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***States: No Longer the “Silent Partner”
in Environmental Protection***

The States Protect the Environment

The role of State governments in environmental protection has increased dramatically over the last ten years.

by R. Steven Brown

Executive Director's note: Some reviewers of an early draft of this article claimed to see in it an attack on funding for the Environmental Protection Agency, or an effort to increase State prominence in environmental protection by denigrating federal activities. We believe the article speaks for itself and that neither interpretation can survive a close reading of the article. However, for the record, our intention is to show the growth of State environmental protection activities and the current extent of those activities. We believe the extent of State activity revealed in these statistics is not generally known, and we believe that telling this story on behalf of the States is a fundamental responsibility of our association.

—Robert E. Roberts, Executive Director

A remarkable, and largely unnoticed, change in environmental protection has occurred over the past five to 10 years. The States have become the primary environmental protection agencies across the nation. Much has been written about EPA's role, or about State-EPA partnerships. This article seeks to tell the States' story.

Over the past year with help from other State-based organizations (many of which have articles in this issue), ECOS compiled a set of data that shows a remarkable maturation of the policy-making and regulatory capabilities of the State environmental agencies. This article presents those data in five categories: delegation, fiscal, enforcement, information gathering and policy-making.

Delegation

Congress intended for the States to administer most federal environmental programs.¹ Generally, a State petitions the EPA to administer one of the delegable programs. This process is commonly known as "delegation," or more legally as "assumption," or "primacy." The governor files a petition after the legislature has passed authorizing legislation that must be at least as stringent as the federal standard and after the State

¹ ECOS has prepared two papers detailing the legislative history of the Clean Air Act and the Clean Water Act. We expect to publish these in early summer 1999.

has shown that it has adequate resources.

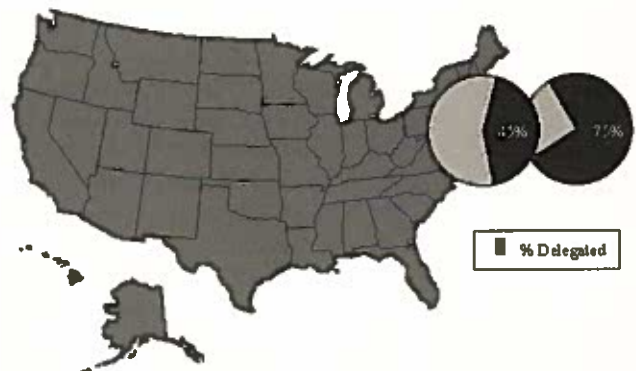
Most federal programs are actually delegated in a piecemeal fashion, however. For example, a State may have created a program for new source performance standards, but may not have everything in place yet to run the hazardous air pollutant part of the Clean Air Act. Such a system

aids the States in that it allows a State to proceed incrementally, but it complicates the discussion about what is delegated and

which level of government runs which program.

Nevertheless, it has become clear that the delegation of environmental programs to the States has increased dramatically in the past five years. In the summer of 1998, ECOS completed a delegation study for 22 of the programs from most of the major delegable federal acts.² This study showed the number of States with delegated programs for the following:

Delegated Programs Increased from 1993 to 1998



- ◆ Clean Air Act: 42 States³
- ◆ Clean Water Act: 34 States
- ◆ Waste (RCRA): 37 States
- ◆ Drinking Water: 39 States
- ◆ Pesticides (FIFRA): 39 States

The overall delegation rate to the States in mid-1998 was about 65 percent, and about 74 percent

² Currently presented on the ECOS web page at: <http://www.sso.org/ecos/states.htm>

³ These are averages for the delegable programs under each Act for which ECOS has information.

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for the major environmental programs. This means, for example, that of the portions of these Acts that *could* be delegated, about 74% *had* been delegated.

Contrast this delegation rate to that of 1993, when EPA had delegated 39.5 percent of 22 environmental programs to the 50 States. By 1998, EPA had delegated 757 of 1,166 possible federal environmental programs to 53 States and territories, nearly a 75 percent increase from five years prior. States also operate many of their own, non-delegated environmental programs. Some of the rapid increase was attributable to programs like the wellhead protection program of the Safe Drinking Water Act (from 8 to 36 States) and the New Source Review program of the Clean Air Act (from 15 to 42 States).

