



ECOS

July 31, 2012

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

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Richard Opper
Director, Montana Department of
Environmental Quality
PAST PRESIDENT

The Honorable Ed Whitfield
Chairman, Subcommittee on Energy and Power
United States House of Representatives
Washington, D. C. 20500

Dear Congressman Whitfield:

RE: Clean Air Act Forum Materials

The Environmental Council of the States (ECOS) is the national non-profit, non-partisan association of state and territorial environmental agency leaders. The purpose of ECOS is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States of America.

Our belief is that state government agencies are the keys to delivering environmental protection afforded by both federal and state law. Further, we believe that ECOS plays a critical role in facilitating a quality relationship between federal and state agencies in the fulfillment of that mission.

Integral parts of the ECOS mission involve championing the role of the States in environmental protection and articulating state positions to Congress, federal agencies, and the public on environmental issues. ECOS advocacy is grounded upon the resolutions approved by consensus of the membership. These resolutions reflect our formal policy positions.

On behalf of the ECOS membership, I would like to submit the accompanying resolutions to you for consideration in conjunction with the Subcommittee's work examining the state, local, and federal cooperation in the Clean Air Act. One resolution, "On Environmental

R. Steven Brown
Executive Director

Federalism," is particularly germane. The remaining resolutions are either specific to issues of the CAA, specific to promulgated regulations pursuant to the CAA, or general with regard to co-regulator implementation relationships with the United States Environmental Protection Agency.

I hope you will find these policy resolutions helpful. Please feel free to contact me should the Subcommittee need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Steven Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Steven Brown
Executive Director

RSB/jpb
Attachments

Environmental Council of the States

Resolutions

Res. 00-1 On Environmental Federalism

Resolutions Specific to the Clean Air Act or Promulgated Regulations

Res. 12-1 Challenges of Achieving Significant Greenhouse Gas (GHG) Emissions Reductions
Res. 07-2 Reducing Greenhouse Gas Emissions
Res. 09-3 Preserving States' Rights to Regulate Greenhouse Gas Emissions
Res. 08-5 Beyond EPA's Clean Air Mercury Rule
Res.10-2 Comprehensive National Mercury Monitoring
Res. 09-5 Funding for Monitoring Under the Clean Air Act Section 103 and Section 105 Authorities
Res. 10-7 Retention of Clean Air Act Waiver of California Emissions Standards and State adoption of California Standards
Res. 07-8 On The Need to Ensure That Up-to-date, Protective National Ambient Air Quality Standards are Promulgated and Implemented
Res. 01-2 On Multi-pollutant Strategies for the Control of Air Pollution
Res.00-12 Change to the United States Environmental Protection Agency's "Once In, Always In" Policy
Res. 06-9 National Training Strategy Implementation and Funding
Res. 09-7 Meaning of "Solid Waste" Under the Resource Conservation and Recovery Act (RCRA) as it Applies to Non-hazardous Waste Programs

Resolutions General in Nature

Res. 11-7 Federal Resources for State Environmental Programs
Res. 11-6 Consideration of State Administrative Costs
Res. 11-8 On the Use of Guidance
Res. 11-1 Objection to the U.S. Environmental Protection Agency's Imposition of Interim Guidance, Interim Rules, Draft Policy and Reinterpretation Policy
Res. 11-2 Respectful Use of Data



Resolution 00 - 1
Approved April 12, 2000
Philadelphia, Pennsylvania

Revised June 13, 2000
By mail vote

Revised April 4, 2003
By mail vote

Revised April 11, 2005
Washington, DC

Revised September 8, 2005
Kennebunkport, Maine

Revised September 22, 2008
Branson, Missouri

Renewed September 26, 2011
Indianapolis, Indiana

Revised March 20, 2012
Austin, Texas

As certified by
R. Steven Brown
Executive Director

ON ENVIRONMENTAL FEDERALISM

WHEREAS, the states are co-regulators with the federal government in a federal system; and

WHEREAS, the meaningful and substantial involvement of the state environmental agencies as partners with the U.S. Environmental Protection Agency (U.S. EPA) is critical to both the development and implementation of environmental programs; and

WHEREAS, the U.S. Congress has provided by statute for delegation, authorization, or primacy (hereinafter referred to collectively as "delegation") of certain federal program responsibilities to states which, among other things, enables states to establish state programs that go beyond the minimum federal program requirements; and

WHEREAS, States that have received delegation have demonstrated to the U.S. EPA that they have the independent authority to adopt and they have adopted laws, regulations, and policies at least as stringent as federal laws, regulations, and policies; and

WHEREAS, states have further demonstrated their commitment to environmental protection by taking responsibility for 96% of the primary environmental programs which can be delegated to states; and

WHEREAS, because of this delegation, the state environmental agencies have a unique position as co-regulators and co-funders of these programs; and

WHEREAS, the delegation of new federal environmental rules (issued as final and completed actions and published by the U.S. EPA) to the states to implement continues at a steady pace of about 28 per year

since spring 2007, for a total of approximately 143 new final rules and completed actions to implement through fall 2011; and

WHEREAS, federal financial support to implement environmental programs delegated to the states has declined since 2005; and

WHEREAS, cuts in federal and state support adversely affects the states' ability to implement federal programs in a timely manner and to adequately protect human health and the environment; and

WHEREAS, states currently perform the vast majority of environmental protection tasks in America, including 96% of the enforcement and compliance actions; and collection of more than 94% of the environmental quality data currently held by the U.S. EPA; and

WHEREAS, these accomplishments represent a success by the U.S. EPA and the states working together in ways the U.S. Congress originally envisioned to move environmental responsibility to the states, not an indictment of the U.S. EPA's performance; and

WHEREAS, the U.S. EPA provides great value in achieving protection of human health and the environment by fulfilling numerous important functions, including; establishing minimum national standards; ensuring state-to-state consistency in the implementation of those national standards; supporting research and providing information; and providing standardized pollution control activities across jurisdictions; and

WHEREAS, with respect to program operation, when a program has been delegated to a state and the state is meeting the minimum delegated program requirements, the role of the U.S. EPA is oversight and funding support rather than state-level implementation of programs; and

WHEREAS, under some federal programs the U.S. EPA grants to states the flexibility to adjust one-size-fits-all programs to local conditions and to try new procedures and techniques to accomplish agreed-upon environmental program requirements, thereby assuring an effective and efficient expenditure of the taxpayers' money.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Affirms its continuing support for the protection of human health and the environment by providing for clean air, clean water, and proper handling of waste materials;

Affirms that states are co-regulators, co-funders and partners with appropriate federal agencies, including the U.S. EPA, and with each other in a federal environmental protection system;

Affirms the need for adequate funding for both state environmental programs and the U.S. EPA, given the vitally important role of both levels of government;

Affirms that expansion of environmental authority to the states is to be supported, while preemption of state authority, including preemption that limits the state's ability to establish environmental programs more stringent than federal programs, is to be opposed;

Supports the authorization or delegation of programs to the states and believes that when a program has been authorized or delegated, the appropriate federal focus should be on program reviews, and, further, believes that the federal government should intervene in such state programs where required by court

order or where a state fails to enforce federal rules particularly involving spillovers of harm from one state to another;

Supports early, meaningful, and substantial state involvement in the development and implementation of environmental statutes, policies, rules, programs, reviews, joint priority setting, budget proposals, budget processes, and strategic planning, and calls upon the U.S. Congress and appropriate federal agencies to provide expanded opportunities for such involvement;

Specifically calls on U.S. EPA to consult in a meaningful, timely, and concurrent manner with the states' environmental agencies in the priority setting, planning, and budgeting of offices of the U.S. EPA as these offices conduct these efforts;

Further specifically calls on U.S. EPA to consult in a meaningful and timely manner with the states' environmental agencies regarding the U.S. EPA interpretation of federal regulations, and to ensure that the U.S. EPA has fully articulated its interpretation of federal regulations prior to the U.S. EPA intervention in state programs;

Believes that such integrated consultation will increase mutual understanding, improve state-federal relations, remove barriers, reduce costs, and more quickly improve the nation's environmental quality;

Noting the extensive contributions states have made to a clean environment, affirms its belief that where the federal government requires that environmental actions be taken, the federal government ought to fund those actions, and not at the expense of other state programs;

Affirms that the federal government should be subject to the same environmental rules and requirements, including the susceptibility to enforcement that it imposes on states and other parties;

Affirms its support for the concept of flexibility and that the function of the federal environmental agency is, working with the states, largely to set goals for environmental accomplishment and that, to the maximum extent possible, the means of achieving those goals should be left primarily to the states; especially as relates to the use of different methods to implement core programs, such as risk-based inspections or multi-media environmental programs, and particularly in the development of new programs which will impact both states and the U.S. EPA; and

Directs ECOS staff to provide a copy of this resolution to the U.S. EPA Administrator.



