

Cooperative Federalism panel – April 11 10:35-11:20 – Bartle Hall (south of 13th St. in 2215A-C ballroom)

Understanding (Embracing) New Directions for Cooperative Federalism

[R. Walker - 2 minute intro]

One of the more controversial and fascinating public policy issues under the new Trump Administration is the changing relationship between the EPA and State environmental agencies.

We are thrilled to have this excellent panel of Federal, State and local agency leaders here to help us understand (and perhaps embrace) these new directions.

My name is Roger Walker. I am an attorney and also the Executive Director of REGFORM, the Regulatory Environmental Group for Missouri, a NFP comprised of regulated facilities from mining, manufacturing, higher education, chemical companies, utilities, and others. We focus exclusively on Missouri regulatory compliance issues.

I want to make a couple of observations about “Cooperative Federalism” before turning to our panel.

Environmental Law has always been based on cooperative federalism. What we are talking about here is recalibrating that balance. Right or wrong, in the past, EPA has essentially served as the “gorilla in the closet” if regulated entities did NOT cooperate with States -- IF EPA thought state programs were not meeting national minimum emissions standards -- IF EPA believed state-issued permits were lax or inadequate – and finally, IF EPA thought states were failing to provide adequate enforcement.

As State programs have matured, most States (long before the Trump Administration) have wanted more say in the setting of emissions standards, greater flexibility in issuing permits, and more autonomy in the area of enforcement. Cooperative Federalism is all about hitting the proper balance.

But bear in mind, our Founding Fathers were not particularly concerned with creating an efficient federal government. They all represented states and were far more concerned about NOT creating a tyrannical federal government. That’s why we have separate states and federalism. That dynamics changed a lot over the next 200 years but it’s still our base.

Finally, when federal laws were being implemented in the 1970s, the driver for change was the concern that States did NOT have tough enough laws, the financial resources or the political will to make the environmental improvements demanded by the public. That argument still sometimes comes up.

My final thought is that I have attended various Environmental Council of States (ECOS) meetings for several years now. ECOS was created by the National Governors Association and has taken a lead role in the area of “Cooperative Federalism.” I encourage you to go to their website and review this policy document. Interestingly, I have NOT heard any State Agency head express reluctance about creating a more balanced partnership with the EPA, whether they are so-called blue, red, or purple.

[Pause]

All right. Here’s the plan.

Each esteemed panel member will have two minutes to provide an opening comment to set the framework for our conversation.

After that, we will go over a handful of prepared questions and also take yours. We will go in order on the program. First is Jim Gulliford.

JIM GULLIFORD, Regional Administrator, US EPA Region 7 (second time as the Region 7 Administrator) Jim's most recent position has been as the Executive Director of the Soil and Water Conservation Society.

KENNETH E. WAGNER, Senior Advisor to the Administrator for Regional and State Affairs, USEPA (Ken and Administrator Pruitt both worked at the same law firm in Oklahoma and both attended the University of Tulsa College of Law. And both love baseball.

JIM MACY, Director, Nebraska DEQ since 2015. Jim has tremendous experience managing diverse program areas at MDNR before taking the head job at NDEQ. He serves on the executive team at ECOS)

TOM JACOBS, Director, Environmental Programs at the MidAmerica Regional Counsel (MARC) since 2001. MARC serves a nine county area in metro KC and is a NFP association of city and county governments. (Tom has an expertise and passion for promoting sustainable development and ethic of environmental stewardship).

CAROL S. COMER, Director, Missouri DNR (former head of Indiana Dept of Envir. Management under Mike Pence - also served as chief of staff and as General Counsel at IDEM. Very effectively revamping and streamlining MDNR rules under the governor's Red Tape Reduction effort)

What is the biggest challenge in implementing "Cooperative Federalism?"

What does "Cooperative Federalism" mean in the daily operations of regulated facilities and for compliance and enforcement. Essentially, why should our audience care?

Is this a Zero-Sum Game? Can both EPA and the States win? Or does one or the other necessarily lose out?

The ECOS white paper, "Cooperative Federalism 2.0," identifies "periodic audit system" to take the place of federal intervention in delegate states. Do you support this and how would the audit system work in practice?

IF States or Local Governments are expected to play a greater role, how will this be funded? Especially if the Trump Administration reduces overall funding to EPA?

Can you identify or provide examples at this point of how Cooperative Federalism is working in Region 7 or elsewhere?

What would you say to those who argue that “Cooperative Federalism” can lead to a “Race to the Bottom”?

How does big data, new technology, and advanced monitoring play into Cooperative Federalism? Is it a disruption or an opportunity?

Any comments on private dynamics outside of government that is changing the how we view environmental compliance and the regulatory process? ISO 14000, corporate sustainability goals, etc.

Q & A from the audience.

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Other potential thoughts or questions:

E-Enterprise nexus with CF

Do we have increased problems or do we just know more now

Corporate leadership as a driver for environmental decision making regardless of what the regulatory requirements say.

Race to top or race to bottom

Does the “What” of environmental protection matter more than the “How?”

Avoid Duplication of effort

Need to agree on goals

Impact of 24 hour news cycle