

Testimony  
Hearing on “The Role of the States in Protecting the Environment Under Current Law”  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
Friday, February 15, 2013  
by  
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and  
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Main Points

1. State environmental agencies are co-regulators with the U.S. Environmental Protection Agency in a national system of environmental protection.
2. The state agencies and the US EPA play complementary roles in this national system.
3. States now implement 96.5% of the federal programs that can be delegated to the states.
4. State agencies conduct over 90% of the environmental inspections, enforcement, and environmental data collection, and issue a similar amount of all the environmental permits.
5. States supply most of the funding for the implementation of the delegated federal programs – typically 80% of the actual cost.
6. States are concerned about the increasing workload that is being asked of the states coming at a time when federal funding support for states is declining.

Thank you for inviting me here today to talk about the role of state environmental agencies in protecting our nation’s environment. I am representing the Environmental Council of the States (ECOS), whose members are the leaders of the state and territorial environmental protection agencies. I am the current President of ECOS.

Environmental protection is a multi-faceted endeavor and requires the contributions and cooperation of many persons and entities, including the federal government and the states. My comments are primarily directed at the federal programs enacted through legislation by Congress and administered by the United States Environmental Protection Agency (EPA). These include, for example, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the Resource Conservation and Recovery Act. Although there are other such statutes, these are the four that are most integral to our environmental protection efforts.

EPA and the states each play a complementary role in administering these laws. In general, EPA issues rules to implement the provisions of the law and acts as an oversight authority while the states implement the day-to-day actions needed. For example, EPA will issue rules, may set standards (although states sometimes do this), conduct research and assist states with technical matters and with funding. EPA also retains the right to supersede state actions should it find they are in conflict with federal law.

One of the basic interactions between states and EPA is the “delegation” process. “Delegation” is a term I will use to describe the process EPA uses to transfer the operation of all or part of the program implementation to the states. Delegation is sometimes called “primacy” or “assumption.” Delegation occurs once for the entire program and is updated as new rules are issued or are changed. Although states are not required to operate federal programs through delegation, most do.

Nearly every state has taken delegation of nearly every program. As of 2013, ECOS and EPA agree that 100% of the Clean Air Act programs are delegated. All but one state has the Safe Drinking Water program and all but two have the RCRA (hazardous waste) program. There are still four states that do not have delegation for the Clean Water Act discharge permitting program. You can see that the states assumed operation of a federal environmental program in 193 out of the possible 200 cases, or 96.5% of the time.

While operating these programs, the state agencies issue permits, conduct inspections, monitor pollutants, conduct enforcement, and work on many other related matters, such as setting standards for watersheds. These activities constitute the majority of such environmental actions taken each year by any level of government.

States conduct about 96% of the inspections at regulated facilities. Pursuant to ECOS data, states conduct about 90% of the enforcement cases when violations are found.<sup>1</sup> States are the source of about 94% of the data found in EPA's six biggest air, water, and waste databases.<sup>2</sup>

The states also review and issue nearly all of the air, water and waste permits across the nation.

The states' implementation of the delegated programs provides benefits to government, the regulated community and our citizens. States pay for about 80% of the cost of operating these delegated programs, thereby saving the federal government millions of dollars. ECOS has no

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<sup>1</sup> Brown, R. Steven and Valerie Green. *Report to Congress: State Environmental Agency Contributions to Enforcement and Compliance*, (Environmental Council of the States, Washington) 2001.

<sup>2</sup> *Environmental Pollutant Reporting Data in EPA's National Systems: Data Collection by State Agencies*, (U.S. EPA and Environmental Council of the States), 1999.

firm estimates of the potential cost to the federal government to operate these programs, but we are confident it would be significantly greater than the current EPA budget.

The operation of the environmental programs by the states also provides for more efficient and effective regulation of environmental issues. The states, having more familiarity with their regulated industries and being located in closer proximity thereto, generally provide timelier compliance assistance and response to citizen concerns and complaints. In addition, states are generally able to provide a quicker turnaround on permit issuance, renewal and modification.

States contribute to our successes on environmental protection in other key ways. We are often the first to see the impacts of new pollution sources. We often develop innovative ways to address environmental challenges. We can sometimes tailor environmental rules as needed to fit local conditions. States may also implement more stringent rules in cases where such a rule is needed to protect a state resource that is not addressed in national legislation.

Both ECOS and EPA understand that a cooperative relationship is important to the successful implementation of national environmental policies. States are co-regulators with EPA, and implement most of the federal laws, but they also have their own state laws. While states and EPA agree on how to address most matters, our different roles mean that sometimes states and EPA see our mutual challenges somewhat differently. Sometimes these views are driven by concerns that more is being asked of the states without the provision of new resources.

