



ECOS' List of Rules/Policies to Retain, Revise or Revoke

(Note: These are listed by ECOS committees, not necessarily in priority order.)

ECOS PLANNING COMMITTEE

Executive Order 13132 on Federalism

Desired Actions:

Revise Unfunded Mandates Reform Act consultation trigger from \$100 million to \$10 million. [Note: This was recently (Nov 2008) changed to \$25million.] Consult with ECOS and states earlier in process and more often.

Summary:

President Clinton signed Executive Order 13132 in August 1999 to ensure that the principles of federalism are carried out according to the vision of the framers of the Constitution. Among the pertinent provisions of the order are the guiding fundamental principles of federalism, policymaking criteria, special requirements for preemption, special requirements for legislative proposals and increasing flexibility for state and local waivers. The effectiveness of executive orders on federalism and intergovernmental relations is tied to an administration's commitment to enforce those orders and to their interpretation of the conditional terms written in those orders.

Background Information and Links:

- ECOS Resolution Number 00-1 (last revised 9/8/05):
[On Environmental Federalism](#)

- Letters
[Letter to EPA on State Consultation](#)
[Reply from EPA on State Consultation Letter](#)

- [Federal Register Notice](#)

U.S. EPA Budget

Desired Actions:

Revise the President's budget request for EPA to increase funding for state program operations and the state revolving loan funds.

Background Information and Links:

- ECOS Resolution Number 08-1:
[ECOS Urges Congress to Reauthorize and Fully Fund the CWSRF](#)

- Letters



[Comments on EPA 2010 Budget Issues](#)
[Letter on State Portions of 2008 EPA Budget](#)
[2008 Budget Cmte Letter - House](#)
[2008 Budget Cmte Letter - Senate](#)
[ECOS Officers letter to Marcus Peacock on budget priorities - April 07](#)

National Environmental Performance Partnership System (NEPPS)

Desired Action:

Retain NEPPS and build upon it with an enhanced approach to state-federal joint governance.

Summary:

On May 17, 1995, the ECOS leaders and EPA entered into the Joint Commitment to Reform Oversight and Create a National Environmental Performance Partnership System (NEPPS), which included commitment to directing scarce public resources toward improving environmental results, allowing states greater flexibility to achieve those results, enhancing accountability to the public, use of environmental performance agreements based on joint strategic planning, and differential EPA oversight of states based on performance. ECOS continues to affirm NEPPS overall as an important and positive step in the right direction, and affirms the benefits provided by NEPPS for many states via Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPG), including increased administrative flexibility, the ability to direct grant resources to cross-cutting and multi-media projects under Part 35 grant rules, and increased support for innovative projects.

At the 2008 ECOS Spring Meeting, the members resolved the states' affirmation of NEPPS and the states' desire to develop an additional new approach to state/federal "joint governance" that would include earlier and more active engagement with EPA at the senior management level on federal environmental priority-setting and associated budgeting decisions. This high-level engagement would also increase state-federal collaboration on environmental program implementation decisions. This approach would be additive to the current NEPPS agreement and would build upon the successes of NEPPS. ECOS seeks to pilot this enhanced approach with one of EPA's national program offices beginning in 2009, and collaborating with other partners (such as the relevant national environmental media associations) in this work.

Background Information and Links:

ECOS Resolution Number 08-10:

[State Commitment to Developing a New State / Federal Joint Governance Approach](#)

NEPPS Agreement (1995)



State Reporting Burden Reduction Initiative

Desired Action:

Retain the Burden Reduction Initiative and continue progress in implementing the remaining recommendations to reduce states' reporting burden.

Summary:

In October 2006, EPA and ECOS launched a joint Burden Reduction Initiative focused on state concerns over escalating reporting requirements. Nearly 40 states submitted over 200 reporting requirements they considered most burdensome and of low value in managing environmental programs. EPA reviewed the recommended changes and commented on their feasibility.

Some reporting changes will be implemented in the short-term, and other proposed changes need more analysis or may require statutory or regulatory changes. In August 2008, EPA prepared a draft report for state review which outlines EPA's progress on addressing 16 priority areas identified by the states in summer 2007; increasing the initiative's transparency and clarity; and creating tools for incorporating burden reduction into EPA's standard operating procedures. Implementation is ongoing, through 2008 and beyond.

