



January 14, 2011

Connie Bosma  
Office of Water  
US EPA  
Washington DC  
(via email)

THE  
ENVIRONMENTAL  
COUNCIL OF  
THE STATES

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R. Steven Brown  
Executive Director

Re: ECOS' Preliminary Comments on Stormwater Rulemaking Proposal  
Provided Pursuant to the Federalism Consultation Held on 12/9/10  
December 16, 2010

Dear Ms. Bosma:

ECOS is pleased to provide our initial comments to the agency regarding its plans for expanding and changing the stormwater rule, as presented at the December 9, 2010, federalism consultation for state and local associations.

Costs

ECOS has two issues regarding the cost of the rule. First, we are interested in EPA's methodology for calculating the overall costs of this rule. We would like you to forward the steps you take to calculate this to us, or to provide a briefing on how you determined the cost estimate. We would like to see your estimates on the total cost of the rule as well as the methodology for determining that cost.

Our second cost issue is the determination of how much it will cost a state environmental agency to implement a rule. This would be a subset of the first issue above. ECOS and state environmental agencies have discussed with the EPA Office of Policy a number of categories of state implementation costs as a result of implementing new rules. For each new EPA rule, states may incur slightly different implementation costs. Cost categories may differ from state to state depending on legislative and regulated community differences. States ask that EPA consider as appropriate state costs for a wide range of implementation start-up and recurring activities in its implementation cost estimation for this rule, as well as for other rules. ECOS requests that EPA consider this full range of implementation cost items in its estimations for this rule before the final rule takes effect. ECOS also requests that EPA seek to secure federal funding for the states to cover the customary portion of the costs associated with the state implementation of this federal rule and consider the availability of funding support in its planning for new rule adoption schedules and other implementation activities following new rule issuance.

Start-up and recurring implementation costs to the states as a result of this rule may include, for example: obtaining additional delegated authority; attending EPA training; developing a system for monitoring affected entities; purchasing new equipment to enforce the new regulation; providing compliance assistance; conducting ongoing public outreach and education programs

(to the regulated communities) on how to comply with the state agency's implementation of the rule; collecting and reviewing data from monitoring, recording, and storing data; and conducting enforcement inspections and follow-up actions.

We seek to ensure here that all pertinent costs are included in any estimate the agency produces. Failure to include an accurate assessment of the implementation costs may result in a rule that is not implemented properly or in a timely manner, which may adversely affect the environment.

#### Implementation during Interim Rule Period

It is normal procedure for EPA to issue a new rule in several stages. Usually, one of these stages is an "interim rule" which may be followed by a "final interim rule." ECOS wants the agency's assurances that EPA will not be implementing the rule itself, nor be asking states to implement the rule, during these stages, and will instead wait until the rule is "final" before implementation occurs.

#### Federal Compliance

It has come to ECOS' attention that significant parts of the federal government have declined to pay the stormwater fees required by the District of Columbia. Our hope is that the bill on this matter, recently signed into law, will help resolve this issue. ECOS would like the agency's assurances that all federal facilities will be required to comply with the same rules as every other regulated source, and that the US EPA will assist the states in vigorously seeking compliance and enforcement penalties from non-complying federal facilities covered by the new bill.

#### Impact on Groundwater

ECOS requests whatever scientific studies EPA has conducted on the impact and efficacy of green infrastructure techniques on urban groundwater and surface water quality.

#### Risk of New Technology for Compliance

ECOS supports the use of green infrastructure. However, EPA's rule proposal is featuring it as a central preferred method for compliance with the proposed rule. In addition, EPA has indicated that it expects states to "establish specific numeric standards that ensure compliance with the requirement." In the event that local governments follow EPA and State guidance in complying with this rule, but find that use of green infrastructure has not met the requirements of the rule, what will EPA's enforcement reaction be? Would, for example, EPA side with states and local governments against citizens' suits in such cases?

#### Expansion of Stormwater Areas

EPA proposes several options to expand the geographical areas beyond the current "urbanized area boundary" coverage. Among these options is the use of Metropolitan Statistical Areas and other techniques that will greatly increase the areas covered by this rule. Some of these options might even justify coverage in rural areas. Is it the agency's intent to broaden the scope of this rule beyond areas of dense human population?

#### Transportation Impacts

EPA noted during the consultation that it was unable to provide us information on transportation impacts because the studies are still underway. We request you notify us when this information is available.

Sincerely yours,

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