



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

January 18, 2011

Ms. Connie Bosma  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Richard Moore**  
*Senator  
Massachusetts Senate  
President, NCSL*

**Tim Rice**  
*Executive Director  
Illinois Legislative Information System  
Staff Chair, NCSL*

**William Pound**  
*Executive Director*

**Re: EPA's Stormwater Rulemaking Consultation with State and Local Governments**

Dear Ms. Bosma:

I am writing on behalf of the National Conference of State Legislatures (NCSL) in response to your request for consultation on the regulatory options being considered by the Environmental Protection Agency (EPA) in the upcoming rulemaking process for new stormwater management performance standards. NCSL appreciates the EPA's commitment to the principles of Executive Order 13132, "Federalism;" and the Unfunded Mandates Reform Act (UMRA), and values the opportunity to participate in consultation so early in the process. The fact that the Stormwater Program has made such a concerted effort to reach out to state and local government officials prior to the option selection process is extremely appreciated and indicative of what NCSL hopes for in meaningful consultation under the Federalism Executive Order.

NCSL does not currently have policy dealing with the specifics of stormwater management inclusive of the issues concerning expansion of municipal separate storm sewer system (MS4s) coverage and/or the establishment of new or differential requirements for stormwater management at particular sites. However, there are two related issues to the development and implementation of any proposed new stormwater regulations that are of key importance to state legislatures. The first is the potential for such rules to result in new or expanded unfunded mandates. The second is the potential role of state legislatures in advancing the implementation of such rules.

An overarching concern for NCSL is the extent of federal unfunded mandates. States and localities across the country continue to face severely constrained budgets with many forced to deal with recurring deficits and fewer options for filling budget gaps. The cumulative impact of federal regulations creates a difficult task for state and local governments seeking to ensure compliance. Many of these requirements come with little or no federal funding attached leaving the burden on state and local government to either assume the cost of implementation where possible or institute new fees to provide a secure funding stream for the program. NCSL urges EPA to take this into consideration at each stage of the upcoming rulemaking process and ensure that the choice of regulatory options maximizes benefit and minimizes implementation and compliance costs.

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In reviewing the regulatory options being considered by the agency it is clear that there is the potential need for legislative action to come into compliance with new stormwater regulations. For example, should the agency choose to expand coverage to all MS4s and provide states the option to exclude certain areas from coverage, changes in regulation or statute that require action by the state legislature may be necessary to determine the final list of covered entities. In establishing any timelines for compliance EPA should make sure to take into consideration the constraints of the state legislative calendars that may come into play and ensure that sufficient time is allowed for states actions necessary to come into compliance. A minimum of two years is necessary to account for the fact that there are four states that only hold session every other year. This concern is not limited to this particular example and could potentially raise a different set of questions in different states. NCSL stands ready to answer any questions you might have about state legislative schedules, deadlines and restrictions on length and scope of sessions.

If you have questions about these comments, or for further discussion, please do not hesitate to call on Tamra Spielvogel (202-624-8690 or [tamra.spielvogel@ncsl.org](mailto:tamra.spielvogel@ncsl.org)) or Max Behlke (202-624-3586 or [max.behlke@ncsl.org](mailto:max.behlke@ncsl.org)) in our Washington, DC office. Thank you again for the opportunity to provide input at such an early stage in the process. NCSL looks forward to continuing conversations with EPA over the coming months as the proposed rule is developed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Morris". The signature is stylized and includes a horizontal line at the end.

Representative Jeff Morris, Washington  
Chair, NCSL Environment Standing Committee