Resolution Number 12-1
Approved March 20, 2012
Austin, Texas

As certified by
R. Steven Brown
Executive Director

CHALLENGES OF ACHIEVING SIGNIFICANT GREENHOUSE GAS (GHG) EMISSIONS REDUCTIONS

WHEREAS, the United States is among 195 parties to ratify the United Nations Framework Convention on Climate Change (UNFCCC), which has as its ultimate objective the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (Article 2); and

WHEREAS, the United States is among the developed and developing countries (including all major emitting countries) that have communicated to the UNFCCC Secretariat economy-wide emission reduction targets and nationally appropriate mitigation actions, and the United States emission reduction target references emissions reductions on the order of 80 percent below 2005 levels by 2050; and

WHEREAS, in the Consolidated Appropriations Act, 2008, U.S. Congress mandated that the National Academy of Sciences “establish the Climate Change Study Committee to investigate and study...issues relating to global climate change and make recommendations regarding what steps must be taken...,” and in May 2011 the National Academy of Sciences released the requested study, *America’s Climate Choices*; and

WHEREAS, the States’ positions vary on the need for, or adequacy of, any specific reduction in GHG emissions nationally.

NOW, THEREFORE BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Requests that the U.S. Environmental Protection Agency (U.S. EPA) in cooperation with the states provide one or more scenarios that will produce an 80 percent reduction in GHG emissions nationally, from a 2005 baseline, in 2050 or beyond;

Further requests that U.S. EPA conduct an analysis with state input and review, with a national and regional scope, of the cost and benefits associated with each scenario as well as an analysis of the costs and benefits of a no-action alternative;

Further requests that U.S. EPA develop in cooperation with the states the scenarios and the requested analysis using existing studies as applicable and in consultation with the U.S. Department of Energy and other appropriate agencies; and

Finally, recommends that the United States Congress or the Administration provide U.S. EPA and the states with new resources required to perform the analysis so as not to detract from any ongoing efforts,

and this request shall in no way be interpreted as a desire by ECOS to affect the timing of other GHG-related measures.



Resolution Number 07-2
Approved March 20, 2007
Alexandria, Virginia

Revised March 23, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

REDUCING GREENHOUSE GAS EMISSIONS

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) has found that the current and projected concentrations of Greenhouse Gases (GHGs) (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFCs), perfluorocarbons and sulfur hexafluoride), in the atmosphere threaten the public health and welfare of current and future generations; and

WHEREAS, the U.S. EPA further found that the combined emissions of carbon dioxide, methane, nitrous oxide and HFCs from new motor vehicles and motor vehicle engines contribute to the atmospheric concentrations of these key greenhouse gases and hence to the threat of climate change; and

WHEREAS, the U.S. EPA has stated that although it supports a legislative solution to the problem of climate change, the U.S. Supreme Court has decided that GHGs are air pollutants under the Clean Air Act (CAA) definition of air pollutants and U.S. EPA has determined that it should regulate GHG emissions pursuant to that statute; and

WHEREAS, in response to the Fiscal Year 2008 Consolidated Appropriations Act (H.R. 2764; Public Law 110-161), U. S. EPA issued the Final Mandatory Reporting of Greenhouse Gases Rule, that requires reporting of GHG emissions from large sources and suppliers in the United States, and is intended to collect accurate and timely emissions data to inform future policy decisions; and

WHEREAS, under the rule, suppliers of fossil fuels or industrial greenhouse gases, manufacturers of vehicles and engines, and facilities that emit 25,000 metric tons or more per year of GHG emissions are required to submit annual reports to U.S. EPA; and

WHEREAS, states and U.S. EPA have formed an Integrated Project Team to collaboratively design and build a mechanism for sharing greenhouse gas emissions data using the National Environmental Information Exchange Network, with an emphasis on building the technology to exchange GHG emissions information and to develop a data exchange mechanism that is flexible enough to meet most GHG information needs; and

WHEREAS, U.S. EPA has proposed the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, that is focused on large facilities with the potential to emit (PTE) over 25,000 tons of greenhouse gases a year, and major modifications at existing large facilities with the PTE over 10,000 – 25,000 tons of greenhouse gases a year, and would require new and

modified facilities with such an emissions increase to obtain Prevention of Significant Deterioration (PSD) construction permits when they are constructed or modified that would demonstrate they are using the best practices and technologies to minimize GHG emissions and Title V operating permits; and

WHEREAS, the proposed thresholds would “tailor” the permit programs to limit which facilities would be required to obtain NSR and Title V permits and would cover facilities responsible for nearly 70 percent of the national GHG emissions that come from stationary sources, including those from the nation’s largest emitters, such as power plants, refineries, and cement production facilities; and

WHEREAS, the federal government recently released details of its national suite of auto standards that would impose the first-ever GHG standard on the nation's cars and trucks commencing with model year 2012; and

WHEREAS, the automobile standard proposals, a joint effort by U.S. EPA and the United States Department of Transportation, would also push corporate average fuel economy, or CAFE, standards to a fleetwide average of 35.5 miles per gallon by 2016, four years ahead of the schedule U.S. Congress laid out in a 2007 energy law; and

WHEREAS, working toward a final bill, the United States House of Representatives passed the American Clean Energy and Security Act, requiring the reduction of carbon emissions from major United States sources by 17% by 2020 and over 80% by 2050 compared to 2005 levels and requiring electric utilities to meet 20% of their electricity demand through renewable energy sources and energy efficiency by 2020; and

WHEREAS, also working toward a final bill, the United States Senate Committee on Environment and Public Works reported out the Clean Energy Jobs and American Power Act that requires a 20% reduction of carbon emissions by 2020; and

WHEREAS, in an effort to achieve an agreement at the annual Conference of the Parties to the United Nations Framework Convention on Climate Change in Copenhagen, the United States government put on the table a United States emissions reduction target in the range of 17% below 2005 levels in 2020; and

WHEREAS, many states and municipalities have already implemented or plan to implement measures to reduce GHG emissions; and

WHEREAS, many states have joined together to implement regional GHG reduction initiatives; and

WHEREAS, addressing GHG emissions on a national and international scale, including developing countries, will enable electricity generators and other sectors to have greater certainty and predictability to optimize investment decisions regarding pollution controls and operating procedures; and

WHEREAS, state and national investment in renewable energy and energy efficient efforts are expected to create high-paying jobs and stimulate the development of a vibrant and sustainable clean energy economy in the United States; and

WHEREAS, the chief executives of several major United States corporations recently urged the federal government to adopt a mandatory cap on GHG emissions in this country.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Urges, that in the midst of all the aforementioned initiatives and activities with regard to GHGs, that all entities put forth the maximum effort in coordination and consultation;

Urges the U.S. Congress and U.S. EPA to support state and regional initiatives to stabilize and reduce GHG emissions;

Urges the U.S. Congress and U.S. EPA to work closely with the Environmental Council of the States and the states so that the national program to reduce GHG emissions in this country enhances the nation's competitiveness in a worldwide economy, ensures a safe, secure, predictable and reliable energy future and builds upon state GHG reduction programs, while preserving authority for states to reduce GHG emissions;

Urges the Administration, U.S. EPA, and the U.S. Department of State to support international efforts to complete effective international agreements as soon as possible to reduce GHG emissions by the amounts that science indicates are needed to avoid dangerous anthropogenic interference with the climate system;

Urges U.S. EPA to provide states adequate time to adjust state rules, where necessary, to make them consistent with federal GHG rules;

Urges U.S. EPA to work closely with the states to expeditiously develop best available control technology (BACT) permit guidance, training tools, permit streamlining alternatives, and funding mechanisms to address the additional permitting and administrative costs of regulating GHG emissions;

Encourages the U.S. Congress and U.S. EPA to support continued research and development of emissions reduction technologies, including increasing energy efficiency, in order to identify and implement approaches that minimize GHG emissions in a cost-effective, coordinated, and streamlined manner;

Encourages the U.S. Congress and U.S. EPA to promote and advance energy efficiency, energy conservation and renewable energy so that energy efficiency, energy conservation and renewable energy through the use of various mechanisms, including, but not limited to, the investment of proceeds of allowance auctions in energy efficiency and renewable energy efforts;

Encourages the U.S. Congress and U.S. EPA to promote and advance cleaner coal technologies that reduce GHG emissions from coal-fired facilities and achieve both carbon capture and sequestration or carbon capture and enhanced oil and natural gas recovery, so that the efficient use of coal resources is improved;

Encourages the U.S. Congress and U.S. EPA to promote and advance technologies that reduce GHG emissions and achieve both carbon capture and sequestration or carbon capture and enhanced oil and natural gas recovery from other fossil fuel facilities and other major GHG emission sources;

Encourages the U.S. Congress and the U.S. EPA to promote state and national efforts to increase the sequestration of carbon in soils, trees, and vegetation;

Encourages the U.S. Congress and U.S. EPA to provide assistance to states to protect vulnerable ecosystems and infrastructure from the impacts of climate; and

Encourages the U.S. Congress and U.S. EPA to continue climate research (including regional climate research) to improve the scientific understanding of the impacts of global climate change.