Background Information and Links:

<http://www.epa.gov/ocir/nepps/burden.htm>

National Environmental Information Exchange Network

Desired Action:

Retain the National Environmental Information Exchange Network (Exchange Network) Grant Program; include dedicated funding in the U.S. EPA budget to sustain the Exchange Network's governance, technological innovation and central services; and, urge EPA to continue to support modernization of its information systems and the adoption of the Exchange Network among its environmental program offices.

Summary:

States and EPA have committed themselves to implementing the Exchange Network as a standards-based, interoperable national architecture that enables efficient data sharing, access and exchange. The agency's Exchange Network Grant Program has provided a key funding mechanism for the ongoing development and implementation of Exchange Network infrastructure and data flows. Both States and EPA have made great strides in improving their data management infrastructure, though work remains to realize the complete vision and full potential of the Exchange Network. With continued financial and management support, the Exchange Network will grow into the interoperable national system that decision makers need to manage and protect the environment and human health.



Background Information and Links:

<http://www.exchangenetwork.net>

ECOS Resolution 05-2:

[National Environmental Information Exchange Network Governance](#)

ECOS Resolution 08-7:

[Support for The Climate Registry and a Single Data Exchange Standard for Greenhouse Gas Emissions and Other Air Pollutants](#)

Cross-Media Electronic Reporting Rule (CROMERR)

Desired Action:

Revise to delay the application deadline for CROMERR applications or, in the alternative, provide a straightforward waiver process, and simplify and streamline the application process to make it less prescriptive and comparable to the electronic filing option utilized by millions of Americans and businesses when filing yearly tax returns with the Internal Revenue Service.

Summary:

States and EPA share the goal of a successful approach to electronic reporting that assures secure transmission of data and gives no cause for reporters to repudiate data submissions. States have raised numerous issues regarding EPA's interpretations of CROMERR's regulatory and application requirements. CROMERR was intended to be a performance-based and technology-neutral rule; however, the application process appears overly prescriptive and favors specific technologies that are costly to implement and may actually discourage the regulated community from adopting electronic reporting.

In May 2007, the ECOS Data Management Work Group urged EPA to allow states the flexibility to meet the requirements of CROMERR in the most cost-effective or practical approach for their own circumstances. With the application deadline looming, few states have submitted applications to become CROMERR compliant.

State and Federal Innovation, including Lean Government Initiative and Process Improvement Transfers

Desired Action:

Revise to establish a formal connection between ECOS and EPA's Innovation Action Council and extended collaboration with the Office of Policy Economics and Innovation.

Summary:

Several states have actively used lean manufacturing tools and techniques to craft innovative and effective solutions to a wide variety of governmental services. Similarly, several states have engaged their regional counterparts in using lean techniques to chart



process improvements in the state/federal delivery of services. Having made changes and realized some successes through these processes, it is also clear that there are opportunities to extend these lessons more broadly. Just as the ECOS Cross Media Committee has worked with EPA's Innovation Action Council (IAC) on the general Innovation Agenda and Program Innovation, the ECOS Planning Committee would be the logical partner on the Administrative Innovations.

- Regarding Lean Government:
 - Formalize the development of lean techniques, conduct of lean events and extension of lean actions at both the state and federal levels.
 - Incorporate leaning government into the ongoing discussions of the IAC.
 - Create a location at which tools and metrics can be accessed along with the network of practitioners to extend use of the lean tool box.

- Regarding Process Improvement Transfers:
 - Create a formal relationship between ECOS and the IAC to replace the current informal one – such a relationship will emphasize the transfer of information from IAC participants to all state environmental agencies.
 - Utilize the Innovation Action Council as the forum for Organizational Improvement that can be accomplished through innovation.
 - Recognize that there is not always a bright line between program improvement and organizational improvements by utilizing the broad forum of IAC and the combined presence of the Planning and Cross Media Committees to assure the effective and efficient allocation of resources to pursue both programmatic and organizational innovation.
 - Provide a forum for the sharing and extension of process innovations in ways that will cause the lessons/gains to be shared and more universally applied.

