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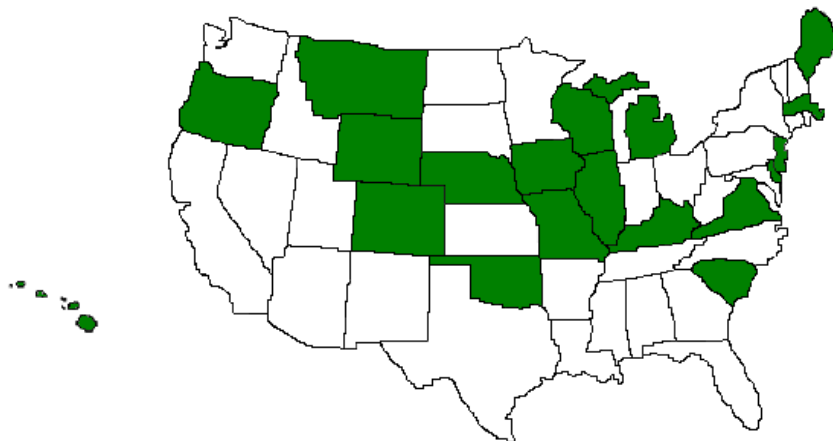
## **FUNDING ENVIRONMENTAL PROTECTION: STATE BUDGET SHORTFALLS AND IDEAS FOR MITIGATING THEM**

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### **INTRODUCTION**

In February 2009, ECOS asked its members to complete a survey on the effects of fiscal year 2009 and 2010 budget cuts. The survey was completed by 19 states: Colorado, Delaware, Hawaii, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, Oklahoma, Oregon, South Carolina, Virginia, Wisconsin, and Wyoming.



While stimulus funding has increased environmental program funds, including funds for administration, reductions in state budget revenues have forced states agencies to consider layoffs, hiring and travel restrictions, pay reductions or staff furloughs, and

other means to reduce budgets. Through survey responses, states offered their considerations for state budget mitigation efforts and ideas, which follow. Current state workload management challenges are important considerations to maintaining a strong state-federal environmental protection partnership moving forward.

## **BACKGROUND ON THE STATE-FEDERAL ENVIRONMENTAL PROTECTION PARTNERSHIP**

Under the oversight of the U.S. Environmental Protection Agency (EPA), most of the major federal environmental statutes are designed for states to assume implementation authority.

In 1994, EPA had delegated 40 percent of these programs to the states. By 2007, 96 percent of these programs had been delegated to the states<sup>1</sup>. States are the implementing agencies for nearly all of the nation's core environmental programs that protect public health and the nation's air, land, and water resources.

Under the major environmental laws – the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), and the Resource Conservation and Recovery Act (RCRA), Congress specifically includes provisions for state assistance to operate these federal programs, often with a state match required. Congress, in authorizing these environmental acts, allows for funding up to 60 percent of programming costs (percent varies by act), which may include permitting, inspections, enforcement, monitoring, standard setting, site cleanup, first responders to spills and natural disasters, and more. Congressional assistance to states is stipulated through 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 (which are used primarily by local governments). The federal portion of funds to support programs is around one-quarter of the funds needed to operate federal programs.<sup>2</sup>

Programming costs also include implementing new or modified rules. From 2000 to 2011, EPA has asked, or is asking, states to implement approximately 600 new or modified rules with a “state or local impact.”<sup>3</sup>

While the percentage of federal programming funding has fallen for delegated activities, states have faced budget reductions during the period 2001-2009 when inflation was

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<sup>1</sup> "State Environmental Expenditures, 2005-2008," R. Steven Brown, March 2008.

<sup>2</sup> "The States Environmental Agencies' Proposal for EPA's 2011 Categorical Grants STAG Budget (State and Tribal Assistance Grants Budget)," ECOS, May 2009.

