



# NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

## ***Environmental Federalism Policy Directive***

### ***NCSL Natural Resources and Infrastructure Standing Committee***

The National Conference of State Legislatures (NCSL) urges the federal government to renew its commitment to the state-federal partnership for environmental protection.

State governments, acting in partnership with the federal government, play an indispensable role in our mutual effort to protect natural resources and combat environmental degradation and pollution. State implementation of federal law is the cornerstone of our current system of environmental protection. States are particularly dependent upon federal pollution control laws to address the interstate migration and affects of pollutants. Given the increasing trend of delegating more authority to the states, it is essential that the federal government not abandon its commitment to uniform minimum federal standards, the state-federal partnership and the very laws and agencies that guarantee the success of our partnership.

In furtherance of the above, the following principles should guide NCSL's federal lobbying efforts with respect to the state-federal environmental partnership:

- NCSL supports the prevention of pollution at its source and believes that federal legislation and regulation, through delegated authority to the states, should encourage the implementation of activities designed to minimize the generation of hazardous pollution by regulated entities.

- NCSL further supports federal funding of pollution prevention research and development, training, technical assistance, and regulatory guidance for states.
- The present level of commitment and funding for natural resource and environmental protection efforts should be enhanced; specifically, the federal government should prevent efforts to further erode its commitment to provide technical support, research and financial assistance to states and avoid further cost shifts to the states.
- The federal government should provide funding to the states in the form of block grants that provide for maximum state flexibility to use federal monies in the manner which they deem proper and in a manner which is consistent with their intended purpose.
- Environmental protection should be based on a holistic comprehensive, flexible and integrated program that addresses environmental issues, the nation's broader economic prosperity, and policies that ensure long-term energy affordability & reliability.
- Uniform minimum federal standards for environmental protection should be preserved and strengthened.
- Statutory authority for states to enact state environmental standards that are more stringent than their minimum federal counterparts should be maintained and renewed.
- Within the framework of uniform minimum federal standards, states should have maximum flexibility in devising approaches and methods for obtaining compliance with such standards. The federal government should adopt performance-based standards which prescribe the end to be accomplished and leave the means of obtaining the end up to individual states. In return for this new level of autonomy, the federal government should adopt a system of performance audits and objectively quantifiable benchmarks that would allow the federal government to certify state performance results in meeting uniform minimum federal standards.
- Implementation schedules established under the framework of uniform minimal federal standards should ensure that the time to deploy emissions control technology reflects normal construction industry experience, technology availability and practices that maximize order and efficiency to avoid wasteful financial expenditures and any risks to energy reliability.

- Within this framework, states should have the flexibility to work with utilities to coordinate the closure and retrofitting of existing power generation stations in a manner that will ensure the continued supply of electricity and that will allow power generators to upgrade their facilities in a manner that provides reasonable cost while attaining environmental compliance. State flexibility should allow for regulatory options for units that are necessary for grid reliability, that commit to retire or repower and establishing interim progress standards that ensure generation units meet EPA regulations in an orderly, cost-effective manner.
- There should be consistent, uniform and vigorous federal enforcement of environmental laws to deter non-compliant behavior and to reward those who are acting in compliance with such laws. The federal government should continue its present role of overseeing the efficacy of state efforts to enforce uniform minimal federal environmental protection standards.
- In light of the Supreme Court rulings in *Seminole Tribe of Florida v. Florida* and *Alden v. Maine*, which suggest that citizens will no longer be able to sue states in federal court for violations of federal environmental protection laws, the federal government needs to allocate adequate resources to ensure compliance among the states.
- Cost-benefit analysis should be performed in environmental decision making. Sound public policy decision making demands that benefits should be proportionate to costs, after factoring in the totality of the circumstances. However, cost-benefit analysis should not be the only determinative factor in any environmental decision making process. Rather, such an analysis should be one of the many tools that inform decision makers in formulating sound public policy. In the face of uncertainty in devising analytical methods, any default assumptions that are employed should favor enhanced environmental protection.
- In order to finance environmental protection efforts, Congress should create funding mechanisms that consistently generate revenue solely for such uses. All monies from such funds should be fully appropriated for their intended uses.

- NCSL supports a citizen's right to access public information. NCSL supports "right-to-know" laws and other statutory and regulatory mechanisms that readily provide public access to public information while acknowledging the need to balance this right with security concerns relating to the distribution of sensitive material such as water security information regarding water infrastructure and sources of supply.
- NCSL supports the preservation of state authority to enforce chemical security standards that are more stringent than those established by the federal government; finally.
- NCSL opposes any attempt to preempt or circumvent the authority of state courts and local administrative bodies. Proposed federal legislation that would centralize decision-making in the Federal courts for compensation for land use and other regulatory actions represents a major threat to our Constitutional system of federalism. Improving the efficiency of the state and local judicial process is an issue for state legislatures, not Congress. Land use and regulatory policy must remain a primary responsibility of the states. The authority of state courts must be preserved.
- In acknowledgement of the unique needs and concerns of the arctic ecosystem that is undergoing rapid environmental change and extensive exploration for natural resources, the NCSL urges ratification of the United Nations (UN) Convention on the Law of the Sea, negotiated in 1982, and of the Treaty on Persistent Organic Pollutants, adopted by the U.S. in 2001 but never ratified.
- NCSL believes federal environmental health regulations require more and better data about the unique exposure patterns and sensitivities of children who are uniquely vulnerable to environmental exposures because they are in a dynamic state of growth, with many vital systems not fully developed upon birth.
- NCSL supports consideration of the sensitivity of children to environmental contamination in all federal environmental policy, legislation, and regulation.
- NCSL supports federal funding for health research on the effects of exposure of children to environmental toxicants, and consistent reporting and tracking of birth defects, cancer, and other relevant diseases in children.