

Cooperative Federalism 2.0

National Association of Clean Air Agencies
Seattle, Washington
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- ECOS produced **“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 of this year.
- Stepped into the space created by the federal budget proposal and Administrator Pruitt’s commitment to an increased role for states in carrying out environmental programs

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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.

COOPERATIVE FEDERALISM 2.0:

Achieving and Maintaining a Clean Environment and Protecting Public Health

JUNE 2017



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Introduction

The Environmental Council of the States (ECOS) is the national nonprofit, nonpartisan association of state and territorial environmental agency leaders. Its purpose is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of our nation.

The following document was produced through a consensus-based process among the members of ECOS. It is respectfully shared by ECOS with all who 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 Alexandra Dunn at adunn@ecos.org or 202.266.4929, or to any of the undersigned officers.

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Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health

State environmental programs exist to provide environmental and human health protection promised to the American people through our national and state statutes.



A recalibration of state and federal roles can lead to more effective environmental management at lower cost – a call for a Cooperative Federalism 2.0.



Cooperative Federalism 2.0 means a change from business as usual and requires a willingness for U.S. EPA and the Congress to align the state/federal relationship with the current realities and responsibilities of state implementation.



Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health

State environmental programs exist to provide environmental and human health protection promised to the American people through our national and state statutes.

1. States have assumed more than 96 percent of the delegable authorities under federal law.

2. Healthy and vibrant communities and economies rely upon both effective environmental protection and resilient economic growth.

3. States believe that implementation flexibility is necessary to account for unique local ecological, social, and economic conditions.



Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health

1. States are willing and eager to engage in this important dialogue.

2. 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.

3. States have numerous examples of what works and what doesn't work.

A recalibration of state and federal roles can lead to more effective environmental management at lower cost – a call for a Cooperative Federalism 2.0.



Cooperative Federalism 2.0: Achieving and Maintaining a Clean Environment and Protecting Public Health

1. An important dialogue to recalibrate state and federal roles and responsibilities must occur and should precede and inform a conversation about budget.
2. Robust cooperative federalism cannot be achieved if one party or the other is not capable of performing its critical functions.
3. Resources are critical to achieving the capability of each party being capable. There is no standard way that states fund their operations.

Cooperative Federalism 2.0 means a change from business as usual and requires a willingness for U.S. EPA and the Congress to align the state/federal relationship with the current realities and responsibilities of state implementation.



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

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



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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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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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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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.
- Contact us any time!

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