Resolution Number 09-3
Approved March 23, 2009
Alexandria, Virginia

Revised March 20, 2012
Austin, Texas

As certified by
R. Steven Brown
Executive Director

PRESERVING STATES' RIGHTS TO REGULATE GREENHOUSE GAS EMISSIONS

WHEREAS, global climate change is an issue of tremendous importance to the United States (U.S.) and the world; and

WHEREAS, a broad "portfolio" of measures will be needed to address any controls for greenhouse gas (GHG) emissions; and

WHEREAS, following the December 7, 2009 release of the Endangerment Finding and the Cause or Contribute Finding for six key well-mixed GHGs¹ in the atmosphere, the U.S. Environmental Protection Agency has begun to regulate greenhouse gases under the authority provided in the Clean Air Act (CAA); and

WHEREAS, individual states and groups of states in the U.S. have emerged as international leaders on GHG reduction strategies, and the wealth of experience gained by these states is a tremendous resource to the ongoing effort to design effective national climate change policy; and

WHEREAS, states have experience in successfully implementing programs to increase energy efficiency and the use of renewable energy, and these programs have resulted in GHG emission reductions as well as other economic and environmental benefits; and

WHEREAS, these states have taken action with the confidence that well designed climate change policy provides a host of associated economic development, energy security, and consumer savings benefits; and

WHEREAS, the historical success of the CAA has resulted from the establishment of appropriate minimum national standards, then providing flexibility for state and local authorities to go beyond the federal "floor"; and

WHEREAS, this approach capitalizes on the strengths of all levels of government and enables states to be the "laboratories of innovation"; and

WHEREAS, states have the experience, regulatory infrastructure, and the programs in place to help ensure that national goals can be met in the most cost-effective manner; and

¹ Carbon Dioxide (CO₂), Methane (CH₄), Nitrous Oxide (N₂O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs), and Sulfur Hexafluoride (SF₆)

WHEREAS, ongoing innovation and development of policy mechanisms by the states will continue to create benefits at the national level, even if comprehensive climate change legislation is not enacted by the United States Congress.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Believes any national climate policy should recognize and protect the efforts of early action states and encourages future state innovation and action;

Supports the inclusion of strong and explicit language in any federal legislation or regulations to expressly preserve the authority and right of states and localities to design and implement measures that reduce GHG emissions, directly and/or indirectly, and that specifically protects against preemption;

Recommends that any federal legislation or regulations include: (1) recognition that some states and their sources are taking early action to address climate change; (2) maintenance of the viability of robust regional carbon markets in the period subsequent to enactment of a federal climate statute but prior to the launch of a federal carbon market; and (3) a mechanism for exchange of allowances issued in a regional cap-and-trade program for federal allowances under fair and equitable terms;

Supports states' rights to set standards above and beyond any federal requirements for GHG emissions reductions in any sector; and

Recommends that any federal control program not generate any new revenue for the federal government and that any fees associated with a federal program be directed to the states.



Resolution Number 08-5
Approved April 15, 2008
New Orleans, Louisiana

Revised March 29, 2011
Alexandria, Virginia

As certified by
R. Steven Brown
Executive Director

BEYOND EPA'S CLEAN AIR MERCURY RULE

WHEREAS, in order to protect children's health from neurological damage that can be caused by exposures to mercury, all 50 U.S. states, one territory, and three tribes have issued public health fish consumption advisories due to elevated mercury concentrations in freshwater fish; and

WHEREAS, several studies show that mercury pollution attributable to human sources will need to be reduced by 90% or greater to achieve fish mercury levels that are safe for consumption by pregnant women and children¹; and

WHEREAS, mercury emissions are transported in the air and may deposit locally, regionally, and globally, potentially impacting water bodies both near to and distant from emission sources²; and

WHEREAS, sources outside of the United States currently contribute significantly to overall mercury deposition and local and regional sources continue to account for much deposition in many areas; and

WHEREAS, coal-fired electric generating units (EGUs) are the largest source of mercury emissions in the nation; and

WHEREAS, such emissions have been linked to elevated levels of mercury in fish, and some studies indicate that reduced mercury emissions are associated with lower mercury levels in fish; and

WHEREAS, a diverse energy portfolio helps to maintain electric reliability in the nation; and

WHEREAS, on February 8, 2008, the U.S. Court of Appeals for the District of Columbia Circuit vacated the U.S. EPA's Clean Air Mercury Rule (CAMR), which was based on emissions trading of mercury between coal-fired EGUs rather than Maximum Achievable Control Technology (MACT) required by section 112 of the Clean Air Act; and

WHEREAS, on April 15, 2010, the U.S. Court of Appeals for the District of Columbia Circuit ordered the U.S. EPA to sign for publication in the *Federal Register* by November 16, 2011, a notice of final rulemaking establishing MACT standards for EGUs pursuant to section 112(d) of the Clean Air Act; and

WHEREAS, air pollution controls to reduce mercury emissions have been demonstrated on many coal-fired EGUs and achieve significantly more mercury reductions than assumed by U.S. EPA in its Clean Air Mercury Rule; and

WHEREAS, U.S. EPA's vacated rule would have achieved about 70% mercury emission reductions by 2025 or later, according to U.S. EPA's projections, and regulating mercury emissions with MACT under section 112 of the Clean Air Act can achieve significantly more mercury emissions reductions, significantly sooner; and

WHEREAS, on March 16, 2011, in response to the D.C. Circuit Court's February 2008 vacatur of CAMR, U.S. EPA issued a proposed National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units (EGUs) under Clean Air Act section 112(d) and revised new source performance standards (NSPS) for fossil fuel-fired EGUs under CAA section 111(b), that would reduce emissions of heavy metals, including mercury (Hg).

NOW, THEREFORE, BE IT RESOLVED THAT:

U.S. EPA should proceed expeditiously to thoroughly and carefully evaluate and establish mercury emission performance standards for EGUs pursuant to section 112 of the Clean Air Act.

U.S. EPA should also consider MACT performance standards for other hazardous air pollutant emissions from EGUs and multi-pollutant strategies advanced previously in ECOS resolutions number 06-8 and 01-2 at the same time it regulates mercury.

U.S. EPA should consider performance standards already adopted by states when setting national MACT performance standards.

U.S. EPA should consider performance standards based on controls proven to be technically feasible on existing EGUs in the U.S.

U. S. EPA should consider the variability of control effectiveness for different types of coal when setting national MACT performance standards.

U.S. EPA should not impinge upon the rights of states to be more stringent than the federal agency in the regulation of hazardous air pollutants from EGUs.

U.S. EPA and the State Department should continue to advocate for strong global efforts to reduce sources of mercury pollution.

Within 8 years after promulgation of MACT, U. S. EPA should adopt additional standards for mercury emissions from EGUs under section 112(f) of the Clean Air Act if those emissions pose a residual risk. In assessing whether there is a residual risk, U S. EPA should evaluate the extent to which remaining EGU emissions contribute to unsafe levels of mercury in fish tissue.

¹ The Northeast Regional Mercury TMDL (<http://www.neiwpcc.org/mercury/mercurytmdl.asp>) assessment documented that fish from over 10,000 water bodies and over 46,000 river miles in the northeast were unsafe to eat due to excessive mercury. Based on mercury emissions inventories and state-of-the-art mercury deposition modeling, the NE states determined that anthropogenic mercury inputs to the region's water-bodies would need to be reduced by 86 - 98% for their fish to meet the U.S.EPA fish tissue consumption criterion for mercury. Using a similar approach NJ (http://www.state.nj.us/dep/watershedmgt/DOCS/TMDL/fish_mercury_071509.pdf), concluded that a 98% reduction would be needed and MN (<http://www.pca.state.mn.us/index.php/water/water-types-and->

[programs/minnesotas-impaired-waters-and-tmdls/phosphorus-and-mercury-issues/statewide-mercury-tmdl-pollutant-reduction-plan.html?menuid=&redirect=1](#)) concluded that reductions of 73 or 93% would be needed depending in the region of the state.

² Mercury deposited or washed from dry surfaces into wet surfaces may methylize into toxic methyl mercury, which may accumulate in the food chain.



