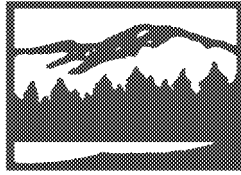


*Cooperative Federalism 2.0:
Filling in the Details of a
Rebooted State-EPA Relationship*



E C O S

A National Webinar Presented by
the Environmental Council of the States

September 26, 2017

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Martha: Welcomes Everybody.

Logistics:

Due to the size of the webinar – all participants are muted.

Invite attendees to type in questions and the moderator will get to the questions as they are able at the conclusion of the webinar.

The Webinar is being recorded. But not the Q&A Portion.

Reminder:

Martha; Slides 2-3.

Henry: Comes on Slide 3:

Reiterates the Administrators Commitment

Alex – Slides 4/5

Todd Slide 6/7

Alex Slide 8/9

Todd Slide 10/11/12

Speakers:



Martha Rudolph, Former ECOS President and Director of Environmental Programs,
Colorado Department of Public Health & Environment

Henry Darwin, Deputy Assistant Administrator & Chief of Operations, U.S. EPA

Todd Parfitt, ECOS President and Director, Wyoming Department of Environmental Quality

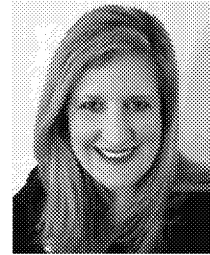
Alexandra Dunn, Executive Director and General Counsel, ECOS



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MARTHA:

I am pleased to be joined by:

Henry Darwin, Deputy Assistant Administrator & Chief of Operations, U.S. EPA

Todd Parfitt, ECOS President and Director, Wyoming Department of Environmental Quality

Alexandra Dunn, Executive Director and General Counsel, ECOS



- ECOS developed **“Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health”** through a consensus-based process among the ECOS members beginning in April 2017 and released in June 2017.
- ECOS stepped into the space created by Administrator Pruitt’s commitment to an increased role for states in carrying out environmental programs as well as the conversation about funding.

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MARTHA:

CF20 is a recasting of state and federal roles makes sense at this time to create and implement environmental protection programs worthy of 21st century challenges, and among other positive changes, would result in:

Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;

With time, reduced partisan wrangling and finger pointing over who’s in charge and who’s to blame when challenges arise or failures occur or who gets credit for successes and results;

Reduced operating costs due to shared services, streamlined operating relationships, best practice sharing and elimination of redundancies across states and divisions of EPA; and

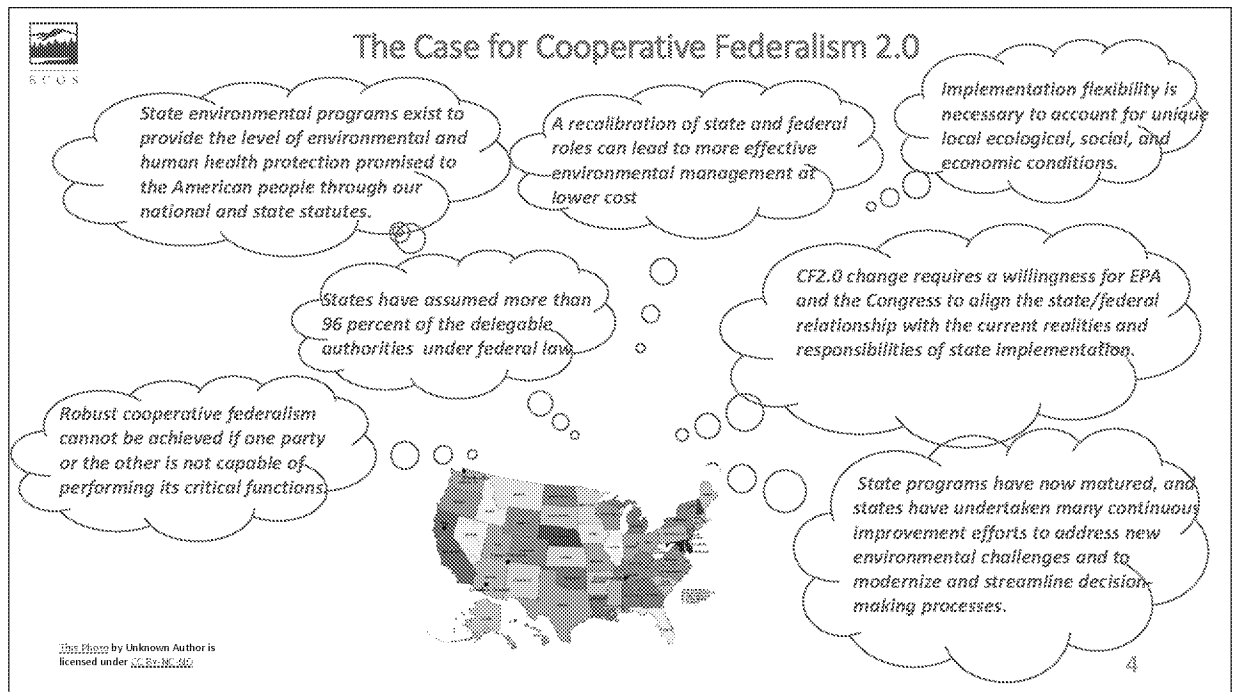
More effective allocation of limited resources by optimizing the state and federal roles and functions built on discerning, and deciding the best fit and legal authority for roles each is best suited to perform.