Fiscal

With such an increase in delegated programs, one might expect a parallel increase in both EPA and State funding to support the new programs. Starting with fiscal 1986, the Council of State Governments periodically researched each State's budget to compile total State spending for environmental protection and natural resources for each State. Data exists for 1986, 1988, 1991, 1994 and 1996. This State spending can be coupled with EPA and US Office of Management and Budget data on funds supplied to the States to present a picture of the source of environmental protection funds in the States.

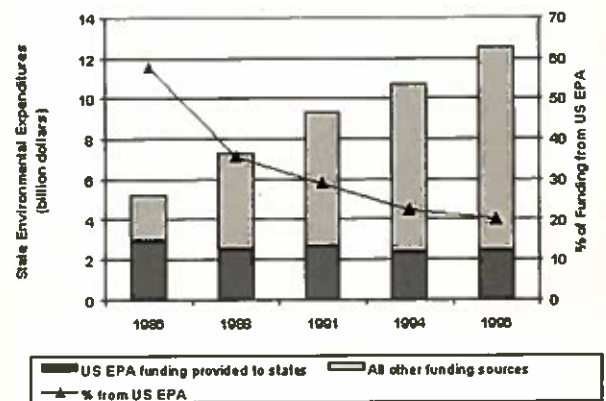
In 1986 States spent about \$5.2 billion on environmental protection and natural resources.⁴ The EPA provided just over \$3 billion of that, almost 58 percent.⁵ But by fiscal 1996, a very different story had emerged. States spent about \$12.5 bil-

In 1996 the States spent nearly twice as much (\$12.5 billion) on environment/natural resources as the entire EPA budget (\$6.5 billion).

lion,⁶ with the EPA providing about \$2.5 billion, or about 20 percent.⁷ During the 10-year period from 1986 to 1996, State spending on the environment increased about 140 percent, while total EPA funding to the States decreased about 17 percent.⁸ Most of the decline is attributable to reductions in water infrastructure support programs. In 1996 the States spent nearly twice as much (\$12.5 billion) on environment/natural resources as the entire EPA budget (\$6.5 billion).

It should come as no surprise that the States have also increased the size of their environmental staff over this 10-year period. In 1986 the State agencies expended about 38,000 work-years, but by 1996 that effort had increased to about 61,000 work-years, almost a 60 percent increase.

Trends in State Environmental/Natural Resource Funding



Enforcement

States are the primary enforcers of environmental law for delegated programs. The States also

⁴ R. Steven Brown, et al., *The Resource Guide to State Environmental Protection*. Lexington, Kentucky: The Council of State Governments, 1988. Page 93.

⁵ ECOS calculation, based on US Office of Management and Budget data. Some funding is also provided to the State environment/natural resource agencies by other federal agencies, but ECOS' preliminary research indicates that most federal funds are from EPA.

⁶ Karen Marshall, et al. *The Resource Guide to State Environmental Protection Fifth Edition*. Lexington, Kentucky: The Council of State Governments, 1999. p. 32

⁷ As per footnote 4.

⁸ EPA believes it has "held the States harmless" by protecting the State categorical grant budgets during times of budget cuts. EPA has stated to ECOS that these grants are about \$880 million per year. ECOS has used OMB numbers (which are higher) to reflect total EPA funding provided to the States for any purpose. Thus, total EPA funding to States has decreased, while categorical grants are reported to have increased over the past 10 years.

enforce many State environmental laws that are not related to the national laws. EPA tracks and reports the enforcement actions that it and the States take each year, but only for delegated programs—enforcement actions that the State takes on non-delegated programs are not counted. Furthermore, EPA may not count some State enforcement actions for a variety of other reasons, such as differences in data management. Even with those limitations, over the past 10 years the States have consistently conducted about 75 percent of the enforcement actions⁹ taken, with EPA doing the rest¹⁰. In recent years, the State workload has risen to 80 percent of the actions.¹¹

Many States have also emphasized “compliance” over “enforcement.” Methodologies for counting compliance assistance activities appear to still be inadequate and are a matter of current research by EPA and the States. As a result, it appears EPA and many States themselves do not track compliance assistance efforts that the States undertake. Unfortunately, this means that States and EPA may not be able to count some of the most important “enforcement actions” that States undertake. While EPA data shows that States perform most of the administrative enforcement actions, we know the number to be even higher because compliance assistance activities are not part of the enforcement action count.

Information

One of the most visible “products” of any environmental protection agency, State or federal, is information. Each State agency gathers, compiles, houses and analyzes a great deal of environmen-

⁹ Administrative actions and judicial referrals.

¹⁰ US EPA, Office of Enforcement and Compliance Assurance; February 18, 1998, web page: <http://es.epa.gov/oeca/96acomp/appa6.html>.

