



Resolution 13-4
Approved September 18, 2013
Arlington, Virginia

As certified by
R. Steven Brown
Executive Director

ENVIRONMENTAL PERFORMANCE DATA AND METRICS

WHEREAS the states affirm their belief in the importance of quality data to support decisions made to protect human health and the environment;

WHEREAS the breadth, depth, and quality of environmental performance metrics continue to improve, providing a firmer foundation for policymaking to protect human health and the environment;

WHEREAS sound data and robust metrics are essential to the analytic rigor and systematic decision making necessary for 21st Century environmental management;

WHEREAS, EPA and the state environmental agencies have a unique partnership as co-regulators and co-funders of environmental programs that require the sharing of data; and

WHEREAS states collect 94% of the data in U.S. EPA's national environmental information databases;

WHEREAS EPA collects and maintains significant additional data that is important to states for managing programs, and U.S. EPA has unique data analysis capabilities;

WHEREAS in addition to what is required to be reported to U.S. EPA, states often collect additional data to meet their own requirements;

WHEREAS in order to meet requests for new data, states may need time to change state regulations, adjust data systems, and to collect and verify the data;

WHEREAS the states share U.S. EPA's belief that data transparency, clarity, comparability, and quality will be essential to maintaining the public trust and environmental performance;

WHEREAS states agree that e-reporting, where feasible, can help with data entry burdens;

WHEREAS publicly-accessible, well-maintained databases that meet state requirements for maintenance of public records can increase transparency and potentially alleviate burdens from Freedom of Information Act requests;

WHEREAS states acknowledge that data needs may change over time due to changes in regulations and additional sources being covered;

WHEREAS the states know that there are costs associated with collecting, storing, evaluating, verifying, and managing data – even if it is collected electronically – but acknowledge that the benefits to the regulated community, the public, and the environment from sound data and robust metrics will generally

outweigh reasonable costs of these system so long as there is careful state-EPA coordination and a focus on efficient data management;

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

Urges U.S. EPA to work with states, through a joint decision-making process such as the E-Enterprise Leadership Council, to work strategically through the evolving data environment before changes in reporting requirements are made;

Requests that U.S. EPA, in their oversight of delegated programs, ensure that data submission requirements are balanced, targeted, clearly defined, and adequately disseminated to allow states to focus their efforts on program implementation;

Urges U.S. EPA to consult with states regarding the proper metrics and interpretation of statutorily-required data;

Encourages U.S. EPA, in their oversight of delegated programs, to work with the States to improve data accuracy, streamline data requirements, and facilitate data transfers;

Requests that U.S. EPA, when revising data requirements, work with states to ensure that the data collected is meeting the decision making requirements of both U.S. EPA and the states;

Asks that U.S. EPA share federal data and data analysis tools with the states to assist them in managing programs and measuring performance;

Requests that U.S. EPA provide additional funding assistance and appropriate windows for implementation for states to prepare for and meet new requests for data;

Requests that U.S. EPA provide adequate training and instruction materials for the implementation of revised data requirements; and

Requests that, in recognition of the on-going costs of data collection, evaluation, and management, U.S. EPA consider these costs an integral part of program management and provide the states the flexibility necessary to allow data cost to be covered under program grants.



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.



Resolution Number 09-4
Approved March 23, 2009
Alexandria, Virginia

Revised March 20, 2012
Austin, Texas

As certified by
R. Steven Brown
Executive Director

**STATE/EPA COMMITMENT TO THE FULL IMPLEMENTATION OF
THE NATIONAL ENVIRONMENTAL INFORMATION EXCHANGE NETWORK**

WHEREAS, ECOS has endorsed the State/EPA Vision and Operating Principles for Environmental Information Management via ECOS Resolution 98-6; and

WHEREAS, states and the U.S. EPA have committed to using the National Environmental Information Exchange Network (Exchange Network) as the preferred method for sharing environmental information among partner agencies; and

WHEREAS, the U.S. Congress appropriated \$162 million in grant funds from federal FY2002–FY2011 to all 50 states, 86 tribes, and 5 territories to participate in the Exchange Network and develop the capacity for further information sharing; and

WHEREAS, these states, tribes, and territories have invested significant time and resources to lay the foundation for full implementation of the Exchange Network; and

WHEREAS, there is work still to be done for the states and the U.S. EPA to fully implement the Exchange Network as their preferred method for sharing environmental information among partner agencies.