the full embodiment of the [cooperative federalism] principles clearly means a change from business as usual for most states and requires a willingness for EPA and the Congress to align the state/federal relationship with the current realities and responsibilities of state implementation of national regulatory programs.

Robust Cooperative federalism cannot be achieved if one party or the other is not capable of performing its critical functions. Inadequate implementation by states benefits no one; insufficient or non-timely performance by U.S. EPA hurts everyone.

We have begun earnest dialogue with EPA about how the principles of Cooperative Federalism can be put into practice immediately.

We are joined by Henry Darwin, EPA’s Assistant Deputy Administrator and Chief of Operations, and former Director of the Arizona Department of Environmental Quality. Both Henry and I can only be on the call for the first portion, and as such I would like to turn it over to Henry for a few moments.



ALEX DUNN:

Thanks to Henry and Martha for those great remarks.

I hope that this slide reiterates a bit of what you've heard from them – Why CF now? Why do we think it can be successful?

Over the last 45 years, states have become the primary implementers of these environmental statutes, such that today, states have assumed over 96 percent of the delegable authorities under federal law.

These state programs have now matured and states have undertaken many continuous improvement efforts to address new environmental challenges and to modernize and streamline decision-making processes. Indeed, from the first fledgling state programs to those we implement today, we have always sought out ways to be better and inspire public confidence in our efforts. States are a critical part of achieving our nation's environmental and public health goals, and mandated responsibilities, in an effective and efficient way.

We are collectively experience significant resource constraints and must collectively addresses problems

The public expects a level of service and a clean environment and are not invested in who has the responsibility to do so.

COOPERATIVE FEDERALISM 2.0:

Achieving and Maintaining a Clean Environment and Protecting Public Health

JUNE 2017



Introduction

The Environmental Council of the States (ECOS) is the oldest, nonprofit, nonpartisan association of state and territorial environmental agencies to date. Its purpose is to enhance the capability of state environmental agencies and their leaders to protect and improve human health and the environment nationwide.

The following document was produced through a consensus-based process among the members of ECOS. It is respectfully shared by ECOS with all with a desire to participate in a conversation related to these matters. Please feel free to direct questions or comments to ECOS Executive Director and General Counsel Alexander Stone at alex@ecos.org or 202.266.4929, or to any of the undersigned officers.

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Part I enumerates, as principles, the roles and functions of states and U.S. EPA in cooperative federalism.

Part II documents an initial list of important policy-neutral issues where the application of cooperative federalism could be focused.



ALEX DUNN:

ECOS' Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health is located on our website ecos.org

Part 1 describes the Role and Functions for States and EPA across the entire spectrum of responsibilities

Part 2 Part II documents an initial list of important policy-neutral issues where the application of cooperative federalism could be focused. This part of the document, while still relevant, has been significantly advanced through dialogue between states and EPA.

I'd now like to turn it over to ECOS President and Director of the Wyoming Department of Environmental Quality for an over view of the key principles in Cooperative Federalism 2.0

Cooperative Federalism Principles (1 of 2)

1. States should be engaged, as key partners with the federal government, in the development of national minimum standards
2. States are the preferred implementing entities for national environmental regulatory programs
3. States should have flexibility to determine the best way for their programs to achieve national minimum standards
4. States should engage local governments, regulated entities, tribes, and the public
5. States should be the primary enforcement authority for programs delegated to the states
6. States should gather, maintain, and share information transparently with U.S. EPA



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TODD PARFITT:

Thanks Alex, I want to touch on a few key components of the Principles:

The principles on this and the following slide describe CF principles for the States. The document has corollary EPA principles. I will emphasize some of the interplay between the EPA and State principles.

The foundation of this document is that the U.S. Congress establishes the law, the federal government implements the law through national minimum standards for the media/pollutant in question, and states can seek authorization or delegation to implement the programs needed to achieve these standards. States may develop programs to go beyond these standards if a state chooses to do so.