<sup>3</sup> "The States' Environmental Agencies Proposal for EPA's 2011 Categorical Grants STAG Budget (State and Tribal Assistance Grants Budget)," ECOS, May 2009.

about 24 percent. Categorical grants rose by 11 percent, a decrease of 13 percent in purchasing power of dollars to state recipients.<sup>4</sup>

States also operate their own environmental programs that address state-specific needs. These do not require federal funds but contribute significantly to the public health and environmental quality of the nation. These may include regional greenhouse gas initiatives, water monitoring for emerging contaminants, and other programs.

### **STATE ENVIRONMENTAL STIMULUS FUNDS**

In February 2009, Congress passed the American Recovery and Reinvestment Act (ARRA) – “stimulus” funds. EPA received funding for six programs: Brownfields (competitive grants), Underground Storage Tanks, Diesel Emissions Reductions, Superfund (states not directly funded), and Drinking Water and Wastewater Infrastructure. States appreciate the infusion of stimulus funding through the federal recovery and reinvestment law for water and wastewater infrastructure improvements, Underground Storage Tank investigation and remediation, diesel emission reductions, and Superfund and Brownfields programs. States have also noted that stimulus funds are lessening the impact of state budget revenue shortfalls.

Other federal agencies such as the Department of Transportation also received ARRA funding that includes state environmental agency involvement for permitting and other activities yet may lack environmental agency funding. While stimulus funds provide much needed additional funding to states for environmental protection, stimulus programs dictate tight time frames and additional administrative burden such as tracking, accountability, and reporting requirements to states as well.

States have noted that early funding requests have vastly exceeded stimulus funding available. A jointly commissioned survey conducted in Spring 2009 by ECOS, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Association of State Drinking Water Administrators (ASDWA), and the Council of Infrastructure Financing Authorities (CIFA) on the demand for Clean Water and Drinking Water State Revolving Loan Fund (CWSRF, DWSRF) completed by 31 states shows demand is greater than the amount available by 15 times (CWSRF) and seven times (DWSRF).

While new stimulus reporting requirements are important, the amount of separate required reporting is potentially burdensome. In early May, ECOS published a set of "ECOS Principles for ARRA Reporting." ECOS developed the principles as a guide for use in development of new and additional reporting requirements and frequencies necessary for ARRA tracking, accountability, and reporting purposes. These principles may be used by ECOS members and EPA when discussing with EPA and program staff the use of existing or development of new ARRA reporting measures and frequencies.

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<sup>4</sup> “The States’ Environmental Agencies Proposal for EPA’s 2011 Categorical Grants STAG Budget (State and Tribal Assistance Grants Budget),” ECOS, May 2009.

## **STATE BUDGET IMPACTS FOR FY 2009**

For FY 2009, of the 19 states that responded to the survey, ten states reported that they have already conducted a budget cut, three states indicated that they were preparing for a budget cut, three states said that they have already conducted one cut and were preparing for a second, and three states reported that they were not preparing for a budget cut. Other states have indicated that it is too early to tell and that options for reductions are still under consideration.

For the ten states that have had their FY2009 budgets reduced, these are the areas that experienced budget cuts (states may have indicated cuts in multiple areas):

- Nine have no/limited out-of-state travel
- Nine have implemented a hiring/promotion freeze
- Five have had staff cuts
- Four have no/limited capital equipment purchases
- Four have limited/cancelled contracts
- Three have no/limited training efforts
- Two have implemented early staff retirements

In addition to the cuts made above, some states have made other adjustments to meet their reduced FY 2009 budgets. A few states have implemented furlough days (unpaid days off each month). Other states have reduced program budgets, rather than eliminating programs. A few states also reported that they have made cuts in monitoring (mostly in water and in some air programs), reductions to field environmental activities, and reductions in stream classification efforts.

Colorado indicated that it sought to increase fees for Drinking Water and Water Quality programs, but withdrew its proposal due to significant opposition from fee payers. A number of states have reported that buy-in for fee increases is difficult to secure, particularly in these economic times.