Background Information and Links:

[The Lean in Government Starter Kit](#)

[Working Smart for Environmental Protection: Improving State Agency Processes with Lean and Six Sigma](#)

[EPA's QMR](#)

State and Federal Performance Measurement, including State Grant Performance Measurement Templates, Standardized State Grant Workplan Pilot and Quarterly EPA-Stat Report (OER, formerly known as QMR)

Desired Action:

Revise to improve collaboration with states.

Summary:

Since FY 2006, EPA has been developing improved and standardized performance measures for state activity funded by EPA grants (known as State Grant Performance



Measures Templates and Standardized State Grant Workplans). As a result of an OMB directive, EPA and states initiated an effort to develop a Standardized Workplan Pilot in FY 2009. Three workplan options were developed for the pilot. Sixteen states from seven EPA Regions are participating in the pilot. In the fall of 2009, the State Grants Subgroup will evaluate how the standardized workplans impacted grant negotiations. In addition, when appropriate, the subgroup will evaluate how the standardized workplans impacted required reporting.

EPA has also been developing standardized simplified management reporting for its own performance (known as Quarterly EPA-Stat Report or QER). The states have appreciated EPA's efforts to collaborate with the states on these efforts. There are still some important issues that need to be addressed in order for these efforts to be effective.

- Regarding state performance measures, these issues include:
 - State performance measures must be adjusted to cover the major activities performed under state grants,
 - State performance measures should be on a timescale that will accurately reflect outcomes, and
 - State performance measures must accurately reflect how state activities are funded only partially by federal funds and by a combination of other funding sources.
 - Important background and context information must travel with these performance measures whenever they are presented.
- Regarding Standardized State Grant Workplan Pilot, issues include:
 - EPA's current approach to working with states to pilot mechanisms for standardizing state grant workplans should continue, and should ensure the state-to-state grant flexibility envisioned in NEPPS is maintained.
- Regarding Quarterly EPA-Stat Report, issues include:
 - Measures should be more standardized across EPA's Regions.
 - EPA's measures should focus on the most significance topics (for environmental protection, public health, and agency efficiency).
 - Raw numbers may not be enough: the reader must be able to tell whether performance was good or bad or OK (e.g. what percent of the total universe was done, what percent of the Regional goal was achieved, etc.).
 - Include some EPA performance data that is important for states, e.g.
 - TMDL Performance Measures on how many state TMDLs were submitted for review/approval, and how many of those were acted on, and
 - Data on region-by-region performance meeting EPA's state grant award timeliness standard.

Background Information and Links:

Appropriate ECOS P&P Docs from ECOS Website?

[State Grant Performance Measures Template](#)



EPA's QMR

Office of Management and Budget's Performance and Assessment Rating Tool (PART)

Desired Action:

Revise to improve collaboration with states. If PART is retained, it should be more transparent, consider a peer-review approach, and involve affected regulatory parties such as States when the programs they implement are being reviewed.

Summary:

During the Bush Administration, OMB began using PART to assess agency program performance. This led to particular problems at EPA, because so many of the agency's programs are delegated to states. In effect, OMB was reviewing state performance, although it was always careful to say that was not the case.

For example, OMB conducted a PART review of water's 106 program. The agency took special effort to involve states in compiling the data used for the review. We felt very strongly that this helped lead to a positive review.

On the other hand, states were explicitly excluded from the review of the agency's 105 air program, and it received a very poor rating, resulting in reduced funding. States felt that if they had been able to contribute to the review that a different result might have occurred.

Background Information and Links:

<http://www.whitehouse.gov/omb/part/>

ECOS WATER & ECOSYSTEMS COMMITTEE

Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula

Desired Action:

Revoke

Summary:

EPA proposed to restructure the manner in which future increases to 106 grants are allotted, based on the percentage of income that a state's Section 106 program receives from permits. This decision was made without consultation with the states, which have listed many problems with the proposal. Some have suggested that the proposal might not be legal and some states have indicated they intend to sue EPA over this issue.

Background Information and Links



- ECOS Resolution Number 07-3
[ECOS Opposition to Set-Asides of Water Quality Program Funding](#)
- Federal Register Notice
<http://www.epa.gov/EPA-WATER/2007/January/Day-04/w22549.htm>
- Letters
[Letter Asking for Withdrawl of Proposed Permit Fees Rule](#)
[Proposed NPDES Permit Fee Rule, March 2, 2007 Letter to USEPA](#)
[ECOS Letter to Assistant Administrator Grumbles Re: NPDES Permit Fee Incentive Rule](#)

Set-asides of Water Quality Program Funding

Desired Action:

Revise. US EPA discontinues current set-asides and proposes no new set-asides. Instead, states ask to work with EPA leadership and staff to cooperatively address EPA's needs and the states' ability to meet them.

