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Memorandum

To: ECOS Members

From: Todd Parfitt, President, and John Linc Stine, Past President

Date: May 4, 2018

Re: Cooperative Federalism 2.0: One Year of Progress and 2018 Aspirations

This memorandum to the Environmental Council of the States (ECOS) membership documents the progress we've made in advancing Cooperative Federalism 2.0 (CF2.0) over the past year and what we aspire to accomplish in the coming months. As we advance our ideas and engage constructively among ourselves and with the U.S. Environmental Protection Agency (U.S. EPA), we want all members to be up to speed about where we are going and the progress we have made so far.

ECOS formally launched CF2.0 in April 2017. This historic action culminated many years of state-driven efforts to build and enhance the capacity and performance of state environmental agencies and to advance the state-federal relationship to deliver human health and environmental protection in the United States. Healthy and vibrant communities and economies rely upon on effective environmental and public health protection. Based on the U.S. Congress' statutory foundation, states are the frontline and primary implementer of national environmental regulatory programs. Today, state environmental agencies assume implementation responsibility of more than 90% of federally established/state-authorized environmental programs. These cumulative state implementation actions are the backbone of our nation's environmental protection system today.

Striving for a state-federal relationship that empowers each party to do what we each do best serves the public and environment best. The current relationship between U.S. EPA and state environmental agencies doesn't consistently and effectively engage nor fully leverage the capability and expertise of the implementing state environmental agencies or of U.S. EPA. Underpinning the aspirations of CF2.0 is a belief that a strong U.S. EPA and empowered state environmental agencies should and can coexist while improving the performance of both parties. Inherent in CF2.0 is a belief that national standards are essential to achieving scientifically established environmental protection *and* that local conditions, knowledge, and expertise play an important role in successfully implementing and enforcing these national standards. CF2.0 remains a state-driven priority for more effective environmental protection and greater administrative efficiency through a fundamental realignment of program implementation responsibilities between states and the federal government. We also recognize that U.S. EPA through its FY 2018-2022 Strategic Plan has embraced cooperative federalism broadly and through proposed areas of focus.

The premise of CF2.0 has proven timely since its launch last April and is spurring significant discussion and debate on its aims and methods. ECOS has devoted significant time at its semiannual meetings to CF2.0 and has hosted well-attended webinars to broadly introduce CF2.0, and individual state leaders have taken the CF2.0 message far and wide to diverse interests critical to its acceptance and success. Importantly, U.S. EPA's embrace of cooperative federalism as a key strategy in its recent Strategic Plan is further evidence of the opportunity to make substantial progress. Seizing on this momentum, states have begun structured and serious discussions on the appropriate roles and responsibilities for states with U.S. EPA in the following areas:

Federal Oversight of State-Delegated Programs. The critical issues in this important component of the nation’s environmental protection framework include optimizing the ‘standard of review’ of delegated programs; codifying the model and principles in applying that standard of review in periodic programmatic audits and other critical interactions; establishing the workflows and processes to support the standard of review and implementation model including timely review and decisions; and ensuring consistent implementation across the country.

Enforcement and Compliance Assurance. Achieving the right balance of federal and state efforts in this essential area of performance is dependent upon establishing principles that define expectations for states and U.S. EPA on individual enforcement actions and developing methods to ascertain the rates of overall compliance with standards and obligations. Relying on these principles, states and U.S. EPA will: seek to establish best practices; strive to ensure consistent and transparent behavior across the U.S. EPA regions; and look for opportunities to minimize, or in some cases eliminate, the need for direct action or intervention. This effort also entails exploring how to engage states earlier and more meaningfully in development and implementation of U.S. EPA’s National Enforcement Initiatives so that these national initiatives both reflect state priorities and focus federal efforts on those circumstances in which a federal presence is most productive.

Permitting. One of the areas of shared responsibility and accountability between U.S. EPA and states is permitting the regulated community to perform in accordance with established standards and obligations. For those program areas where states have the permitting lead, which accounts for the vast majority of permits issued in the United States, significant interaction at the programmatic level may be required by states and U.S. EPA, and less so at the permit-by-permit level. Improving the performance and efficiency of permitting systems is a priority of both state agencies and U.S. EPA. States and U.S. EPA are applying Lean process improvement reform efforts, and through E-Enterprise for the Environment, have begun developing a menu of metrics to measure the efficiency and effectiveness of permitting systems for states and U.S. EPA to use. For 2018, the most important work in this area is for states and U.S. EPA to establish how continuous improvement reform efforts may modernize permitting practices and increase timely review and decisions for those programs with shared responsibility that embodies the principles of CF2.0.

Superfund. As interest in Superfund revitalization gains momentum, ECOS is collaborating with U.S. EPA and the Association of State and Territorial Solid Waste Management Officials via the ECOS Superfund Workgroup to enhance and accelerate cleanups. The workgroup aims to strengthen communication and coordination to encourage efficiencies and promote progress under the Comprehensive Environmental Response, Compensation, and Liability Act. State participants have explored solutions to mitigate administrative, technical, and financial barriers to site cleanup and reuse. States regularly provide feedback on federal implementation of the recommendations of the EPA Superfund Task Force, working through concerns and proposing solutions such as involving ECOS affiliate Interstate Technology & Regulatory Council to expedite cleanups. In discussions with U.S. EPA, the workgroup has secured an agency commitment to consult first with states on forthcoming proposed revisions to U.S. EPA Superfund-related groundwater policies. In addition, ECOS has provided state experts to participate in U.S. EPA Superfund Lean Kaizen workshops and, at its Spring Meeting, showcased Superfund successes at the state, federal, and local levels.