States have also reported that revenue forecasts for the current year (FY 2009) have dropped, increasing budget pressures on the current fiscal year.

## **STATE BUDGET IMPACTS FOR FY 2010**

Of the 19 states responding to the survey, 17 reported that their agency has been told to prepare a reduced budget for FY 2010.

For the 17 states that are preparing FY 2010 budgets reductions, the following areas may be cut or be limited (states may have indicated cuts in multiple areas):

- Twelve have hiring/promotion freezes
- Nine have no/limited out-of-state travel
- Eight have staff cuts

- Six have limited/cancelled contracts
- Four have no/limited capital equipment purchases
- Two have no/limited training effort

Michigan DEQ indicated that it would return a delegated program to EPA.

### **POTENTIAL CONSEQUENCES OF STATE BUDGET REDUCTIONS**

Many states have expressed their concern that current and future budget cuts could affect their ability to maintain adequate/viable scientific, regulatory, or enforcement programs.

Reduced budgets have the potential to:

- Limit an environmental agency's ability to perform inspections or provide on-site technical assistance for permitted activities
- Necessitate reduction or discontinuation of monitoring programs
- Impair inspection and enforcement activities
- Delay permit issuance
- Impact a department's ability to continue training due to limited/no out-of-state travel
- Limit collaboration and information sharing efforts
- Diminish customer service

Early retirements and hiring freezes have the potential to increase the workload for existing employees. Early retirements could result in the loss of a department's institutional knowledge, effectively reducing the department's efficiency during the economic downturn, and may hamper a department's ability to rebuild when budgets begin to grow. A hiring freeze may increase burden on those remaining employees who must absorb the work that a vacant position or departing employee leaves behind.

If states return delegated programs or do not implement new rules, additional burden may shift to the EPA to carry out these activities at the federal level. A strong state-federal environmental protection partnership is important to maintain.

### **POTENTIAL STATE BUDGET MITIGATION EFFORTS AND IDEAS**

In survey responses, the following considerations are under review or have been adopted by states.

**Defer Purchases and Contracts:** Postpone or defer equipment purchases and contracts until sufficient funding is available.

**Environmental Assessments:** Montana DEQ has begun using checklist Environmental Assessments (EAs) on smaller projects where the department once might have done more extensive reviews. MT DEQ is also requiring more work by the applicants (for example, gravel pit applications) rather than using staff time to help prepare applications so that the department can handle more work with fewer staff.

**Shift in Funding Source:** Nebraska DEQ reports that it received EPA approval to use its State Revolving fund (SRF) administration funds for engineering review costs of projects that are on the Intended Use Plan (IUP). This activity had previously been funded with State General Funds. NE DEQ anticipates savings of \$136,000 in General Funds.

**Risk-Based Inspection Strategy:** Virginia DEQ is using a risk-based inspection strategy for evaluating grant commitments and reducing the number of inspections to be performed.

**Data Handling Efficiency:** Michigan DEQ is developing an Enterprise Content Management (ECM) system that will allow the efficient management and handling of all records and digital content. Digital content includes pictures/images, text, reports, video, audio, transactional data, and e-mail. With the electronic file storage component of ECM, MI DEQ anticipates substantial savings realized through reduced file space and substantially lower labor costs associated with filling between 8,000 and 10,000 Freedom of Information Act (FOIA) requests each year.

**Budget Flexibility:** Missouri DNR reported that budget flexibility provides the greatest opportunity for the department to address programmatic needs and maximize its resources. The department uses three types of flexibility: (1) Flexibility between Personal Service (PS) and Expense & Equipment (EE) for General Revenue operating appropriations. This flexibility allows departments to move appropriation authority from PS to EE or vice versa, depending on need. (2) Flexibility between environmental divisions. This allows the department to move resources between divisions to address issues or problems as they arise. (3) Flexibility between Federal Funds and Other Funds. Depending on the availability of cash, and the work that needs to be done, flexibility with Federal Funds and Other Funds allows the department to flex appropriation authority (not cash).