Background Information and Links

- ECOS Resolution Number 07-3
[ECOS Opposition to Set-Asides of Water Quality Program Funding](#)
- Letter
[ECOS Letter to Assistant Administrator Grumbles Re: NPDES Permit Fee Incentive Rule](#)
[Proposed NPDES Permit Fee Rule, March 2, 2007 Letter to USEPA](#)

Clean Water Act Jurisdiction

Desired Actions:

Revise.

Passage of federal legislation that restores the definition of waters covered by the Clean Water Act to that in use before the court cases of recent years; i.e. the definition exactly as it appeared in 40 CFR 122.2.

Amend section 404 of the Clean Water Act to facilitate the delegation of the program from the Army Corps of Engineers and US EPA to the States

Background Information and Links

- ECOS Narrative
[Narrative on Clean Water Act and Wetlands](#)
- ECOS Resolutions – Numbers 08-2 and 08-3
[Clean Water Act Jurisdiction Issues Require Clarification from Congress](#)
[State Delegation of Clean Water Section 404 Permit Program](#)



- ECOS Letter to Chairman Oberstar
[Letter to Oberstar with ECOS Definition of Waters of the US](#)
- U.S. Army Corps of Engineers/U.S. Environmental Protection Agency Guidance
<http://www.epa.gov/owow/wetlands/pdf/RapanosGuidance6507.pdf>

CWA NPDES State Burden

Desired Action:

Revise.
US EPA works in cooperation with states to develop a fully integrated set of policies

Background Information and Links

- ECOS Resolution Number 07-4
[Clean Water Act National Pollutant Discharge Elimination System \(NPDES\) Management Framework](#)
- Letters
[ECOS Letter to USEPA Re: USEPA's Draft NPDES Policies](#)
- Three NPDES Policy Paper
http://www.ecos.org/files/2738_file_Relation_Between_3_NPDES_Policies_April_3_0_2007.doc?PHPSESSID=69bf8a50ad486be3e6a394513b4291e7

ECOS WASTE COMMITTEE

Toxics Release Inventory Burden Reduction Final Rule

Desired Action: Revise

Summary:

Effective January 22, 2007, U.S. EPA revised the Toxics Release Inventory (TRI) reporting requirements to reduce burden. TRI reporting is required by section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). An August 2006 ECOS resolution expressed support for TRI burden reduction but asserted that some of the proposed changes ultimately implemented by EPA contradict the purpose of EPCRA. The rule expands non-Persistent Bioaccumulative and Toxic (non-PBT) chemical eligibility for Form A by raising the eligibility threshold to 5,000 pounds of total annual waste management (i.e., releases, recycling, energy recovery, and treatment for destruction) provided total annual releases of the non-PBT chemical comprise no more than 2,000 pounds of the 5,000-pound total waste management limit. The rule also allows, for the first time, limited use of Form A for PBT chemicals when total annual releases of a PBT chemical are zero and



the total annual amount of the PBT chemical recycled, combusted for energy, and treated for destruction does not exceed 500 pounds. The rule, however, retains the current exclusion of dioxin and dioxin-like compounds from Form A eligibility and takes other steps to encourage adequate reporting.

Background Information and Links:

- ECOS Resolution Number 06-12 (On U.S. EPA's Proposal to Change TRI Reporting)
http://www.ecos.org/files/2255_file_Copy_of_Resolution_06_12.pdf
- Federal Register Notice
<http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=0435092126+2+0+0&WAIAction=retrieve>

CROSS-MEDIA COMMITTEE

DOD's changed policy on Defense State Memorandum of Agreement (DSMOA)

Desired Action:

Revise, to return to previous policy

Summary:

DOD interpretations of DSMOA policy since 2006 are limiting state enforcement, are restricting the type of work that is eligible for DSMOA payment, are inconsistent from state to state, and are undermining development of joint state-DOD policy on subjects directly related to DOD cleanup activities.