EPA sets the standards, States implement those standards, and must have flexibility to determine how to implement. States should be engaged, as key partners with the federal government, in the development of national minimum standards to protect human health and the environment, and in any federal requirements regarding implementation of those standards. States bring experience in identifying and understanding evolving science and emerging environmental challenges, and developing effective programmatic options and alternatives. In particular, states have the first-hand knowledge of how to ensure successful implementation of programs designed to meet these standards including experience communicating with the regulated community and the public.

States recognize the need for and the importance of EPA's oversight responsibility. However; EPA's oversight of state's performance should emphasize developing, aligning, and mutually supporting efforts that address environmental challenges successfully instead of routinely reviewing state's individual implementation actions. U.S. EPA should periodically and routinely audit state implementation programs authorized or delegated to achieve national minimum standards (including adequacy of state implementing authorities and resources).

States should be the primary enforcement authority for programs delegated to the states and have the ability access federal enforcement authorities when federal enforcement is needed or appropriate. U.S. EPA should respect the states' role as the primary implementer of national environmental regulatory programs and not review individual state implementation decisions, including enforcement, on a routine or recurring basis unless programmatic audits identify this need or particular circumstances compel federal action. This State/EPA relationship places a premium on clear and

frequent coordination and communicatin.

Cooperative Federalism Principles (2 of 2)

7. States should be encouraged through flexible federal requirements to develop, pursue, and implement state innovations to effectively and efficiently achieve desired environmental outcomes
8. States should work cooperatively with U.S. EPA in development of shared services, implementation toolkits, and other key resources
9. States that choose to implement federal programs should both be adequately funded by the federal government to do so as Congress directed in authorizing statutes

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TODD PARFITT:

One item in the CF20 document is that the U.S. EPA has a role as a convener and facilitator in important pollutant-related interstate issues to efficiently support multi-state solutions and in some cases, to ensure final decision-making. States' willingness to work on these types of issues collectively and collaboratively with each other is also critical for success. Regional collaborations of national significance often need additional assistance (i.e., technical or scientific support, funding, regulatory accountability, and dispute resolution) that USEPA should have the capacity to provide."

The CF2.0 also articulates a clear need and role for EPA in research – both to achieve economies of scale and to either amplify or diffuse state innovations.

On the last item of budgets:

Ensuring adequate capital and operating resources to fully implement federal environmental laws has been and must remain a priority focus. Robust Cooperative federalism cannot be achieved if one party or the other is not capable of performing its critical functions. The federal government should financially support state implementation efforts commensurate with the complexity and breadth of federal requirements. Furthermore, when states implement federally-delegated authorities, they must continue to provide a level of resources commensurate with their responsibilities. In the event there are decreases in the level of support for the operation of federally-delegated programs by either federal or state governments, it is critical that there be a shared understanding, and disclosure to the public, of what work will no longer be performed by either party. Lastly, cuts to NOAA and Dept of Agriculture (e.g., rural development grants for infrastructure), and to a lesser degree the Department of Defense, the Department of the Interior, and Department of Homeland Security also impact the environmental infrastructure of states.

LET ME TURN IT TO ALEX NOW FOR a DISCUSSION OF HOW WE'VE MOVED INTO IMPLEMENTATION OF 2.0.

Where CF2.0 Implies Changes (1 of 3)

- **1-- DELEGATED PROGRAM OVERSIGHT:** Improve program oversight by reducing EPA's day to day oversight and enhancing its programmatic audits. Streamlining will enable increased productive workload sharing between states/EPA.
 - Action: Examine new approaches to achieve day to day oversight and program oversight, redefine roles & responsibilities (if necessary), and look at remaining workflows to seek efficiencies.
- **2-- COMPLIANCE & ENFORCEMENT.** Better align federal enforcement approaches with state compliance assistance efforts and integrate them with programmatic functions. Performance improvement in inspections and enforcement; electronic permitting and data sharing; and measures, metrics, and outcomes development.
 - Action: Assess NEIs; establish expectations about communications and state involvement to better coordinate inspections and enforcement actions; and discuss how outcome measures could more effectively be used to drive changes in roles and responsibilities.

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ALEX DUNN:

THANKS TODD. AS TODD'S NOTED, We have moved from principles to practice.

ECOS has initiated work in 8 areas where CF2.0 means changes in practice.

LET ME TELL YOU ABOUT EACH GROUP.

