



THE  
ENVIRONMENTAL  
COUNCIL OF  
THE STATES

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Executive Director, Oklahoma  
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PAST PRESIDENT

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R. Steven Brown  
Executive Director

September 27, 2005

The Honorable Joe Barton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable John D. Dingell  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives  
2322 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Barton and Representative Dingell:

The Environmental Council of the States\* (ECOS) is writing about the "Gasoline for America's Security Act of 2005."

We appreciate the House's desire to address energy infrastructure deficiencies made clear by the recent hurricanes. We offer our comments in hope of improving the solutions to those problems.

Our comments focus on two primary matters: changes in permitting authorities and changes in the Clean Air Act.

It is important to note that States are co-regulators and partners with the federal government in protecting the environment, providing for more than two thirds of the funding. States implement most of the nation's major environmental laws and operate their own innovative programs. The biggest load is carried by the States, which are responsible for 90% of the enforcement. States also collect 94% of environmental data, manage 75% of the delegated programs including all of the air permitting programs, and issue most of the environmental permits.

The Act offers assistance from the U.S. Department of Energy upon request of a Governor. We read "assistance" to mean that the act shifts responsibility of environmental decision making from the States to US DOE. Refineries are not like pipelines, electric generation plants and transmission lines – they generally do not require FERC-type approvals as the bill implies. Second, the Act places the Secretary in control of the timetable for permit review – and the Governor appears to be liable in federal court if the State cannot meet the deadlines the Secretary sets, which may prove to be arbitrary. Third, it is unclear to us why a distinction is made between non-federal and federal lands. The Act calls on the President, not the Governor, to authorize the Secretary's permitting coordination authority on federal lands such as former military bases, even though the federal land is still within the State's borders and still requires the same permits as a facility not on federal land. Finally, the federal agencies most likely to affect the State's issuance of air, water and waste permits are the U.S. Environmental Protection Agency and the Department of Interior's Bureau of Fish and Wildlife – not US DOE.

Our second point has to do with changes to the Clean Air Act. While time does not permit a point-by-point review, we note that the recent hurricanes have placed us in a crisis mode with respect to refinery production. But eventually the crisis will pass. However the changes to the Clean Air Act cover more than just refinery capacity, and there is no provision for the changes to end after the crisis has passed.

While expedited siting and permitting of new facilities may be desirable, such facilities must ensure for the long-term protection of human health and the environment. Such protections are best assured by the state governments most knowledgeable about and responsive to local needs and conditions.

Modifications to new source review rules, whether as rule making or as legislation should be informed by the state entities that have managed these sources and understand the range of practical, economic methodologies to improve air emissions.

States have worked long and hard with their regulated entities to plan for timely necessary actions to achieve “attainment” with health based air quality standards. We should not allow backsliding on these long-term programs and goals unless and to the extent necessary to overcome what will hopefully be a short-term, though significant, energy need.

It is critical that States’ ability to issue permits and to provide vital environmental protection services are not hindered.

Please contact me at 202-624-3667 should you have any questions. Thank you for considering our position.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Steven Brown". The signature is fluid and cursive, with the first name "R. Steven" and the last name "Brown" clearly distinguishable.

R. Steven Brown  
Executive Director

*\*ECOS is the national, non-profit, non-partisan association representing the state and territorial environmental commissioners whose mission is to serve as a champion for States; to provide a clearinghouse of information for state environmental commissioners; to promote coordination in environmental management; and to articulate to Congress, federal agencies and the public state positions on environmental issues.*