it more accessible to and functional for all users. The current rule requires users to follow complicated and burdensome reporting procedures. The procedures involve challenges associated with password expirations, log-on delay time, and updating secret questions as a double verification steps.

6. Sewage Overflow Regulations (CWA)

ECOS recommends EPA include in any modifications to regulations regarding sewage overflow into the waters of the United States from waste water treatment works, sanitary sewer systems and combined sewer systems the following: a clear definition of “sewage overflow”, a requirement to describe the level of treatment provided to the sewage overflow and to report the overflow in a timely and effective manner, and require only necessary and

realistic monitoring. These modifications would ensure the public health and safety of source waters and prevent any undue reporting burdens.

7. Permit Modification Classification System (RCRA)

ECOS urges EPA to reevaluate the permit modification classification list found at 40 CFR 270.42. As currently set forth, all class 2 modifications require that the facility hold a public meeting and opportunity for comment on the proposed modification. Based on state experiences, the public almost never attends these public meetings on proposed class 2 modifications and the states rarely receive public comments. The meetings end up being a waste of facility and agency time and resources. ECOS believes that many modifications could be assigned a lower classification, making the permit modification process more efficient, timely and responsive to facility needs. Alternatively, EPA could include a provision requiring a public hearing only when the public demands so.

8. Authorization of State Hazardous Waste Programs (RCRA)

ECOS urges EPA to streamline the authorization process stated in 40 CFR 271 and reduce the amount of supporting documents needed, particularly for programs that mirror federal rules. This would eliminate staff and contracting time and expense. Additionally, ECOS urges for the elimination of EPA changes to the MOA that attempt to provide for a greater EPA presence in the state. Removing these changes would confirm that the state is the lead for hazardous waste oversight.

9. Hazardous Waste Rules and Regulations (RCRA)

ECOS recommends EPA revise hazardous waste rules and regulations in 40 CFR 245 Subparts AA, BB and CC to reference the Air Program's emission standards requirements for process vents, tanks, surface impoundments, and containers. The Air Program's standards are more restrictive so additional requirements under Subtitle C are not needed. This would provide consistency between Hazardous Waste and Air programs, eliminate unnecessary duplication, and free up resources for the regulatory agencies and regulated community.

Opportunities to Modify Requirements to Advance State Flexibility & Authority

10. State Assumption of the 404 Program (CWA)

ECOS supports EPA's formation of the National Advisory Council for Environmental Policy and Technology (NACEPT) Assumable Water Subcommittee (Subcommittee) to recommend to EPA clarifications to its regulations that will foster meaningful state assumption of Clean Water Act Section 404 permitting authority as allowed under the law. The U.S. Army Corps of Engineers' (USACE) interpretation of waters retained by USACE articulated in the just published NACEPT report run counter to supporting state assumption.

11. Underground Injection Control Regulations for Class V Wells (SDWA)

ECOS recommends EPA review the underground injection control (UIC) regulations for Class V wells to increase regulatory flexibility for states to implement the Class V program based on state determined priorities. Prior to the promulgation of the federal UIC regulations, some states had already prioritized types of UIC wells that pose the most significant risk to groundwater sources of drinking water. Now, many of the provisions of the federal regulations are duplicative of state programs, particularly the inventory requirement.

12. Disinfection Byproducts Rule (SDWA)

ECOS urges EPA to allow states to reduce the Disinfection Byproducts Rule (DBPR) monitoring requirements for groundwater systems that consistently have very low DBP's. Currently the reduced monitoring for DBPs is

once per 3 years for very small systems and once per year for larger systems. States would like the option of reducing the monitoring to less frequently than every three years where the water quality and treatment are well defined and stable.

13. Maximum Residual Disinfectant Level Reporting (SDWA)

ECOS recommends that EPA allow additional reductions in required reporting, as outlined in 141.134, at state discretion for systems where water quality and treatment are well defined and stable.

14. Lead and Copper Rule (SDWA)

ECOS urges EPA to engage with primacy states on the development of the new Lead and Copper Rule. States have provided the agency with extensive input on how to make a new rule more effective, transparent, and implementable.

15. National Pollutant Discharge Elimination System (CWA)

ECOS recommends that EPA remove barriers to full state programmatic flexibility and operations that are not expressly established in the CWA. Additionally, ECOS suggests the implementation of a National Pollutant Discharge Elimination System (NPDES) electronic reporting rule that provides EPA with only the data needed for program oversight thus limiting the data management burden on the states. The current NPDES electronic reporting rules place a significant burden on states to electronically capture and report hundreds of data fields (~368) reflecting both information collected from regulated facilities and state-generated data reflecting compliance monitoring activities, compliance determinations, and enforcement actions. The “Hanlon Memo”, dated May 10, 2007, is designed to provide a framework for the review of NPDES permits containing compliance schedules for water quality-based effluent limits (WQBELs). The memo lays out when compliance schedules may be included in permits, and the principles applicable to whether a compliance schedule for achieving a WQBEL is consistent with the Clean Water Act and related regulations. The memo and its interpretation result in an overly narrow review of factors relevant to setting the date included in the compliance schedule as to when a permittee must comply with the WQBEL.

16. Underlying Hazardous Constituent Land Disposal Restriction Regulations (RCRA)

ECOS recommends EPA eliminate the requirement in 40 CFR 268.2(i) to address underlying hazardous constituents for simple characteristic hazardous wastes unrelated the characteristic specific hazard. Additionally, ECOS recommends combining the numerous tables in 40 CFR 268.4, 268.42, 268.45, 268.48, and 268.49 with a single toxicity characteristic leaching procedure concentration-based land disposal restriction threshold and clarifying near circular references to other rule sections by identifying referenced requirements. Both recommendations would simplify regulations and reduce confusion on the part of the regulated community.

17. Set-Asides in State and Tribal Assistance Grants (Multi-Media)

ECOS urges EPA to work with Congressional appropriators to eliminate set-asides in STAG funding unless the set-asides are made with state concurrence and support joint priorities. Set-asides of existing funding reduce the ability of states to continue to implement environmental programs in the manner in which they deem appropriate

18. Maintenance Area Monitoring Requirements (CAA)

ECOS recommends that EPA allow states to reduce monitoring in maintenance areas that can demonstrate permanent ambient pollutant levels significantly below the level of the relevant National Ambient Air Quality Standards (NAAQS). In many areas of the country, ambient levels of pollutants have been drastically and

permanently reduced based on improvements in technology, land use changes, and the implementation of State Implementation Plan controls. However, under current rules and guidance documents (September 4, 1992 memo “Procedures for processing requests to redesignate areas to attainment” and 40 C.F.R. part 58) these areas are required to continue to operate monitors throughout the 20 -year maintenance period, even when these monitors demonstrate no threat of NAAQS violation. This imposes a significant cost with no environmental benefit; these are resources that could be better spent understanding pollutants that are a current health concern

Regulations that Hinder Infrastructure Investment

19. Projects Ineligible for Drinking Water State Revolving Fund (SDWA)

According to CFR 35.3520(e)(3), “the following projects are ineligible for assistance from the Drinking Water State Revolving Fund (DWSRF): reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located.” Some states have been prevented from receiving funding for certain projects because the raw water reservoir is on the same property, although miles away, as the treatment plant. ECOS requests EPA consider making these projects eligible for assistance from the DWSRF.