Message

From: Glenn, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E9F7C03E151E475D9A656C21FD6FE4BB-WGLENN]
Sent: 9/27/2019 9:04:24 PM
To: Amato, Paul [Amato.Paul@epa.gov]
Subject: FW: ECOS Charges EPA's 'Unilateral' Attacks On California Violate Federalism

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Bill Glenn
Acting Director
Office of Public Affairs
U.S. EPA, Pacific Southwest
glenn.william@epa.gov / (415) 947-4254

From: Nazmi, Niloufar <Nazmi.Niloufar@epa.gov>
Sent: Friday, September 27, 2019 11:21 AM
To: Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; Lee, Anita <Lee.Anita@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Lo, Doris <Lo.Doris@epa.gov>; Rios, Gerardo <Rios.Gerardo@epa.gov>; Glenn, William <Glenn.William@epa.gov>; Maier, Brent <Maier.Brent@epa.gov>
Subject: ECOS Charges EPA's 'Unilateral' Attacks On California Violate Federalism

ECOS Charges EPA's 'Unilateral' Attacks On California Violate Federalism

September 27, 2019
The Environmental Council of the States (ECOS) is pushing back against EPA's recent attacks on California's air and water programs, demanding a meeting with Administrator Andrew Wheeler on "unilateral" threats to withhold the state's highway funds and revoke its delegated legal powers that ECOS says "violate" cooperative federalism principles.
"ECOS is seriously concerned about a number of unilateral actions by U.S. EPA that run counter to the spirit of cooperative federalism and to the appropriate relationship between the federal government and the states who are delegated the authority to implement federal environmental statutes. . . . We respectfully demand that the U.S. EPA Administrator and senior leadership immediately meet with the ECOS leadership team to discuss these concerns," reads a Sept. 26 letter from ECOS Executive Director Donald S. Welsh to Wheeler. ECOS represents many state environmental agencies.

EPA on Sept. 24 threatened to withhold federal highway funds from California unless it acts quickly to address its backlog of pending Clean Air Act state implementation plans (SIPs) for attaining air quality standards that the agency considers "unapprovable" because they are inadequate.
And on Sept. 26, Wheeler sent a letter to the state's Gov. Gavin Newsom (D) alleging that its Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) programs are falling short of federal standards of protection. Wheeler implied that unless those flaws are remedied EPA could withdraw delegated authority under both laws and begin enforcing them directly in the Golden State.
De-delegation of water programs and highway sanctions for SIP failures are severe penalties for states that fail to meet the statutory requirements for environmental protection. Prior administrations have occasionally threatened to use those powers in response to high-profile incidents or state-federal policy conflicts, but never followed through.

The Trump administration's clashes with California seem to stem from the legal and policy battle over vehicle greenhouse gas emissions standards. EPA on Sept. 19 finalized a rule revoking the state's authority to set its own standards, drawing an immediate court challenge, and the Department of Justice is investigating a deal between CalEPA and four automakers on voluntary vehicle efficiency targets as a potential antitrust violation.
Those moves and others have drawn charges that EPA is ignoring its professed focus on "cooperative federalism" that prioritizes states' authority over federal mandates.

While Welsh's Sept. 26 letter does not directly reference either of Wheeler's communications with California, or even name the state specifically, it warns that EPA's actions could undermine other states' environmental work.
"We are concerned about the lack of advance consultation with states and the impact of these and several other actions on the ability of states to protect human health and the environment, and call on U.S. EPA to return to the appropriate relationship with the states as coregulators under our nation's environmental protection system," Welsh writes.
ECOS members debated and voted on the letter during a closed session of their fall meeting in Seattle, WA, that ran Sept. 24-26, but a CalEPA official tells *InsideEPA/climate* that it was "signed by the heads of each of the 50 state environmental agencies," indicating bipartisan concern over the agency's conduct.
EPA did not respond to a request for comment by press time.

California's Response
During the ECOS meeting, CalEPA Secretary **Jared Blumenfeld**, a former Region 9 administrator during the Obama administration, used a Sept. 25 question-and-answer session with EPA Assistant Deputy Administrator Henry Darwin to attack the agency's SIP threat as a partisan move against the most prominent "blue" state. Region 9 covers California and other Pacific Southwest states.
"I want us all to get to where we'll all be treated equally no matter what history, no matter what our political stance is. We're all trying to get the job done for the people in our states, for the people of this amazing country. I think often, cooperative federalism is used in different contexts in different states, and we would love to join the cooperative federalism family."
He said that during his tenure with EPA, the backlog of SIPs "was a Region 9 challenge, not a California challenge," and should have been approached with a "collaborative nature," while the threat to sanction highway funds came "completely out of the blue."

But Darwin in his answer focused exclusively on the backlog of SIPs, echoing other officials' statements that EPA is not singling out California and plans to address other states' outstanding plans as well. "We would, as I think the letter indicated, be happy to sit down and work with California on what is, you're absolutely right, a historic backlog of SIPs. It is something that goes back at EPA many, many years, and as everyone knows, as part of this process we also wanted to eliminate the SIP backlog and we want to work with California on that, we want to work on that backlog. **Frankly, starting to eliminate the backlog really starts with working with California, which has over a third of the backlog of SIPs that are unapprovable residing in one state," he said.** -- *David LaRoss* (dlaross@iwpnews.com)

Niloufar Nazmi
Air and Radiation Division, EPA Region 9
Desk: 415-972-3684; Cell: 415-328-1143