

June 11, 1999

Ms. Judy Borger, Legislative Director  
c/o The Honorable James Greenwood  
Congress of the United States  
2436 Rayburn Building  
Washington, D.C. 20515

RE: Second Generation Environmental Improvement Act

Dear Ms. Borger:

Thank you for your May 18, 1999, letter, soliciting comments on the draft federal legislation titled "Second Generation Environmental Improvement Act" (ACT). The enclosed comments are submitted on behalf of the Minnesota Pollution Control Agency (MPCA).

The MPCA has been and is continuing attempts to work with the Environmental Protection Agency (EPA) under various regulatory innovations programs. These programs include, Project XL and the Common Sense Initiative. In addition, the MPCA had a key leadership role in the development of the Environmental Commission of States (ECOS)/EPA regulatory innovations agreement. When reinvention efforts were implemented in the mid-1990s, the MPCA was an enthusiastic participant. The MPCA believed the initiatives presented the opportunity to improve the environment and become more efficient at the same time. However, MPCA experience with the reinvention initiatives have been disappointing. The effort to develop pilot projects has been resource intensive and has resulted in incremental improvements at best. A key part of why the EPA reinvention initiatives have had disappointing results is EPA itself. Instead of allowing innovation experiments to happen, and then evaluating and applying the lessons learned, EPA chose to focus on requiring guarantees of up-front success. This has resulted in resource intensive up-front review and micro-management of the proposed pilots. The outcome is apparent, very few participants stepping forward to pilot the initiatives. Therefore, little has been learned from innovation pilots as to how to improve the way regulators conduct our environmental business. The MPCA believes that it is difficult, if not impossible, for a multi-faceted and complex organization like the EPA, to develop pilot projects outside the core environmental regulatory programs.

The MPCA supports and would like to help develop federal legislation, like this ACT, to give EPA clear direction in developing innovative approaches that result in:

- 1) a reduction of impacts on the environment;
- 2) an efficient use of resources; and

- 3) a better understanding of environmental impacts by the affected public.

The following comments are made from the MPCA experience with current EPA regulatory innovation initiatives. The comments could help improve the ACT.

### **General Comment – Ability to Experiment Key**

The MPCA believes this dialogue on how to best implement innovative strategies is important. The premise of this dialogue is the fact that current regulatory systems can and should be improved. The MPCA believes the focus at this point should be to facilitate experiments to identify how improvements can be made. The experiments should be conducted meeting the following four conditions:

- 1) will not harm public health or the environment;
- 2) will be consistent with existing federal law;
- 3) will have a higher level of accountability to the public; and
- 4) will have evaluation and recommendation requirements to report lessons learned.

Therefore, a federal legislative action to simply facilitate experiments meeting the above criteria would be adequate. After results of experiments are known, recommendations could be made as to how the environmental regulatory system can be improved.

### **Comment Section 201 (a) - Authority**

This section is focused on EPA developing a program to enter into innovative strategy agreements. The MPCA believes that this approach presents a fundamental flaw in the potential for developing innovative strategy agreements. As stated above, the MPCA believes the primary reason for the disappointing results under current EPA innovation initiatives is the amount of resources required to develop and implement pilot projects. Furthermore, Minnesota as well as many other states,<sup>1</sup> passed state legislation to conduct innovation-related pilot projects meeting the four criteria stated above. The MPCA believes that rather than create a new EPA program, federal legislation should simply facilitate the ability of states to conduct and report on innovation pilot projects. *Therefore, the MPCA recommends this provision state explicitly that EPA delegate the implementation of an innovative strategy program to a state if the program meets the above four criteria.*

### **Comment Section 201 (b) - Eligible Applicants**

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<sup>1</sup> A 1998 comparison of legislation from seven states concerning conducting innovative pilot projects is available on the MPCA Website at <http://www.pca.state.mn.us/programs/projectxl/envin-leg.html>.

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The list of eligible applicants refers to “any person.” The MPCA assumes this refers to regulated entities. If this is the case, the MPCA suggests the term “any person” be changed to “any regulated entity.”

This section also states an eligible applicant of an innovative strategy must have a good overall record of meeting statutory environmental standards. This definition makes sense for non-regulated entities (e.g. states). However, for regulated entities it may be helpful to clarify the term “good overall record.” For example, under Minnesota law an eligible applicant for an environmental improvement program is defined as a facility that has not had an enforcement penalty imposed in the previous two years.

The MPCA is interested in furthering regulatory innovation through federal legislation such as the ACT. Therefore, the MPCA would be happy to develop a more detailed response or provide testimony concerning this legislation, should it be needed.

Again, thank you for the opportunity to comment on this draft legislation early in the development process. If you have any questions or comments concerning this letter please feel free to contact me or Andrew Ronchak, of my staff, at (651) 296-3107.

Sincerely,

Karen A. Studders  
Commissioner

KAS:cad

cc: Robert Roberts, ECOS  
Mark Kramer, Legislative Assistant  
The Honorable James Greenwood, United States Representative  
The Honorable Calvin Dooley, United States Representative  
The Honorable Rod Grams, United States Senator  
The Honorable Paul Wellstone, United States Senator  
The Honorable Gil Gutknecht, United States Representative  
The Honorable David Minge, United States Representative  
The Honorable Jim Ramstad, United States Representative  
The Honorable Bruce F. Vento, United States Representative  
The Honorable Martin Olav Sabo, United States Representative  
The Honorable William P. Luther, United States Representative  
The Honorable Collin Peterson, United States Representative  
The Honorable James L. Oberstar, United States Representative

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