Resolution Number 10-2
Approved March 24, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

COMPREHENSIVE NATIONAL MERCURY MONITORING

WHEREAS, methyl mercury levels in fish and other living organisms routinely exceed thresholds considered potentially harmful to people and fish-eating wildlife throughout much of the United States; and

WHEREAS, exposure to toxic levels of mercury largely occurs through consumption of organisms with elevated methyl mercury and adverse effects on growth, reproduction and neurological function have been observed in organisms with elevated methyl mercury levels; and

WHEREAS, high levels of mercury measured in fish have triggered fish consumption advisories throughout the United States, including significant coastal advisories; and

WHEREAS, better data on mercury cycling in the environment would improve scientific understanding and ability to predict and quantify linkages between mercury emissions and environmental response; and

WHEREAS, improved mercury monitoring information will help to optimize mercury policy development and implementation and is needed to track progress; and

WHEREAS, a comprehensive long-term mercury monitoring program focused on ambient concentration, mercury deposition, watershed cycling and levels in key biota would allow scientists and resource managers to accurately assess mercury in the environment and link changes in emissions and deposition with ecosystem effects and response; and

WHEREAS, the comprehensive data gathered would provide useful information to evaluate trends in mercury levels in the environment and biota and inform the development of future mercury reduction policies;

WHEREAS, many states have developed and implemented mercury monitoring efforts and have developed substantial expertise in this area, and are now, due current state budget issues, facing difficulties in sustaining these efforts; and

WHEREAS, the U.S. EPA has estimated that over three-quarters (83 percent) of the mercury deposited in the U.S. originates from international sources¹, which is beyond states' regulatory control.

¹ U.S. EPA, 2005a. Technical Support Document, Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the §112(c) List: Reconsideration, October 21, 2005. Accessible at www.epa.gov/ttn/atw/utility/TSC-112final.pdf.

NOW, THEREFORE, BE IT RESOLVED THAT:

ECOS urges the President of the United States and U.S. Congress to expand federal and state capacity for mercury-related action, including but not limited to environmental monitoring, fate and transport science, pollution prevention programs, and health advisory efforts. New resources, in particular to the states, are needed to ensure that state and federal progress is sustained;

ECOS supports congressional action that would fund a comprehensive, long-term mercury monitoring program that meets national monitoring needs; and

ECOS requests that the Federal Government engage its counterparts in other countries to encourage international reductions in mercury emissions and work with the States in the design and implementation of these efforts to ensure that they address and meet state concerns and data needs and effectively support and coordinate with state mercury monitoring programs.



Resolution Number 09-5
Approved September 21, 2009
Whitefish, Montana

As certified by
R. Steven Brown
Executive Director

FUNDING FOR MONITORING UNDER THE CLEAN AIR ACT SECTION 103 AND SECTION 105 AUTHORITIES

WHEREAS, state and local air pollution control agencies have the primary responsibility for implementing our nation's clean air program and carry out numerous activities, including efforts to develop and implement State Implementation Plans, monitor emissions, compile emissions inventories, conduct sophisticated modeling of emissions impacts, inspect sources of pollution, conduct oversight and enforcement, provide technical assistance to regulated sources and respond to citizens' complaints; and

WHEREAS, in order to accomplish this work, they receive funding from several sources, including state and local appropriations, and federal grants under Sections 103 and 105 of the Clean Air Act; and

WHEREAS, Section 105 grants, which require a minimum state match of 40 percent, support the foundation of state and local air quality programs, while Section 103 grants, that do not require a state match, have typically funded specific monitoring efforts; and

WHEREAS, state and local air quality agencies have struggled for years with insufficient funding; and

WHEREAS, in addition to the fact that federal funding levels have been relatively stagnant for a long time, over the past 15 years federal grants for state and local air quality agencies to operate their programs (not including the separate PM_{2.5} monitoring program) have actually decreased by approximately one-third in terms of purchasing power, due to inflation; and

WHEREAS, this reduced spending power has come at the same time as increasing demands related to new programs, including, but not limited to developing State Implementation Plans to meet ozone, PM_{2.5}, lead, nitrogen dioxide, and haze requirements; and

WHEREAS, the Environmental Council of the States has addressed this funding struggle in the **"The States Environmental Agencies' Proposal for EPA's 2010 Categorical Grants STAG Budget,"** submitted to the United States Environmental Protection Agency, calling for \$270 million to be available in Fiscal Year (FY) 2010 for grants to states and local clean air agencies under Sections 103 and 105; and

WHEREAS, the National Association of Clean Air Agencies has completed a study showing that federal grants to state and local air agencies should be increased over \$550 million annually to support necessary clean air programs, including monitoring; and

WHEREAS, U.S. EPA has proposed recently revised monitoring requirements for ozone and nitrogen dioxide, which would require additional new monitoring sites nationwide, posing further substantial financial and labor burdens on state and local agencies, few of which have the resources necessary to support such mandates; and

WHEREAS, state and local agencies have felt the repercussions of these limited funds, resulting in adverse impacts on their programs that include the reduction in air monitoring and associated data analysis, the stagnation of emission inventories, the elimination of air toxics programs, the curtailment of small business assistance, the loss of trained and experienced staff or an inability to fill vacancies, the reduction in staff training; inability to accept delegation of federal programs (especially related to toxic air pollutants from area sources), the decline in enforcement and compliance activities, and the cessation of some public education efforts; and

WHEREAS, when state and local clean air agencies are forced to make hard choices and scale back essential air quality-related activities, public health and welfare suffer; and

WHEREAS, because of the inability of some state and local air agencies to provide matching funds for monitoring, there could be significant cuts to this important program; and,

WHEREAS, In FY 2010, federal grants to Sections 103 and 105 will, once again, not be significantly increased; and,

WHEREAS, For FY 2010 U.S. EPA has proposed to earmark \$10,371,286 of state and local air grants for activities that are clearly federal responsibilities and should not be funded with Section 103 or Section 105 funds, such as, PM2.5 Monitoring Associated Program Support in Headquarters, NATTS Monitoring Associated Program Support in Headquarters, Lead Monitoring Associated Program Support in Headquarters, Training, and National Procurement,

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Recommends \$270 million be available in FY 2010 for grants to state and local clean air agencies under Sections 103 and 105 and that PM, toxics, and lead monitoring programs, among others, be funded under Section 103 authority, consistent with aforementioned **“The States Environmental Agencies’ Proposal for EPA’s 2010 Categorical Grants STAG Budget”**:

Recommends that new funding for monitoring activities be granted under the authority of Section 103, so the funds can be available for all states, regardless of their ability to match the grants;

Recommends that the FY 2010 Section 103 and Section 105 funds (\$10,371,286) that U.S. EPA has earmarked for national level activities be allocated to the regions to be used for the activities that are the highest priority for the state and local air agencies; and

Recommends increasing federal grants to state and local air agencies by \$100 million in FY 2011, for a total of \$327 million. This is a fraction of the amount needed to support ongoing and increasing responsibilities necessary for the protection of public health including, but not limited to, monitoring.



Resolution 10-7
Approved August 30, 2010
Whitefield, New Hampshire

As certified by
R. Steven Brown
Executive Director

RETENTION OF CLEAN AIR ACT WAIVER OF CALIFORNIA EMISSIONS STANDARDS AND STATE ADOPTION OF CALIFORNIA STANDARDS

WHEREAS, Clean Air Act (CAA) section 209(b) provides that the United States Environmental Protection Agency (U.S. EPA) shall waive preemption if a qualified state (i.e., California) vehicle emissions standard is at least as protective of public health and welfare as applicable Federal standards; and

WHEREAS, CAA section 177 permits other States to adopt California's vehicle emissions standards; and

WHEREAS, in addition to California, the District of Columbia and the following States have adopted the California low emissions vehicle standards, including its greenhouse gas (GHG) vehicle emissions standards: Arizona, Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington; and

WHEREAS, several other States, including Colorado, Florida, Montana, and Utah, have explored adopting the California low emissions vehicle standards, including the GHG vehicle emissions standards; and

WHEREAS, on April 2, 2007, in *Massachusetts v. EPA* the United States Supreme Court ruled that greenhouse gas emissions are air pollutants subject to regulation under the CAA; and

WHEREAS, a 2006 National Academy of Sciences (NAS) study concluded that the above state standard-setting process provides emissions control, air quality benefits, and innovation beyond federal standards and has been beneficial overall, and recommended that California continue its pioneering role; and

WHEREAS, on May 19, 2009, the federal government, automakers, and California announced an historic series of commitments including a federal notice of intent to establish federal greenhouse gas emissions passenger motor vehicle standards to be set for model year 2016 equivalent to California's standards; and

WHEREAS, on June 30, 2009, U.S. EPA Administrator Jackson granted California's request for a waiver of preemption allowing California to enforce its adopted greenhouse gas emissions standards and allowing other States to enforce as permissible under CAA section 177 (74 Fed.Reg. 32744 (July 8, 2009)); and