- DOD's new policy withholds **all** DSMOA reimbursements when states use enforcement authority at a site in its DSMOA.
- DOD now has determined that DSMOA can only fund state employees for site-specific oversight work—national policy and guidance development work specific to DOD is no longer DSMOA eligible. Additionally, work related to property transfer recently has been deemed ineligible.

Background Information and Links:

ECOS Resolution 07-6 DSMOA and Federal-State Collaboration

http://www.ecos.org/files/2670_file_07_6_ECOS_DSMOA_Resolution_3_21_07_FINAL.doc

ECOS Green Report on DSMOA:

http://www.ecos.org/files/2884_file_green_report_on_DSMOA_final.pdf



Letters to Philip Grone and Alex Beehler of DoD

COMPLIANCE COMMITTEE

Regulation Title: Required Data Elements in the ICIS-NPDES Data System to Enable EPA to Manage the National NPDES Program (RIN2020-AA47)

Desired Actions:

Stop EPA from promulgating federal regulations specifying the data elements NPDES-authorized States will be required to submit to EPA for the purposes of EPA's national NPDES program management.

Summary:

EPA has a responsibility to ensure the Clean Water Act National Pollutant Discharge Elimination System (NPDES) program is effectively and consistently implemented across the country. The Permit Compliance System (PCS), the official EPA national database for the NPDES program, has been in operation since 1970 without substantial modification. PCS supports the second largest data collection effort in the federal government.

EPA is undertaking a multi-year, extensive process for identifying data and system design requirements for a modernized PCS – the Integrated Compliance Information System-NPDES (ICIS-NPDES). Many States are concerned about the burdens associated with the expansion PCS, and the ability to maintain approved NPDES programs in light of diminishing resources and significantly increased reporting requirements associated primarily with the expansion of PCS to track programs for wet weather and new facilities such as Biosolids, Concentrated Animal Feeding Operations, Combined Sewer Overflows, Stormwater, and Sanitary Sewer Overflows.

Rather than a federal rulemaking to determine to promulgate in federal regulation required data elements for the NPDES program, ECOS supports the ICIS-NPDES Policy Statement review framework agreed to by the Expanded PCS/ICIS Steering Committee.

This review framework, among other actions, would outline other approaches States might use for providing information to meet the management needs of the NPDES Program at State, Regional and National levels, and assess the resource and information management workload implications associated with operating an approved State NPDES program that now includes Biosolids, CAFOs, CSOs, Stormwater and SSOs.

Background Information and Links:

ECOS Resolution: http://www.ecos.org/files/1922_file_Copy_of_Resolution_06_4.pdf

EPA April 2008 Action Initiation List:

<http://www.regulations.gov/fdmspublic/custom/jsp/search/searchresult/docketDetail.jsp>



AIR COMMITTEE

EPA's Revised NAAQS Review Process

Desired Actions:

Modify EPA's revised NAAQS review process to restore the public release of an EPA Staff Paper, which provides the Clean Air Scientific Advisory Committee (CASAC) and the public with a genuine policy assessment of scientific and technical information. Further, ECOS supports the role of CASAC in the NAAQS review process and recommends that EPA fully consider the findings of CASAC when making its decision.

Background:

EPA had a longstanding and scientifically sound procedure for the review of the national ambient air quality standards (NAAQS) that involved the publication of a Staff Paper as part of the process. The EPA Staff Paper provided an opportunity for public review of the independent scientific analysis and the recommendations made by EPA professional staff in the NAAQS review process.

CASAC's mandate under the Clean Air Act is to provide independent scientific advice and recommendations in the NAAQS review process. EPA revised its procedures for the NAAQS review process on December 7, 2006, eliminating the Staff Paper and replacing it with a policy assessment that reflects the views of EPA management, to be published in the *Federal Register* as an Advanced Notice of Proposed Rulemaking (ANPR).

CASAC commented in a January 23, 2008 letter to EPA that it found the ANPR for the Lead (Pb) NAAQS to be "unsuitable and inadequate as a basis for rulemaking." CASAC found the ANPR did not provide an adequate basis to understand and analyze EPA's decision making.

Background Information and Links:

Information on EPA's revised process for reviewing the NAAQS

<http://www.epa.gov/ttnnaqs/#review>

CASAC input of EPA's revised NAAQS review process

<http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/NewNAAQSProcess?OpenDocument>

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