Research. Cooperative Federalism 2.0 identifies the need for U.S. EPA to maintain robust scientific research and data-gathering capacity to inform regulatory standards, help respond to complex environmental challenges, address contaminants of emerging concern, incorporate modern technologies, and determine effective alternative remediation strategies. Through Environmental Research Institute of the States (ERIS) work with U.S. EPA’s Office of Research and Development (ORD), states have learned that ORD has conducted valuable research and developed many useful tools but that these have not been shared well with states. To begin to develop conduits for information from ORD to the states, a State Science Contacts network has been developed with staff from states identified to share information they learn from ORD with appropriate parts of their agency. ERIS and ORD also expect to begin work on a “clearinghouse” of environmental research to better provide access to ORD and other environmental research for states. Such a shared service has the potential to greatly increase direct state access to U.S. EPA’s scientific work. Additionally, the state science contacts will be used to assist with the third biannual survey of state research needs in late FY18. This survey is becoming a significant opportunity for states to provide input to ORD on their upcoming research. Under the CF2.0 approach to addressing contaminants of emerging concern, EPA has

established a workgroup with states to discuss their research and prepare for release of new toxicity information and values for additional per and polyfluoroalkyl substances. This workgroup may establish a new partnership between U.S. EPA and the states around how toxicity and regulatory information on newly emerging contaminants of concern are addressed.

Executive Leadership. Cooperative Federalism 2.0 calls for and absolutely requires a functional and productive relationship between states and U.S. EPA. Close coordination, effective consultation, identification of shared and individual environmental priorities, routine and rigorous review of performance by both parties, timely resolution of disagreements, and effective problem-solving all require strong working relationships based on trust, transparency, and mutual commitment to the principles of CF2.0. States, through ECOS, are engaging U.S. EPA headquarters leadership on a regular basis about CF2.0 and are beginning to implement it successfully for both parties. In another important step, ECOS leadership and most of the newly appointed U.S. EPA Regional Administrators met early this year to begin this important conversation from a state-regional point of view; to introduce CF2.0 to these newly appointed federal leaders from the states' perspective; to explore how Regional Administrators can quickly engage in the rapidly moving work streams CF2.0 has spawned; and to develop a shared vision of what a consistent and productive state leader/Regional Administrator relationship entails, including how issues should be handled if they involve U.S. EPA headquarters. These aspects of the state-federal relationship are essential to getting off on the right foot with the political leadership of U.S. EPA as CF2.0 moves forward.

ECOS launched the Cooperative Federalism 2.0 campaign just one year ago. Since then, ECOS has made significant headway in socializing the principles of Cooperative Federalism 2.0, framing key actions needed to realize its potential, and establishing substantive dialogue with U.S. EPA in important priority areas. However, the work done to date does not yet signal success nor imply completion. Fully realizing CF2.0 requires changes in policies and processes/workflows, and the development and implementation of tools to comprehensively shift the way U.S. EPA and states interact so that day-to-day interactions embody CF2.0. This will take time to fully develop and implement. And even as these are indeed critical for success, CF2.0 is fundamentally rooted in the recognition of the importance and competence of every state agency to assure effective on-the-ground environmental and public health protection. This recognition of states' important role and competence must become the guiding light in developing the culture and relationships within state environmental agencies and U.S. EPA, and with each other.

So, what does success look like? Successful implementation of CF2.0 occurs when flexibility is built in during program development rather than as a result of ad hoc procedures developed after the fact in program implementation. Success occurs when states and U.S. EPA avoid problems due to earlier and more meaningful engagement and consultation based on mutual respect. Success occurs when the changes resulting from CF2.0 extend beyond current administrations and are embodied by the people, processes, workflows, and tools of state environmental agencies and of U.S. EPA. Ultimately, success will be determined and measured by safeguarding a healthy environment that supports and augments a vibrant economy.

CF2.0 explicitly embraces these high bars for success. CF2.0 will require consistent levels of trust and action between states and U.S. EPA that can be transparently and accountably demonstrated to the American people. Overall, we will need to prove that our shared environmental goals are in the hands of good stewards and effective regulators. Through CF2.0 we can build on the foundations of national statutes, learn from the innovations and best practices of state programs, and confidently meet the challenge of providing 21st century environmental protection with the best of 21st century methods and relationships.

2018 is the year in which ECOS will diligently pursue CF2.0 to ensure that our aspirations bear this fruit. Each state leader will be critical to this effort as we move from the CF2.0 principles, which have been widely embraced, to the policy workgroups, which are ongoing now, to the changes in the day-to-day interactions which we hope to see in 2018. Changing the way we do our work to ensure greater environmental protection and enhanced administrative efficiency will ultimately rest upon the commitment of both the state and U.S. EPA leaders. State leadership that is laser-focused on changing the way our crucial business gets done, consistent with CF2.0, will be essential, and our collective willingness to do so remains our greatest strength.