¹¹ EPA has told ECOS that it is more likely to spend its time on large, complex enforcement cases, which it believes have a significant qualitative impact, if not a quantitative one.

tal information, both for delegated programs and for other environmental purposes important to them. When a State is delegated a program, it usually agrees to forward key information to EPA to one or more of 13 national environmental databases that EPA maintains. Six of these national databases house environmental quality data (the others have toxicology information, or information about regulated facilities). In the summer of 1999, ECOS and EPA expect to jointly publish a report that describes

the source of the data in these six national databases.¹² For example:

- ♦ Air data: >99% of EPA’s data comes from States¹³
- ♦ Water data: ~91% of EPA’s data comes from States¹⁴
- ♦ Hazardous waste data: >92% of EPA’s data waste data comes from States¹⁵

That is, over 94 percent of all the environmental quality data in EPA’s national databases was first collected and compiled by State environmental agencies. The States and EPA share this data for

a variety of purposes (for example, environmental performance measures).

The States also collect additional environmental

quality data that is not contained in national databases. Some of this data is collected for delegated programs, but is not usually forwarded to EPA because EPA does not require it (for example, water quality reports from minor point sources).

¹² *Environmental Reporting Data in EPA’s National Systems: Data Collection by State Agencies*. ECOS/EPA, 1999. In press.

¹³ Aerometric Information Retrieval System (AIRS) and AIRS Facility Subsystem (AFS). Essentially, AIRS/AFS is states’ database.

¹⁴ Safe Drinking Water Information System (SDWIS), 99%; Permit Compliance System (PCS - a component of the National Pollution Discharge Elimination System), 83% of major sources and 94% of minor sources; and STORET, 90%.

¹⁵ Biennial Reporting System (BRS), 92%.

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and actions taken at the State and local level, where there is on-the-ground, immediate response capability when, for example, a disease outbreak situation occurs. Add to the mix the many preventive and protective programs that States have institutionalized over the years and the significant amount of funding that States have contrib-

uted to the program, and one can begin to appreciate the important role that States have played and will continue to play in protecting public health.

Vanessa M. Leiby is Executive Director of the Association of State Drinking Water Administrators.

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Some data is collected because of environmental laws that States have that are not related to delegated programs (for example, most solid waste, water quantity, natural resource management, growth management or land use planning data). ECOS has not yet assessed the amount of this other data that States collect, but we believe it to be a significant amount, perhaps even exceeding the environmental data reported to EPA.

Policy Making

States implement most environmental protection programs, so they often see innovative solutions for environmental problems first. Each year since ECOS began its annual meetings (starting in 1994), it has compiled the program and implementation innovations that ECOS' members have presented. These cover the complete range of environmental protection, including delegated and non-delegated programs. ECOS has now compiled hundreds of these innovations.¹⁶ Some of these State ideas have been nationally recognized by Innovations Awards programs such as those of The Council of State Governments and Harvard University. Our members have consistently rated this kind of peer-sharing as one of the most important benefits of ECOS.

However creative and inventive State agency solutions can be, from time to time legislative solutions are more appropriate. States have not shied away from implementation of new environmental

¹⁶ 1998 State Environmental Innovations. Washington, DC: ECOS, 1998.

laws. According to the National Conference of State Legislatures, the States passed over 700 environmental bills in 1997 alone.¹⁷ At least half of these dealt with non-delegated environmental programs such as pollution prevention and solid waste management.

Conclusion

States have proven to be serious about their responsibilities as stewards of the environment, and have more than fulfilled the expectations of the 1972 Congress that drafted some of the original legislation envisioning the State role in the federal environmental protection system.

In fact, almost 30 years later, the States are leaders in environmental protection. Whether the yardstick is delegation, fiscal, enforcement, information gathering or policy-making, the States are responsible for an increasing, and perhaps surprising, amount of the work done to protect the nation's environment.

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¹⁷ George Hagevik and C. Kohler, "Trends in State Environmental Law 1997," NCSL Report, 1998.

Material for this article was compiled by ECOS staff including: R. Steven Brown, Mary Blakeslee, and Erin Wuchte. Mr. Brown is the Director of Programs and Development at ECOS and has tracked State contributions to environmental protection for nearly 15 years. Mary Blakeslee is ECOS' Director of Information Management, and is a 30+-year veteran of the EPA on loan to ECOS. Erin Wuchte is an Executive Intern to ECOS from the University of Maryland School of Public Affairs.