WHEREAS, U.S. EPA's waiver enables California and other States to reduce GHG emissions within their State boundaries, and these reductions are a large part of the substantial State efforts

essential to achieving greenhouse gas emission reductions sufficiently to reduce climate change impacts; and

WHEREAS, on April 1, 2010 the federal government completed its May, 2009 commitment to establish federal greenhouse gas emissions passenger motor vehicle standards equivalent to California's in the 2016 model year; and

WHEREAS, the aforementioned 2006 NAS study cited numerous similar examples of California establishing stringent vehicle and other mobile source emissions standards later adopted by other States and eventually nationwide by U.S. EPA.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Finds that to continue making the substantial progress in reducing air pollutant emissions as needed to meet federal and in some cases State air quality standards and greenhouse gas emissions reduction goals, states must be allowed to exercise their discretion to regulate pollutants within their borders and develop standards as or more stringent than federal regulations, as long as these standards do not conflict with federal law;

Commends U.S. EPA for returning in its June 30, 2009 GHG waiver decision to its traditional waiver analysis by reviewing California's motor vehicle program as a whole; and

Urges the U.S. Congress to retain and not limit: 1) California's authority to adopt or enforce emissions standards for any air pollutant from any mobile source; and 2) any State's ability under CAA section 177 to adopt California's vehicle emissions standards.



Resolution Number 07-8
Approved September 17, 2007
Sun Valley, Idaho

Revised March 23, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

ON THE NEED TO ENSURE THAT UP-TO-DATE, PROTECTIVE NATIONAL AMBIENT AIR QUALITY STANDARDS ARE PROMULGATED AND IMPLEMENTED

WHEREAS, the Clean Air Act (CAA) requires the United States Environmental Protection Agency (U.S. EPA) to set primary National Ambient Air Quality Standards (NAAQS) that, “allowing an adequate margin of safety, are requisite to protect public health”; and

WHEREAS, U.S. EPA is also directed to set secondary NAAQS that are “requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air”; and

WHEREAS, the primary standards must be set without regard to cost considerations, as stated by the Supreme Court in *Whitman v. American Trucking Associations*; and

WHEREAS, U.S. EPA is further required, at a minimum of five-year intervals, to complete a thorough review of each NAAQS, and make revisions to those NAAQS, as appropriate; and

WHEREAS, the CAA requires U.S. EPA to appoint an independent scientific review committee to review the air quality criteria published by U.S. EPA and recommend any new primary and secondary standards, or revision of existing standards, as may be appropriate; and

WHEREAS, since the NAAQS program was established in 1970, there has been ample scientific evidence demonstrating harm to public health and welfare from exposure to ambient concentrations of carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide (known as criteria pollutants); and

WHEREAS, since the NAAQS program was established in 1970, the U.S. EPA has determined in setting or revising certain NAAQS that existing criteria pollutant levels harm the public’s health, including sensitive populations such as asthmatics and others with pre-existing conditions, children, and the elderly; and

WHEREAS, the U.S. EPA has also determined that existing criteria pollutant levels have adverse effects on the public’s welfare, including reduced forest growth and crop yield and degraded scenic vistas; and

WHEREAS, The Environmental Council of the States (ECOS) recognizes the collective progress made by states in reducing levels of all criteria pollutants and their precursors in the ambient air; and

WHEREAS, ECOS recognizes that many states and local agencies throughout the country have struggled to meet their obligations to attain various NAAQS, and are facing significant resource constraints, given the current economic situation.

NOW, THEREFORE BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF STATES:

Recognizes the importance of reducing ambient concentrations of criteria pollutants as necessary to protect public health and welfare;

Recognizes the importance of reassessing and revising existing NAAQS on a regular basis, in order to ensure that NAAQS reflect current scientific information;

Urges that all new or revised NAAQS be set at levels that provide an adequate margin of safety to public health, after giving serious consideration to the recommendations of the appointed independent scientific review committee;

Urges U.S. EPA to revise the State Implementation Plan process so as to foster cost-effective, efficient, and multi-pollutant NAAQS implementation strategies;

Calls on U.S. EPA and U.S. Congress to provide more resources to the states and local agencies to help implement the programmatic changes that are necessary to meet new and revised NAAQS;

Calls on U.S. EPA to provide significant leadership in the development and promulgation of national rules that directly limit NAAQS pollution from categories of sources so as to help all areas of the country to effectively and expeditiously meet new or revised NAAQS;

Urges U.S. EPA to work in partnership with states and local agencies in the development of national rules regarding obligations of states and local agencies to take action to meet new or revised NAAQS, preferably well in advance of finalizing any change in a NAAQS; and

Urges U.S. EPA to work in partnership with states and local agencies to develop methodologies and enhance existing tools to educate and warn sensitive populations concerning exposure effects to them during periods of high concentration.



Resolution Number 01-2
Approved February 27, 2001
Clearwater, Florida

As certified by
Robert E. Roberts
Executive Director

Reaffirmed on April 15, 2004
Washington, DC
Electronic Vote Tally

Reaffirmed on March 20, 2007
Alexandria, VA

Revised March 23, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

ON MULTI-POLLUTANT STRATEGIES FOR THE CONTROL OF AIR POLLUTION

WHEREAS, many sources of air pollution emit more than one pollutant subject to regulation under the Clean Air Act and under state laws; and

WHEREAS, multiple air pollutants interact to form other regulated pollutants and control of one or more of the pollutants may have co-benefits in reducing other pollutants such as air toxics; and

WHEREAS, the traditional approach to regulation of pollutants has proceeded independently for each pollutant in determining the level of regulation, the type of control requirements, and the timing of such regulatory requirements; and

WHEREAS, the traditional approach to the regulation of these pollution sources may lead to control strategy decisions that might vary significantly in cost, efficiency, and type; and

WHEREAS, a multi-pollutant strategy is defined as the coordinated consideration of multiple regulatory decisions for sources of environmental pollutants; and

WHEREAS, a well-designed multi-pollutant strategy has the potential to improve the ability of the sources to control environmental pollutants in a manner that facilitates efficiency, competitiveness, and cost savings while significantly reducing environmental impacts and provides industry with the ability to plan for the future; and

WHEREAS, it is in the public interest to protect and preserve the environment, while promoting more effective planning and rational, flexible regulation of sources and to limit the economic burden of environmental regulation wherever possible; and

WHEREAS, several States have adopted or are in the process of adopting multi-pollutant strategies e. g., for the power generation industry, some of which consider the simultaneous

regulation of multiple pollutants including mercury, SO₂ and NO_x; such states including Colorado, Connecticut, Delaware, Illinois, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Tennessee, and Wisconsin; and

WHEREAS, this coordinated approach could lead to greater environmental gains than would be achieved under the existing provisions of the Clean Air Act and could create greater opportunities for pollution prevention and sustainability, as well as recognize the timing of installation, economic impact and co-benefits of controls; and

WHEREAS, ozone, PM 2.5, and regional haze share, to some extent, common precursors and all or some are affected by long range transport, it is critically important that pollution control strategies for ozone, PM 2.5, and regional haze be developed in tandem.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Requests that U.S. EPA and the U.S. Congress support research and incentives to allow the use of multi-pollutant strategies for the control of air pollution from the power industry and other stationary sources and the development of State Implementation Plans (SIPs) under the federal Clean Air Act;

Requests that U.S. EPA work with States to develop a cost-effective, efficient, and environmentally protective approach to implementing a multi-pollutant strategy for the regulation of the stationary sources;

Requests that, in pursuing a multi-pollutant strategy, the U.S. Congress, U.S. EPA, and the States should proceed in a manner that protects the public health and environment, promotes efficient expenditure of resources, provides adequate and reliable energy, is scientifically sound and technically feasible and minimizes government impediments to the achievement of these goals and cost savings while significantly reducing environmental impacts and providing industry with the ability to plan for the future; and

Requests that any Congressional action to enact a multi-pollutant strategy maintains the states' ability to achieve all NAAQS requirements, to meet our regional haze needs, and to provide robust public protection from toxics in accordance with current timelines.



