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October 18, 2019

Jim Macy
President, ECOS
VIA EMAIL jim.macy@nebraska.gov

Donald Welsh
Executive Director, ECOS
VIA EMAIL dwelsh@ecos.org

Gentlemen:

In anticipation of the October 21 conference call on how the ECOS relationship with EPA is to be managed this correspondence is to set out some thoughts from the Alabama Department of Environmental Management (ADEM).

Due to schedule conflicts I was unable to participate the Executive session on September 26 or the conference call on October 2. As best I can determine the letter from the Environmental Council of States dated September 26, 2019 addressed to Administrator Wheeler was in response to certain EPA correspondence with the State of California on that same date and a publication in the Federal Register. It may have also be in response to earlier EPA correspondence with officials in New Jersey.

It appears the states present at the Executive session believed EPA acted without an acceptable level of consultation with California and that action was indicative of a failure of EPA to properly engage in Cooperative Federalism. It also appears there was a concern that EPA failing to engage in an appropriate level of Cooperative Federalism with California is an affront to all states.

EPA's actions with California may very well have been inconsistent with expectations, however, I believe taking time to fully consider the matter would have resulted in a more reasoned response and would have been more productive. Given time to fully consider the matter before sending the letter might have put the issues in better perspective. For example, the September 26, 2019 letter from Andrew Wheeler to California Governor Newsom may have been tied in to other issues such as the automobile mileage controversy and the possibility of withholding certain federal funding from California. It may have been prompted by a genuine realization by EPA that it needed to exercise better oversight. These issues between EPA and California have been in play directly and indirectly for some time.

As regards the automobile mileage issue, both California and EPA have legitimate interests. While there has been an understanding that individual states generally have the option to develop environmental standards that are more stringent than EPA, in this specific case California's decision to implement a more stringent mileage standard is in effect binding on all states. California would be taking away the ability of



other states to utilize EPA standards. When a proposed action by a single state directly impacts all other states those other states and EPA are entitled to be part of the conversation.

I offer the following observations / opinions:

1. Consideration of the letter was not on the agenda for the meeting of the Executive Committee meeting on September 26, 2019.
2. There was no mention of such a letter being considered at any time prior to the Executive session that took place on September 26, 2019 which is inconsistent with long established ECOS past practice of advance notification of contemplated actions.
3. Without notice, adequate opportunity for consideration and input by all states was not afforded which is inconsistent with the ECOS principle of consensus action by ECOS.
4. The hasty process of developing and publishing the letter sets a bad precedent for future ECOS actions.
5. The tone of the letter is unnecessarily confrontational and inconsistent with any historical precedent of the ECOS organization in dealing with EPA.
6. The letter does not show due deference for EPA as the major financial contributor to ECOS, without such support ECOS would likely not exist.
7. The letter went to EPA without the courtesy of any advanced notice to EPA or some of the states and is a public blind side to EPA much the same as the EPA action that states find objectionable.
8. The letter damages (hopefully not irreparably) the goodwill and mutual respect developed between EPA and ECOS that has been developed since ECOS was organized.
9. The letter damages (hopefully not irreparably) the goodwill and mutual respect developed between the individual states that are members of ECOS that has been developed since ECOS was organized.
10. The letter does not clearly identify the EPA actions with which the author(s) take issue.
11. Although it has not been specifically made clear to me what the contentious issues prompting the letter are, it is my understanding the author(s) are referring to the concerns of several individual states, not issues deemed by all states to be areas for concern.
12. It is likely that the issues objected to by a few states are in fact supported by other states.
13. There are more appropriate avenues for individual state concerns to be expressed including state one-on-one conversations with EPA representatives or ECOS representatives having conversations with EPA representatives making it clear the views are only from a subset of all states.
14. During prior EPA administrations there were issues objected to by some states and supported by other states and if a consensus could not be reached ECOS did not select one point of view and reject the other and then present the selected position to be the consensus of all states.
15. States that do not agree with the letter are now perceived by EPA and the public as having agreed to the letter.
16. The letter very well may result in media incorrectly developing the narrative that the states are unanimously at odds with EPA and then using the narrative for partisan political purposes.

The process to develop the letter, the tone of the letter, the lack of specifics in the letter, the failure to first employ other options to address the issues, and the implication that the letter represents the

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consensus of all the states lead ADEM to suggest that a more thoughtful and measured approach would have been preferred.

I suggest efforts be made to de-escalate the situation. Engaging with EPA in a non-confrontational manner to address the areas of concern very well may lead to a more acceptable resolution for all and maintain mutually beneficial relationships.

I look forward to our conference call on Monday.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lance R. LeFleur". The signature is fluid and cursive, with the first name being the most prominent.

Lance R. LeFleur

Director

LRL/lc