



"Serving Western Legislatures"

The Council of State Governments West

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May 19, 2015

Honorable Mike Rounds
United States Senator
Chairman, Superfund, Waste Management, and Regulatory Oversight
Subcommittee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Honorable Edward Markey
United States Senator
Ranking Member, Superfund, Waste Management, and Regulatory
Oversight Subcommittee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senator Rounds and Senator Markey,

On behalf of the Council of State Governments West (CSG West), thank you for the opportunity to contribute to the Superfund, Waste Management, and Regulatory Oversight Subcommittee's hearing on oversight of scientific advisory panels and processes at the Environmental Protection Agency (EPA). We appreciate your leadership and the subcommittee's interest in hearing from Western state legislators.

As a nonpartisan, nonprofit organization serving Western state legislatures, CSG West is dedicated to preserving the role of states as "laboratories of democracy" and fostering effective cooperation with relevant federal agencies in areas of shared jurisdiction while limiting unnecessary federal intrusion in areas of state responsibility. In no other region in our country is effective federal and state cooperation more important than in the West where federal agencies work with relevant state and local agencies on a number of critical issues affecting the sustainability of our region, including the management of our natural resources and the protection of wildlife.

Over the past several years CSG West, through resolutions and correspondence, has urged Congress and federal agencies to communicate and consult with Western states in a substantive and timely manner when considering amendments to the Water Pollution Control Act as well as other federal laws. Moreover, CSG West has urged federal agencies to adhere to Presidential Executive Order 13132, issued August 4, 1999, requiring federal agencies to "have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications."

Enclosed for your reference are copies of CSG West resolutions related to proposed amendments to the Federal Water Pollution Control Act and water-related federal rules, regulations, directives, orders and policies.

Despite our organization's call for greater consultation with Western states, communication challenges remain. In many instances state consultation by federal agencies, including U.S. EPA, has taken place in the latter part of the policy development process, placing states and regional organizations such as CSG West in a reactionary position to a proposed regulation or interpretation as opposed to engaging states on the front-end of the process to ensure that state perspectives are taken into account.

In addition to the state consultation challenges limited state representation exists in EPA advisory panels. U.S. EPA advisory panels play an important role in providing independent advice to the EPA Administrator and other high level administration officials on a number of technical issues, including the development of rules related to the jurisdiction and application of the Clean Water Act, Clean Air Act and other regulations that impact state authority. Because they provide an independent voice to complex, technical matters, it is imperative that such advisory boards be comprised by a wide array of stakeholders, including state level representatives. However, states are largely underrepresented in EPA advisory panels.

Below are some examples related to the lack of state/local participation on EPA advisory panels:

- Of the 47 members of EPA's Chartered Science Advisory Board, only three are from state and local governments.
- EPA's Hydraulic Fracturing Research Advisory Panel, a subpanel of the Science Advisory Board designed to review EPA science on hydraulic fracturing and water, has no state/local/tribal experts on the panel. Thirteen state/local/tribal experts were nominated including from Western states and local governments, but none were selected by EPA.
- For the Science Advisory Board "Connectivity" Panel, which was reviewing a highly influential scientific assessment designed to inform EPA's authority over "waters of the U.S." under the Clean Water Act, EPA did not pick any of the nine qualified state/local experts the 27-member panel. As the Western Governors' Association recently testified: "It is worth noting that the SAB panel for the review of the EPA water body connectivity report included no state representatives. The report was therefore developed without the regulatory expertise, scientific resources and on-the-ground knowledge possessed by state professionals."
- For EPA's Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy's proposed ozone regulations, only one of the 22 panelists came from a state/local perspective.

- For EPA's seven-member chartered Clean Air Scientific Advisory Committee, whose recommendations establish the range to be considered by EPA in setting national air pollution standards, not a single member has come from EPA Region 6 (AR, LA, NM, OK, TX), Region 7 (IA, KS, MO, NE), Region 8 (CO, MT, ND, SD, UT, WY), or Region 10 (AK, ID, OR, WA) since at least 2010.

CSG West recognizes that the federal government has a vital role to play in advancing national priorities. However, it is imperative that federal agencies substantially engage states when developing or enacting regulations which affect state jurisdictions, and ensure that advisory panels designed to provide an independent voice include greater state representation. We encourage you and the members of the subcommittee to address these challenges with the hope that our state and federal engagement can be strengthened for the benefit our states and communities.

Once again, thank you for your consideration of these important issues. If you or your staff has any questions, please feel free to contact CSG West Executive Director, Edgar Ruiz, at (916) 553-4423.

Sincerely,



Senator Nancy Todd
Chair, CSG West
Colorado State Senate



Representative Jeff Thompson
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Chair, CSG West State &
Federal Relations Committee
Alaska House of Representatives



Representative Cindy Evans
Vice Chair, CSG West State &
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Hawaii House of Representatives

CC:

Senator James M. Inhofe (OK), Chairman, U.S. Senate Committee on Environment & Public Works

Senator Barbara Boxer (CA), Ranking Member, U.S. Senate Committee on Environment & Public Works

Enclosures

- CSG West Resolution 2014-03 on water-related federal rules, regulations, directives, orders and policies.
- CSG West Resolution 2011-03 regarding U.S. EPA and the U.S. Army Corp of Engineers' draft guidance on identifying waters protected by the Clean Water Act.
- CSG West Resolution 2010-01 regarding amendments to the Federal Water Pollution Control Act, as proposed by S. 787 and H.R. 5088 in the 111th Congress.