Resolution Number 00-12
Approved August 15, 2000
Girdwood, Alaska

Reaffirmed
August 12, 2003
Salt Lake City, Utah

Reaffirmed
August 29, 2006
Portland, Oregon

Reaffirmed
September 21, 2009
Whitefish, Montana

As certified by
R. Steven Brown
Executive Director

**CHANGE TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S
"ONCE IN, ALWAYS IN" POLICY**

WHEREAS, Pollution Prevention is acknowledged as the best practice for eliminating pollution and has been recognized as such by the United States Environmental Protection Agency (EPA) in negotiations with the states for revisions to the "once in always in" policy; and

WHEREAS, the States have developed their own programs, in cooperation with EPA, to promote and implement pollution prevention practices that have resulted in lasting actual reductions in hazardous air pollutants; and

WHEREAS, the 1990 Pollution Prevention Act states "...opportunities for source reduction are often not realized because existing regulations, and industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction which is fundamentally different from and more desirable than waste management and pollution control"; and

WHEREAS, section 112 of the Clean Air Act was established to reduce emissions of Hazardous Air Pollutants (HAPs); and

WHEREAS, since 1992, EPA has promulgated technology based emission standards, commonly referred to as Maximum Achievable Control Technology (MACT) standards, to reduce HAP emissions from a wide range of source categories; and

WHEREAS, a major HAP source under a MACT standard is required to obtain a Title V Operating Permit; and

WHEREAS, the "Once In, Always In" Policy results in substantial reporting burden by continuing all major source requirements under a MACT standard even if the source of HAPs has been eliminated or reduced through pollution prevention measures.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF STATES:

Calls on EPA to provide an exception to the "Once In, Always In" Policy provisions that apply major source requirements after a source reduces and maintains its level of HAP emissions below major source thresholds and equivalent to maximum achievable control technology (MACT) if the reduction is made through the use of pollution prevention measures that are permanent and enforceable through permit conditions;

Calls on EPA to recognize that the urgency of this issue is dictated by years of negotiation, dialogue, analysis and review by the Environmental Council of the States, the National Association of Clean Air Agencies (NACAA) and the Forum on State and Tribal Toxics Action (FOSTTA);

Calls on EPA to create a timely, informed solution free of case-by-case determinations, free of reporting burdens when performance is through source reduction and responsive to state capabilities and safeguards through state based administrative review and minor source permitting programs; and

Believes EPA will promote pollution prevention as envisioned in the 1990 Pollution Prevention Act, achieve emissions reductions as envisioned in Section 112 of the Clean Air Act and reduce administrative and reporting burden by changing the "Once In, Always In" Policy to provide an incentive for sources to reduce emissions through means such as process changes and reformulations as opposed to adding control equipment.



Resolution Number 06-9
Approved August 29, 2006
Portland, Oregon

Reaffirmed
September 21, 2009
Whitefish, Montana

As certified by
R. Steven Brown
Executive Director

NATIONAL TRAINING STRATEGY IMPLEMENTATION AND FUNDING

WHEREAS, local, state and federal air quality professionals require a strong training program in order to develop the knowledge, skills and abilities to effectively contribute to attaining and maintaining healthy air quality, to quickly learn new job responsibilities and to maintain, enhance and update skills in their existing areas of responsibility; and

WHEREAS, local, state and federal officials, especially those United States Environmental Protection Agency (EPA) staff working in the regional offices, should receive training in a consistent and uniform manner; and

WHEREAS, turnover in staff at local, state and federal agencies has reached such levels that adequate training opportunities are critically needed by local, state and federal agencies; and

WHEREAS, while the Clean Air Act (section 103(b)) expressly requires EPA to provide training for local and state air quality professionals, and, for a variety of reasons, the agency's efforts have not been sufficient to fulfill this responsibility; and

WHEREAS, to fill this gap, local and state agencies have consistently and overwhelmingly voted to subsidize nationwide training activities out of their section 105 grants; and

WHEREAS, recognizing the need for a national approach to training, the National Association of Clean Air Agencies (NACAA) and EPA have worked cooperatively and collaboratively and officially endorsed (March 2006) the "**National Training Strategy For Clean Air Officials**" (National Training Strategy), and have agreed to update it, where necessary; and

WHEREAS, this "National Training Strategy" listed the following goals for a national training program: 1) understand the training needs of local, state and federal air quality officials on an ongoing basis; 2) provides training opportunities that meet the needs of local, state and federal air quality professionals utilizing effective and cost-efficient training methods; 3) utilizes course materials that are up to date, complete and easy to use; 4) ensures that training provided to local, state and federal officials is effective by using instructors who are recognized subject matter experts, communicate clearly and are effective teachers; and 5) enhances the delivery of training through the use of existing, new and emerging technologies where appropriate; and

WHEREAS, a major issue to be resolved is how to fund the critical need for updating existing and developing necessary new training courses.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF STATES:

Hereby endorses the concepts and proposals outlined in the “**National Training Strategy For Clean Air Officials**”;

Expects EPA to explore all available mechanisms for funding in fulfill its statutory obligation to provide training for state and local air officials on an ongoing basis. Suggested mechanisms include additional Congressional appropriations as well as redirection of non-State and Tribal Assistant Grants (STAG) funds within EPA’s budget;

Recognizes that the issue of securing funding for the immediate update of existing training courses and development of new courses, as outlined in the National Training Strategy, is critical, and funds to make these updates should be located as soon as possible;

Supports NACAA’s efforts to obtain funding for this project through solicitation of a variety of sources, including foundations and specialized grants, and agrees to work with them in this effort if both organizations find it appropriate to do so; and

Urges EPA to assist its state and local agency air partners by providing timely and comprehensive training on air topics that will assist in building capacity among government partners for effective implementation of national air programs and achieving our mutual goal of attaining and maintaining air quality that protects and enhances public health and welfare.



Resolution 09-7
Approved September 22, 2009
Whitefish, Montana

Revised March 23, 2010
Sausalito, California

As certified by
R. Steven Brown
Executive Director

MEANING OF “SOLID WASTE” UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AS IT APPLIES TO NON-HAZARDOUS WASTE PROGRAMS

WHEREAS, on January 2, 2009, the U.S. Environmental Protection Agency (U.S. EPA) published an “Advanced Notice of Proposed Rulemaking - Identification of Non-Hazardous Materials That Are Solid Waste” (FR Vol. 74 No. 1), to address the issue of which non-hazardous materials are or are not “solid waste” under the Resource Conservation and Recovery Act (RCRA) and to assist U.S. EPA in developing certain standards under sections 112 and 129 of the Clean Air Act; and

WHEREAS, as a part of the rulemaking, U.S. EPA is considering whether materials such as whole waste tires used in combustion devices should be classified as solid waste under RCRA, thus requiring processing (e.g., chipping or shredding) prior to use as a fuel in combustion devices; and

WHEREAS, some states with independent waste tire programs have suggested that the federal definition of solid waste under RCRA should be amended to exclude whole tires so that no chipping or shredding is required prior to use as a fuel in combustion devices; and

WHEREAS, states that do not have independent waste tire statutes are concerned about their ability to regulate whole tires as solid waste if whole tires are excluded from the definition of solid waste; and

WHEREAS, in either case, states are operating waste tire disposal programs that are protective of the environment.

NOW, THEREFORE BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Urges U.S. EPA to create a subcategory under section 129 of the Clean Air Act (CAA) rules for combustion of whole waste tires as alternative fuel and regulate this combustion similarly to the CAA, section 112 standard for maximum achievable control technology (MACT), or, in the alternative, exclude whole tires from the definition of solid waste at the point of combustion (see attachment).

Attachment to Resolution 09-7

Proposed statutory and/or regulatory amendment at 42 U.S.C. sec. 6903(27) and/or 40 CFR 157.2:

“Solid waste” means any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923), or combustion of whole tires that have been recovered or diverted from the solid waste stream and used as legitimate alternative fuel pursuant to an established state waste tire program.



Resolution 11-7
September 26, 2011
Indianapolis, Indiana

As certified by
R. Steven Brown
Executive Director

FEDERAL RESOURCES FOR STATE ENVIRONMENTAL PROGRAMS

WHEREAS, since 2007, states now operate 96% of the federal programs that are delegable to them, such as the Clean Water Act (CWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and the Safe Drinking Water Act (SDWA) that protect public health and our nation's air, land, and water resources; and

WHEREAS, of the core environmental protection activities required by federal (and state) law, states conduct 97% of the inspections at regulated facilities; provide 94% of the data in EPA's six major databases; conduct over 90% of all enforcement actions; and are first responders at spills, cleanups, and natural disasters, with EPA providing most of the remaining work directly; and

WHEREAS, in recognition of this key role in environmental service delivery, the U.S. Congress included provisions in the CWA, CAA, RCRA, and SDWA to provide assistance to states to operate these federal programs and this is primarily through, but not limited to, state and tribal assistance grants (STAG), which are composed of two parts: categorical grants (which assist with the operation of delegated programs) and infrastructure funds (most notably the clean water and drinking water state revolving funds - SRF), and in some cases under these statutes required a state match; and

WHEREAS, from the states' point of view, funds that support operation of delegated programs in particular are essential to provide resources to meet congressional requirements for public health and the environment; and

WHEREAS, U.S. EPA grant funding for the non-SRF portions of STAG has been largely flat since FY 2004 and has not been increased to assist states with inflation and other increased staff costs (including per-person wage and health care cost increase); and

