Dear Administrator Johnson:

I am writing as a citizen concerned about the enforcement of environmental programs to express my opposition to the direct final rule, "**Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs**". As I understand it, the deadline, currently October 13, 2008, is for states, tribes and local governments to submit applications to EPA for approval of their "existing" systems for receiving electronic reports from facilities they regulate under programs they administer under Environmental Protection Agency (EPA) authorization, delegation or approval. According to the definition in the Cross-Media Electronic Reporting Rule (CROMERR), these "existing" systems are, more or less, systems that were at least substantially developed on October 13, 2005, and which – presumably – have now been operating for several years to receive electronic reports from regulated entities.

I oppose this action to extend the CROMERR deadline because I take EPA at its word that compliance with CROMERR requirements is necessary to ensure the enforceability of environmental programs. In the preamble to final CROMERR, EPA states: "EPA believes that the standards in § 3.2000(b) of today's rule, as developed from the proposed ''Validity of Data'' criterion, together with other proposed criteria clarified as general performance standards, **represent the minimum set of requirements for electronic document receiving systems necessary to ensure the legal dependability of the electronic documents such systems receive**." (70 FR 59857, October 13, 2005, boldface added). In that same preamble, EPA also states:

> Section 3.2000(b) specifies the standards that electronic document receiving systems must satisfy if they are to be approved for use by states, tribes, or local governments to receive electronic documents in lieu of paper under an EPA-authorized program. EPA's purpose in specifying such standards remains the same as it was when EPA specified the proposed § 3.2000 criteria in proposed CROMERR. As discussed in section IV.B.1, that purpose was to ensure that electronically submitted documents have the same ''legal dependability'' as their paper counterparts, so that any electronic document that may be used as evidence to prosecute an environmental crime or to enforce against a civil violation has no less evidentiary value than its paper equivalent. EPA has been motivated to provide for the legal dependability of electronic documents submitted under authorized programs by considering, among other things:
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> - The roles that many electronically submitted documents would likely play in environmental program management, including compliance monitoring and enforcement;
> - **EPA's statutory obligation to ensure that authorized or delegated programs maintain the enforceability of environmental law and regulations**; and
> - **The consequent need to ensure that enforceability is not compromised as authorized programs make the transition from paper to electronic submission of compliance or enforcement-related documents**. (70 FR 59867, October 13, 2005, boldface added)

I quote this passage in its entirety, because it makes the strongest possible case that ensuring that state, tribe and local government e-reporting systems comply with the CROMERR requirements is essential to EPA's meeting its "statutory obligation to ensure that authorized or delegated programs maintain the enforceability of environmental law and regulations." By extending the deadline for CROMERR compliance, then, EPA delays meeting these statutory obligations, and continues to place the enforceability of its authorized and delegated programs at risk.

The question, then, is what could possibly justify this delay and the associated risk. In the subject action, all that EPA offers as explanation is the following:

> After setting the current deadline, EPA learned that some states and local agencies currently working to comply with CROMERR have experienced an unanticipated delay in the completion of necessary upgrades to their electronic document receiving systems. EPA believes it is appropriate to extend the submission deadline for applications related to existing systems by an additional 15 months. (73 FR 61737, October 17, 2008)

This explanation does not justify EPA's continuing to place the enforceability of authorized and delegated programs at risk. The explanation does not explain what the "delay" is, why it was "unanticipated", or why the "delay" makes it "appropriate" to extend the submission deadline for 15 months. The explanation does not say anything about how many states are "experiencing" this "delay". To make any sort of plausible case that an extension could be justified, EPA would have document the numbers of states that have and have not been able to meet the October 13, 2008 deadline. If, for example, it turns out that several states have in fact submitted applications at or near the deadline, then EPA needs to explain why the non-submitting states have not been able to meet the deadline as well.

It is also hard to see how anything concerning CROMERR compliance could be "unanticipated" by states at this point in time. Again, on the evidence of the CROMERR preamble, states have had ample notice of CROMERR requirements:

> This final rule reflects more than ten years of interaction with stakeholders that included states, tribes, and local governments, industry groups, environmental non-government organizations, national standard setting committees, and other federal agencies. As detailed in the proposal, many of our most significant interactions involved electronic reporting pilot projects conducted with state agency partners, including the States of Pennsylvania, New York, Arizona, and several others. In May, 1997, work began with approximately 35 states on the State Electronic Commerce/Electronic Data Interchange Steering Committee (SEES) convened by the National Governors' Association (NGA) Center for Best Practices (CBP). Also, EPA sponsored a series of conferences and meetings, beginning in June, 1999, with the explicit purpose of seeking stakeholder advice before drafting the proposal. Reports of these conferences and meetings are

> available in the docket for this rulemaking, along with the product of the SEES effort, a document entitled, ''A State Guide for Electronic Reporting of Environmental Data,'' and reports on some of the more recent state/EPA electronic reporting pilots. (70 FR 59851, October 13, 2008)

Clearly, as of the writing of the final rule, states, tribes and local governments had at least ten years of notice of the kinds of requirements that EPA was planning to set for electronic reporting, and ample opportunity to discuss those requirements. Additionally, in the three years since publication, states, tribes and local governments has known exactly what those requirements are – and presumably EPA has taken every opportunity to communicate the expectation that states would comply with the rule. After these 13 years of notice, what is it that the states could not have anticipated?

Additionally, even if states are experiencing "unanticipated delay" in "the completion of necessary upgrades to their electronic document receiving systems," that does not make an extension to the October 13, 2008, deadline "appropriate". To meet the current deadline, all the affected states, tribes and local governments had to do was ***submit an application*** for approval of their electronic reporting rule. There is no requirement that the application has to be approvable or even complete by that deadline. Hence, a delay in completing system upgrades should in no way have kept a state from submitting an application by the current deadline. In fact, looking at the section 3.1000 provisions for approving state, tribe and local government systems, there is no set deadline for those systems to actually meet the CROMERR requirements. Indeed, it appears that there is already substantial flexibility in the CROMERR as it stands for both EPA and the states to work together toward CROMERR-compliant systems well beyond the October 13, 2008 deadline. Again, all that states, tribes and local governments had to do to meet the current deadline was submit some sort of application. States, tribes and local government unable or unwilling to do even that much clear have no interest in complying with CROMERR, and, arguably, no interest in preserving the enforceability of their EPA-authorized programs. In view of that fact, EPA needs to explain why – instead of extending the CROMERR deadline – it is not taking action to withdraw authorization from states, tribes and local governments that have refused to comply with CROMERR.

Finally, there is no evidence that the extension will help bring EPA any closer to fulfilling its statutory obligation to ensure the enforceability of its authorized and delegated programs. EPA has already provided one extension to the original CROMERR deadline for states, tribes and local governments with existing systems, which was October 13, 2007. The fact that EPA is now acting to extend the deadline again appears to imply that the first extension contributed nothing to CROMERR compliance. EPA has provided no reason to think that – were this new extension to be become effective – it would not choose to extend the deadline yet again as January 13, 2010 approaches. On the evidence that EPA is clearly willing to follow one extension with another, recalcitrant states, tribes and local governments will conclude that EPA is never serious about a compliance deadline, and, as a consequence, they will defer CROMERR compliance indefinitely. EPA can only justify the subject action if it can show that it is serious this time about fulfilling its statutory objects to ensure enforceability, and this would require

that EPA outline the concrete steps that it will take between now and January 13, 2010, to ensure that states, tribes, and local governments comply with the requirements of CROMERR.

Sincerely,

Tom Hamilton
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