ALEX WALK THROUGH WHAT IS ON SLIDE FOR 1 AND 2

Where CF2.0 Implies Changes (2 of 3)

- 3--INFRASTRUCTURE. Leverage the states willingness to contribute to the national discussion about water and sewer and other infrastructure priorities; demonstrate how state permitting is modernizing to raise timeliness and transparency of permits.
 - Action: ECOS Infrastructure Workgroup
- 4--BROWNFIELDS AND SUPERFUND. Establish roles and responsibilities around both RODS and remedial design that creates a more proactive and efficient relationship between state and federal regulators, PRPs, and the public.
 - Action: ECOS Brownfields Superfund Workgroup
- 5--RESEARCH: EPA is strong at research; find ways to align EPA research priorities to answer pressing state needs, share research and tool development at EPA.
 - Action: Environmental Research Institute of the States (ERIS)

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ALEX TO CONTINUE ON THESE GROUPS

THEN TURN TO TODD

Where CF2.0 Implies Changes (3 of 3)

- 6--STATE ROLE IN RULEMAKING. Emphasize State role in federal rulemaking especially how implementation issues most effectively enter the rulemaking discussion and for existing rules identify key substantive areas where inefficiencies are embodied in regulations, guidance, and or procedures and work on improving the service delivery/decision-making in those areas (e.g., SIPS, NSR, TMDLs).
 - Action: Collaboration with EPA on Federalism Consultations, Dialogue with WGA, NGA
- 7--LEAN. Performance improvement in inspections and enforcement; electronic permitting and data sharing; and measures, metrics, and outcomes development.
 - Action: Lean Action Board, E-Enterprise for the Environment
- 8—BUDGET. Assure stable STAG funding and increased flexibility in STAG appropriations (e.g., fewer line items) to enable states to become more efficient and effective and to assume greater responsibilities with no increase in federal funding from current levels.
 - Action: Letter from ECOS on FY19 Budget

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TODD:

THANKS ALEX

LET ME BRIEFLY TOUCH ON A FEW ADDITIONAL AREAS.

Of course we're very interested in the role of states in Rulemaking and ensuring meaningful consultation when regulatory options are on the table. Changes in this area will take some time and will be implemented as rulemaking activities go forward.

Lean and business process improvement is an area where states and EPA are working together extensively. In fact, ECOS has an inventory on our website of 700 projects that state environmental agencies have undertaken at their own agencies and EPA has lean coordinators in all 10 regions who are working closely with their states. We believe this is an area where transparency of information will be increased through Lean efforts and service an responsiveness to the regulated community will be enhanced.

Of course all of these changes require an assessment of roles, responsibilities, and resources. 2.0 requires an assessment of how dollars are allocated across the environmental enterprise. This is a conversation with Congressional appropriators and with EPA and the Administration.

You may want to look at ECOS' state budget report here, which shows how state environmental agencies are funded, as well as the letter ECOS recently sent to the Administration on the FY19 budget process which is just beginning. In short, Cooperative Federalism requires a fiscal partnership and we are committed to finding ways to do our work well and efficiently to yield results.

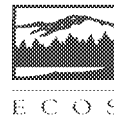
NOW, I'd like to discuss how we can engage all of you in this effort.

Getting Involved and Staying Informed

- ECOS will hold periodic webinars on Cooperative Federalism 2.0
- CF2.0 implementation is a continual improvement exercise, centrally about streamlining and increasing the effectiveness of workflow and relationships between EPA and the states.
- As these efforts lead to changes, permittees, the public, and all stakeholders will see the effects in how decisions are made and in the supporting documentation and procedures.
- Where non-state entities are affected (e.g., Superfund, Brownfields, Infrastructure), U.S. EPA will use its existing tools and forums to gain input and insights.
- Contact us any time!

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Todd

I know we will have a lot of questions but before we move onto to questions I want to emphasize a few points:

Robust Cooperative federalism cannot be achieved if one party or the other is not capable of performing its critical functions. Inadequate implementation by states benefits no one; insufficient or non-timely performance by U.S. EPA hurts everyone. Both states and EPA need to perform as required and expected under a truly effective Cooperative federalism.

State environmental programs exist to provide the level of environmental and human health protection promised to the American people through our national and state statutes. The conversation about how to recalibrate state and federal roles must remain focused on how to best serve our citizens and achieve our missions of environmental and human health protection.

We are convinced a recalibration of state and federal roles can lead to more effective environmental management at lower cost. We believe that Cooperative Federalism 2.0 can build on the foundations of national statutes, learn from the innovations and successes of state programs, and confidently meet the challenge of providing 21st century environmental protection with the best of 21st century methods and relationships.”

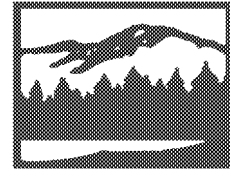
More work is needed for the long haul to bring our vision of cooperative federalism to a fully functioning reality and we are hard at work.

Now I'll turn it to Alex to take some of your questions

Questions?

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Alex handle questions and pass to Todd or she will answer too

Then Todd, thank everyone for participating and we will conclude!