WHEREAS, according to the U.S. EPA, during the period 2001-2009, the inflation rate was more than double the increase in categorical grants, cutting these grant's purchasing power by approximately 13%; and

WHEREAS, increases to U.S. EPA's budget have been disproportionally allocated to STAG and decreases to U.S. EPA's budget have been largely pushed to STAG – with the exception of the significant one-time increase to SRF in FY 2010 resulting from the American Reinvestment and Recovery Act (ARRA) (for example, in FY 2004 U.S. EPA increased its non-STAG budget by \$244 million while only increasing STAG funds by \$43 million, and in FY08 U.S. EPA reduced its non-STAG budget by \$45 million while cutting STAG by \$361 million); and

WHEREAS, in the 2011 budget proposal, U.S. EPA recommended increases to the categorical grants to states and significant cuts to the SRF of which the U.S. Congress enacted only cuts to SRFs; and

WHEREAS, states have thus far been able to substantially maintain their ability to deliver federally-delegated program commitments, despite the reduction in federal funding; and

WHEREAS, in principle, states are often supportive of the need for federal rules when they are based on sound science to protect human health and the environment, and states support the U.S. EPA's ability to enact these new rules; and

WHEREAS, on average, states received 53 new federal environmental rules (issued as final and completed actions and published by the U.S. EPA) – some of which are significant and some are minor -- to implement each year since fall 2006 through spring 2011; and

WHEREAS, in addition to new environmental rules, the burden of related federal rules, including disadvantaged business enterprise changes, ARRA requirements, and Federal Financial Accountability Transparency Act (FFATA) implementation, has significantly increased the administrative burden to states in the past two years; and

WHEREAS, the combination of the reduction in purchasing power from inflation, budget cuts, and the steadily increasing demands on states to implement new federal environmental rules have begun to impede successful state implementation of delegated programs, and states expect these implementation challenges to increase; and

WHEREAS, in April 2011, the U.S. Congress passed the 2011 budget but the U.S. EPA did not require award of categorical grant funds to states until August 15, more than three months after the budget's passage and after the end of most states' fiscal year.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Recognizes the continuing need for states as co-regulators with the U.S. EPA to jointly work together for the most efficient and effective use of limited resources for the greatest environmental benefit;

Continues to ask that the U.S. EPA seek early, meaningful, and substantial state involvement in its budget development;

Urges U.S. EPA and the U.S. Congress to reverse the trend of inequitable apportionment of U.S. EPA's overall budget adjustments (including increases and decreases) to U.S. EPA's funding for states via the STAG portion of their budget;

Asks that U.S. EPA consider the availability of federal funding support in its planning for new rule adoption schedules and other implementation activities following new rule issuance;

Asks that the U.S. EPA continue to work with states to reduce the time necessary to make grant awards to states following the enactment by the U.S. Congress of the budget or continuing resolution; and

Recognizes that reductions to STAG, in particular categorical grants, jeopardize states' ability to implement federal programs on behalf of the U.S. EPA.



Resolution 11-6
September 26, 2011
Indianapolis, Indiana

As certified by
R. Steven Brown
Executive Director

CONSIDERATION OF STATE ADMINISTRATIVE COSTS

WHEREAS, state environmental agencies are responsible for implementing nearly all of the core environmental programs that protect public health and our nation's air, land, and water resources; and

WHEREAS, U.S. EPA has proactively adopted internal guidance to consult with states on proposed regulatory actions that are estimated to have an effect on state or local governments of \$25 million or more in aggregate, exceeding the requirements of Unfunded Mandates Reform Act (UMRA) of 1995, 1993 Executive Order (E.O.) 12866 "Regulatory Planning and Review," and 1999 Executive Order 13132 "Federalism" to consult on proposed regulatory actions that are expected to exceed \$100 million or more; and

WHEREAS, the delegation of new federal environmental rules (issued as final and completed actions and published by the U.S. EPA) to the states continues at a steady pace with states receiving on average 53 new federal environmental rules to implement each year from fall 2006 through spring 2011; and

WHEREAS, with workload increasing and with the federal budget and the majority of state budgets remaining flat or declining, states and the U.S. EPA must prioritize workloads, seek other funding sources such as permit fees, and communicate resource needs to state and federal legislatures; and

WHEREAS, no matter which level of government implements new rules, the costs to do so have to be addressed; and

WHEREAS, states have expressed to the U.S. EPA the potential individual and cumulative burden of state administrative costs from new federal rules and that having U.S. EPA identify, estimate, and include these costs in its regulatory development of new rules might assist the U.S. EPA and states in seeking resources to support implementation of these new environmental rules; and

WHEREAS, states incur start-up and recurring implementation costs as a result of rules that may include, for example: obtaining additional delegated authority; pursuing state rulemaking process to adopt state regulations to implement the federal requirements; attending U.S. EPA training; developing a system for monitoring affected entities; purchasing new equipment to enforce the new regulation; providing compliance assistance; conducting ongoing public outreach and education programs to the regulated communities on how to comply with state agency implementation of the rule; collecting and reviewing data from monitoring; recording, and storing data; and conducting enforcement inspections and follow-up actions; and

WHEREAS, U.S. EPA most often only includes direct compliance costs in its new rule economic analyses; and

WHEREAS, implementation guidance may lag behind new rule publication, resulting in delegated states being delayed in action or delegated states taking action that may have to be amended following release by U.S. EPA of implementation guidance; and

WHEREAS, the E.O. 12866 Section 6 (a)(3)(C)(ii) directs for significant regulatory actions (unless prohibited by law) that federal agencies should have developed "[a]n assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost ... to the government in administering the regulation ..." as part of its decision-making process and that section 6(a)(3)(E)(i) directs that this information be made available to the public; and

WHEREAS, E.O. 12866 further directs federal agencies in Section 1(a) that "[c]osts and benefits should be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider;" and

WHEREAS, UMRA directs federal agencies to include a number of statements to accompany significant regulatory actions in a notice of proposed rulemaking including Section 202 (a)(2) that "the agency shall prepare a written statement containing... a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State... governments;" and

WHEREAS, the 2011 Executive Order 13563 "Improving Regulation and Regulatory Review" reiterates general principles of regulation including that the regulatory system must take into account benefits and costs, both quantitative and qualitative, and directs federal agencies to take into account to the extent practicable the costs of cumulative regulations; and

WHEREAS, ECOS met with U.S. EPA's Administrator in 2006 to discuss funding shortfalls to administer federal environmental laws and consequently worked with the U.S. EPA Office of Policy's National Center for Environmental Economics (NCEE) on a cost of rules study, "A Framework for Reviewing EPA's State Administrative Cost Estimates: A Case Study," published in September 2007; and

WHEREAS, since September 2010, ECOS on behalf of states has submitted, without response from U.S. EPA, written comments on five U.S. EPA proposed rules asking that U.S. EPA consider appropriate costs for start-up and recurring activities in its estimations of state administrative costs.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Continues to support early, meaningful, and substantial state involvement in the development and implementation of environmental statutes and related rules including consideration of administrative resources needed to accomplish rule implementation;

Asks that the U.S. EPA include estimates of both state administrative costs and state direct compliance costs as called for by the above referenced executive orders and by UMRA;

Asks that U.S. EPA consider state administrative costs for a wide range of implementation start-up and recurring activities in its cost estimations for new rules;

Requests that U.S. EPA's Office of Policy review its regulatory rule development system to ensure that national media program offices include in their proposed significant regulatory actions a qualitative and quantitative assessment of benefits and costs of new rules including state administrative costs and state direct compliance costs and that this information is made public;

Requests to the greatest extent possible that the U.S. EPA concurrently publish implementation guidance for new rules to states at the time of new rule issuance as timely issuance of implementation guidance would facilitate state adoption of new rules as well as increase state and U.S. EPA staff resource efficiency in completing activities related to new rule adoption;

Asks that U.S. EPA consider the availability of federal funding support in its planning for new rule adoption schedules and other implementation activities following new rule issuance;

Recognizes that failure to include an accurate assessment of the state administrative implementation costs may result in a rule that is not implemented properly or in a timely manner, which may adversely affect human health, and which may require additional action from U.S. EPA; and

Requests that U.S. EPA provide to states its estimates of state administrative costs for any new rule to assist in planning and in seeking appropriate resources.