Sometimes states may think Certain EPA actions could cause a fundamental shift in the state-

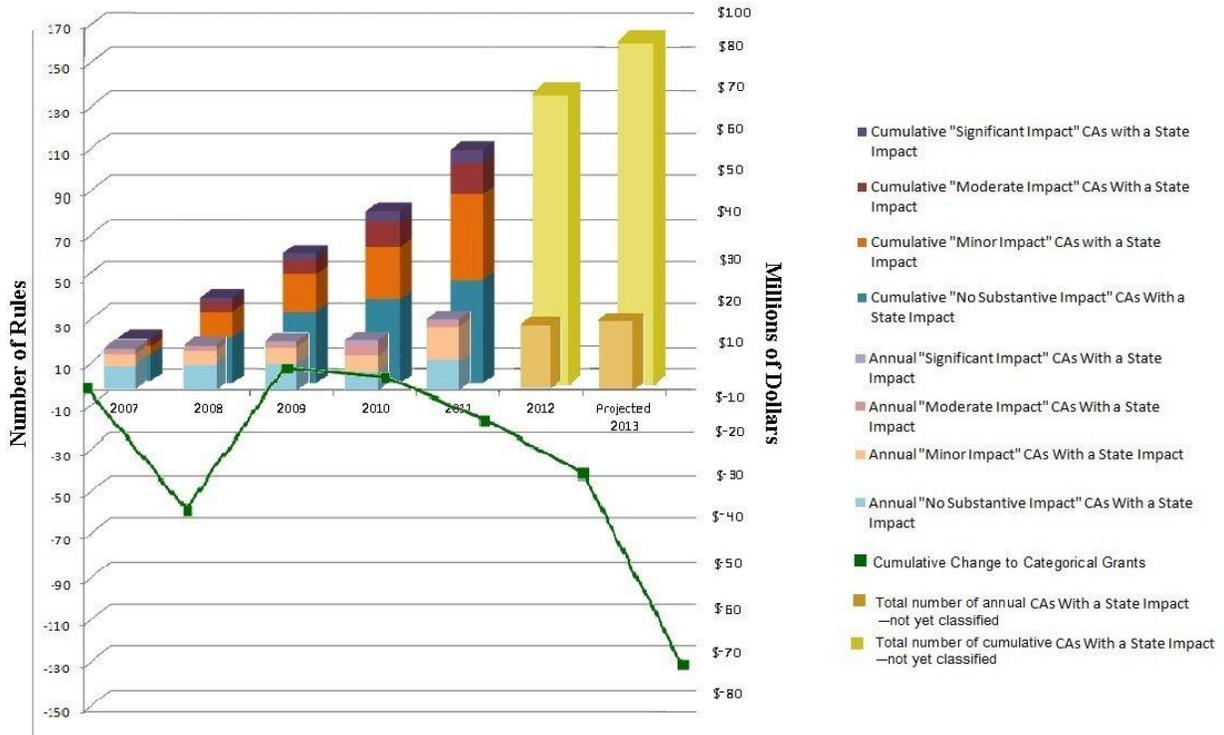
federal relationship. We usually work through these differences in a professional manner and we are usually successful in resolving them.

EPA reports the number of rules it issues and ECOS reviews those regularly. Our review is particularly concerned with any impact the rule may have on state and local government. ECOS also monitors the annual appropriations to “categorical grants,” which is the part of EPA’s budget that assists states in implementing the delegated programs.

I call to your attention the graph entitled “Balancing Workload and Budgets.” This graph was developed by ECOS staff and tracks three things: the number of “completed actions” (i.e., “rules”) that EPA issues each year, the cumulative number of those rules over the past few years, and the budget provided to the states to implement those rules. The first two items concerning the number of rules are further divided into their impact, such as “significant,” “moderate,” or “no substantive impact.”

The number of rules completed each year is the small set of bars. You will see that varies between 20 and 30 per year. Behind the small set of bars is a much taller set that shows the cumulative impact. Beginning with 2007 by the time we reach 2012, we have about 140 new rules. It is important to note that ECOS rarely opposes these rules. We acknowledge that many of them will have a positive impact on human health or the environment, or that they may simply be court-ordered.

## Balancing Workload and Budgets



Now let us turn to the green line on the chart. This line shows the cumulative change that states have seen to the “categorical grant” part of EPA’s budget during the same years. As you can see, some years we lost funds, some years we gained funds. In 2013, with a 5% cut coming from sequestration we seem likely to take the biggest single year cut in recent memory. As a result, states find themselves in 2013 with a lot more rules, and the possibility of a lot less money to implement them. States are very unsure how much longer these two trends can continue before the core environmental programs in each state begin to significantly suffer.

In conclusion, the state environmental agencies are co-regulators with the U.S. Environmental Protection Agency. Both agencies are key to our joint mission to protect human health and the

environment. I hope this information has been helpful in understanding the vital role the states play in our nation's environmental protection efforts.