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

Reaffirms its endorsement of the principles of the Exchange Network as embodied in the State/EPA Vision and Operating Principles for Environmental Information Management, which was adopted in 1998;

Endorses the continued approach to joint governance of the Exchange Network as accomplished through the Exchange Network Leadership Council, the Network Operations Board, and other governance bodies as needed;

Calls on the U.S. EPA to join states in a renewed commitment to full implementation of the Exchange Network through aggressive implementation of the Action Plan for Completing Phase I of the Exchange Network;

Urges all of the U.S. EPA program offices to establish bi-directional data exchanges for the National System Flows by making their federal data available to authorized users through the Exchange Network; and

Recognizes that the U.S. EPA will need to maintain direct access to the federal data systems for states that use these data systems as their official systems of record.



Resolution Number 07-4
Approved March 21, 2007
Alexandria, Virginia

Revised March 24, 2010
Sausalito, California

Revised March 5, 2013
Scottsdale, Arizona

As certified by
R. Steven Brown
Executive Director

CLEAN WATER ACT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) MANAGEMENT FRAMEWORK

WHEREAS, the Clean Water Act (CWA), a landmark environmental statute, has been central to the important progress we have made as a nation in improving the health of our waters, wetlands, and watersheds; and

WHEREAS, it is the policy of U.S. Congress, as expressed in the CWA, to recognize that states have the authority to manage and implement the National Pollutant Discharge Elimination System (NPDES) permit program with oversight from U.S. EPA; and

WHEREAS, the states are fully committed to protecting the nation's waters, enhancing pollution abatement and control programs, and implementing the NPDES program; and

WHEREAS, the scope of water quality programs has grown tremendously since the CWA was first enacted in 1972 to address literally hundreds of thousands of pollution sources; and

WHEREAS, the CWA established as national policy “...that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government”; and

WHEREAS, in October 2009, U.S. EPA issued the Clean Water Act Action Plan that laid out EPA's plan to target enforcement to the most important water pollution problems, strengthen state oversight, and improve transparency and accountability; and

WHEREAS, under the Clean Water Act Action Plan, U.S. EPA has identified four key changes to make which are to switch to electronic reporting with automated compliance evaluations, to compel compliance through permits and regulations, to address the most serious water pollution problems, and to improve state and U.S. EPA performance in protecting and improving water quality; and

WHEREAS, many states are concerned about the duplication and increased state work load that could result from the implementation of new priorities and approaches to wastewater enforcement in conjunction with the increased burden of maintaining approved state NPDES programs with substantially decreased state resources; and

WHEREAS, many states are concerned that some of these actions by U.S. EPA will undermine the authority of delegated states to administer the NPDES Program in their states; and

WHEREAS, many states are concerned that NPDES electronic reporting rule will increase data management requirements for states and that the increased reporting requirements are inappropriately driven by program implementation rather than national program oversight.

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

Maintains that in order for the states to effectively implement NPDES policies, consultation with the states and the resulting policies should:

1. Provide due deference to a state's approved continuous planning process and program for the prevention, reduction, and elimination of pollution in accordance with the purposes and provisions of the CWA;
2. Remove any barriers to full state programmatic flexibility and operations that are not expressly established in the Act;
3. Establish a budget neutral approach that would govern NPDES program operations and the federal-state partnership as additional pollution sources are brought into the NPDES program;
4. Minimize the duplication of effort, redundancy, and burden to the maximum extent practicable for states that effectively leverage the investment of public funds;
5. Make full use of information technologies that provide operational savings, efficiencies, and generally minimize the burden of maintaining approved state NPDES programs and assure broad programmatic accountability; and
6. Maintain a state's prerogative to design and implement a management information system that best meets the challenges for the prevention, reduction, and elimination of pollution within its jurisdiction while still providing a core set of information for U.S. EPA oversight.

Supports working with U.S. EPA to:

1. Identify and address emerging issues and concerns regarding activities associated with the implementation of the Clean Water Act Action Plan and the NPDES Program;
2. Develop an NPDES electronic reporting rule that provides U.S. EPA with only the data needed for program oversight while limiting the data management burden on the states; and
3. Ensure that U.S. EPA NPDES oversight activities do not erode the authority of delegated states, while recognizing U.S. EPA's role in multi-state issues.



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 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.