Resolution 11-8
Approved September 26, 2011
Indianapolis, Indiana

As certified by
R. Steven Brown
Executive Director

ON THE USE OF GUIDANCE

WHEREAS, our nation's regulation of the environment is founded on law through enacted statutes, and regulations issued pursuant to those laws; and

WHEREAS, both the federal government and respective state governments enact statutes and regulations; and

WHEREAS, from time to time, the U.S. Environmental Protection Agency (U.S. EPA) and some, but not all, states may issue documents collectively called "guidance"; and

WHEREAS, U.S. EPA, on its web page at <http://www.epa.gov/lawsregs/policy/index.html> (as of June 7, 2011) declares "Sometimes, however, that authority needs to be further refined or explained. In such cases, EPA may develop and implement policies and write guidance. In addition, EPA sometimes issues policy or guidance to encourage compliance with environmental requirements;" and

WHEREAS, guidance may serve to interpret regulations in plainer English, so as to facilitate understanding and compliance with the statutes and regulations; and

WHEREAS, states do not issue guidance as a substitute for statutes or regulations; and

WHEREAS, U.S. EPA's use of guidance does not require public notice or participation as does a regulatory proposal in direct conflict with the agency's stated value of transparency, nor is U.S. EPA required to provide notice to the states, as co-regulators, or seek their participation in the development of guidance; and

WHEREAS, U.S. EPA recognizes that guidance does not have the force of law by including disclaimer language in guidance that says, for example, "This draft guidance document is intended to describe for agency field staff the agencies' current understandings; it is not a rule, and hence it is not binding and lacks the force of law" (from EPA's *Draft Guidance on Identifying Waters Protected by the Clean Water Act*).

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Believes that each state reserves the right to use, or refrain from using, guidance as part of its environmental regulatory effort;

Believes that U.S. EPA has the right to use guidance for the purposes declared above;

Urges U.S. EPA to limit use of guidance to “interpretation” of its regulations, not as a substitute for regulation, or to change or expand the effects of the regulation, such as adding or deleting entities covered by current regulation; and

Believes that U.S. EPA has the right to object to a permit under some statutes, however, particularly objects to the use of guidance, which has not been subject to public review and comment, as a justification for official or unofficial objection to the issuance or renewal of a permit.



Resolution Number 11-1
Approved March 30, 2011
Alexandria, Virginia

As certified by
R. Steven Brown
Executive Director

**OBJECTION TO U.S. ENVIRONMENTAL PROTECTION AGENCY'S IMPOSITION
OF INTERIM GUIDANCE, INTERIM RULES, DRAFT POLICY AND
REINTERPRETATION POLICY**

WHEREAS, protection of public health and the environment is among the highest priorities of governments, requiring a united and consistent effort at all levels of government; and

WHEREAS, U.S. Congress has provided by statute for delegation, authorization, or primacy (hereinafter referred to as delegation) of certain federal program responsibilities to states; and

WHEREAS, states that have received delegation have demonstrated to the U.S. Environmental Protection Agency (U.S. EPA) that they have adopted laws, regulations, and policies at least as stringent as federal laws, regulations, and policies; and

WHEREAS, states have developed and demonstrated the capability to maintain existing and assume new delegations; and

WHEREAS, U.S. Congress in environmental statutes and the Administrative Procedure Act (APA) establishes a formal rulemaking process to provide a mechanism for public comment, offering amendments, or allowing states to object, and providing standards for judicial review of agency actions; and

WHEREAS, it is a fundamental responsibility of U.S. EPA to work cooperatively and collaboratively with the states as co-regulators to ensure that regulations and programs can be effectively implemented; and

WHEREAS, some states are required by state law to conduct their own rulemaking prior to implementing federal regulations; and

WHEREAS, some states are prohibited by state law from implementing any requirement more stringent than the federal requirement; and

WHEREAS, the states have limited options to challenge U.S. EPA imposition of objection authority based on interim guidance, interim rules, draft policy or reinterpretation policy, and the Courts are inconsistent in their findings for judicial review in these cases; and

WHEREAS, the processes, rather than the environmental substance of the underlying rules, U.S. EPA may be using to impose interim guidance, interim rules, draft policy or reinterpretation policy, may result in a state agency being forced to choose whether it will comply with either U.S. EPA's policy or its own state laws; and

WHEREAS, U.S. EPA interim guidance, interim rules, draft policy or reinterpretation policy may not be legally binding and states using these as the basis for issuing permits or other actions may result in delays and potential job losses; and

WHEREAS, U.S. EPA's continued imposition of interim guidance, interim rules, draft policy or reinterpretation policy may lead to uncertainty regarding actions taken by state and federal regulatory bodies; and

WHEREAS, ECOS published an ECOS Green Report, "Recent U.S. EPA Positions on Interim Guidance, Rules, and Policies", in December 2010 that presents known cases of these policies and discusses some of their implications for state and federal roles in implementing national environmental policies.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Believes that U.S. EPA should adhere to the requirements of federal environmental statutes, the APA and its own guidance governing rulemaking to provide for adequate public notice and comment on proposed and final actions;

Believes that U.S. EPA should engage the states as co-regulators prior to and during the rulemaking process seeking early, meaningful, and substantial involvement from states to ensure high quality regulations that can be effectively implemented by delegated states;

Believes that U.S. EPA should minimize the use of interim guidance, interim rules, draft policy and reinterpretation policy and eliminate the practice of directing its regional or national program managers to require compliance by states with the same in the implementation of delegated programs;

Urges U.S. EPA, when interim guidance, interim rules, draft policy or reinterpretation policy is deemed necessary, to consult with states and require its regional and national program managers at the earliest possible opportunity to engage in meaningful and consultative discussion with each of their states about the content of interim guidance, interim rules, draft policy or reinterpretation policy and the practicalities of implementation;

Urges U.S. EPA to make its guidance, rules and policies final prior to seeking state adherence and implementation;

Believes U.S. EPA should not use its objection authority when based entirely or in part on interim guidance, interim rules, draft policy or reinterpretation policy;

Requests that for formal objections to state-issued permits, U.S. EPA modify its processes to designate that its objection is a final agency determination subject to judicial review;

Further requests that U.S. EPA establish firm and timely deadlines for it to issue or deny those permits to which it has objected; and

Request that a copy of this resolution be transmitted to the appropriate U.S. Senate and House of Representatives committees and to the U.S. EPA Administrator.



Resolution Number 11-2
Approved March 30, 2011
Alexandria, Virginia

As certified by
R. Steven Brown
Executive Director

RESPECTFUL USE OF DATA

WHEREAS, the overwhelming majority of data in U.S. EPA databases is generated by state, local and tribal officials; and

WHEREAS, the states are obligated under various program grants to make quality data and information available to the U.S. EPA in a timely manner; and

WHEREAS, U.S. EPA and the states present data in various ways and forums on their websites; and

WHEREAS, U.S. EPA receives requests for information under the Freedom of Information Act (FOIA); and

WHEREAS, U.S. EPA is required to make requested records available unless the records are protected from disclosure by certain FOIA exemptions; and

WHEREAS, the FOIA applies only to federal agencies and not to records held by U.S. Congress, the courts, or by state or local government agencies; and

WHEREAS, the FOIA entitles exemptions on documents being requested by the public including, but not limited to, the following:

1. Those documents properly classified as secret in the interest of national defense or foreign policy;
 2. Related solely to internal personnel rules and practices;
 3. Specifically exempted by other statutes;
 4. A trade secret or privileged or confidential commercial or financial information obtained from a person;
 5. A privileged inter-agency or intra-agency memorandum or letter;
 6. Compiled for law enforcement purposes, the release of which
 - a. could reasonably be expected to interfere with law enforcement proceedings,
 - b. would deprive a person of a right to a fair trial or an impartial adjudication,
 - c. could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - d. could reasonably be expected to disclose the identity of a confidential source,
 - e. would disclose techniques, procedures, or guidelines for investigations or prosecutions, or
 - f. could reasonably be expected to endanger an individual's life or physical safety;
- and

WHEREAS, providing data to the public is good government allowing for use and analysis by others to better understand the state of the environment as well as the implementation of environmental programs.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Urges U.S. EPA to provide advance notice to states and U.S. EPA regional offices prior to the scheduled release of routine datasets in cases where data use and distribution are not subject to more specific agreements, so that states are prepared to respond to potential inquiries by the press and the public regarding those datasets;

Supports a cooperative process for the scheduled release of routine data as outlined in the U.S. EPA's 2010 Data Verification Process that allows states the opportunity to review data pertaining to their jurisdiction and submit timely corrections of data errors before the data is released;

Encourages U.S. EPA to establish a pre-notification process that alerts states to unscheduled releases of non-routine, un-verified datasets that contain nationwide information, that are on controversial or sensitive topics or that contain State agency outputs (such as number of permits, enforcement actions taken or penalties collected);

Requests that when U.S. EPA releases raw datasets, that the raw data be put in context (i.e. metadata that explains what the data is and is not) and informs U.S. EPA that states would be willing to participate in the development of those context descriptions; and

Supports inclusion of the data source/provider as part of the metadata as well as referral of data queries to the original source.