**Reorganization:** Some states have been able to combine/consolidate areas with similar functions and reduce management positions. Kentucky DEP reported a reorganization that moved some support positions into one division (IT and lab services) and will allow additional consolidation of support positions in the future (i.e., budget, file room). VA DEQ reported combining two of its seven regional offices to achieve management and operational efficiencies.

**Mandatory Furloughs:** New Jersey DEP will be utilizing mandatory furloughs of one day a month during FY 2010 to reduce its salary costs and yield additional operating savings through closing of office buildings on either Friday or Monday to increase utility savings associated with having all central office locations closed for three days in a row.

**Retirement Incentives:** Create incentives for senior staff to retire. Early retirement incentives are designed to reduce salary expenses, avoid layoffs, or increase productivity. Supporters of early retirement incentives contend that the public saves money by

inducing older, higher paid employees to retire and replacing them with lower paid workers or leaving the positions vacant.

**Cash Transfers:** Colorado DPHE has proposed transfers of cash balances from certain funds to the Legislature, which will help with the overall state budget; however the cash transfers could impact individual programs if future fee increases are not approved.

**Increase Fees:** Increasing permit fees is a possible avenue for some states, however a few states have found it difficult to secure stakeholder or political support for fee increases during these tough economic times. Programs that require legislative approval for fee increases are typically not receiving fee increases.

In addition, states reported in the survey possible or enacted work furloughs, extended position vacancies, reductions to local government assistance, employee health insurance contributions, and returns of lapsed funding to the General Fund.

ECOS developed a handout, "Opportunities for Directing State Grant Funds and Work Load Sharing," in March 2009. Two additional ideas from this handout for state budget mitigation include:

- **EPA Regional Staff Loan to State Office.** *Nebraska DEQ* has had an EPA Region 7 staff person do a part-time rotation at NE DEQ in its 319h non-point program. As the state only has two state staff in this program, adding staff support here represents a big percentage increase. Nebraska DEQ has also used EPA staff to help write NPDES permits to assist with backlog, with the regional staff person working remotely from Region 7 offices. *Massachusetts DEP* and *Texas CEQ* have used regional staff to help with permit writing. *South Carolina DHEC* reports having used an EPA regional staff person to assist with Title V air permitting efforts when the state was establishing its program. *Montana DEQ* has received assistance from Region 8 enforcement staff with inspection workload, allowing state resources to be focused on permit renewal backlog.
- **State-Regional Office Collaboration.** *North Carolina DENR* benefited from Region 4 funding two staff positions for the Underground Storage Tank program to meet the unfunded mandate in the federal Energy Policy Act of 2005 that required a three-year inspection cycle on tank systems. In previous years for NC DENR, Region 4 secured contractors to perform RCRA facility investigations (RFAs) to assist with filling in gaps on hazardous waste program resources. *Nebraska DEQ* collected fish tissue samples that were then analyzed by Region 7 offices benefiting the state. *New York DEC*, under a water monitoring program that is part of the West Nile virus-related pesticide applications, collects and analyzes water samples across the state except in New York City where this work is completed by Region 2 as part of a work sharing arrangement.

## **MOVING FORWARD**

ECOS members continue to discuss with federal officials the work management challenges associated with reductions to FY 2009 and FY 2010 state budgets alongside increased stimulus work activities and ongoing core environmental program work.

On May 8, 2009, details of the President's FY 2010 were released. EPA's new 2010 budget seeks an increase of more than \$16 million for many of the programs that ECOS had said were priority items, including the air, waste, water, and drinking water programs. Increases for water and drinking water infrastructure are very significant and, when coupled with stimulus funds, will enable states to make significant progress on these matters. The requested budget proposal is a step in the right direction, reverses a previous adverse trend, and addresses the priority needs that ECOS has identified.

ECOS has had positive early discussions with EPA regarding FY 2011 budget development including state environmental budget concerns discussed above.