



Environmental Council of the States

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Date: November 12, 2021
To: Mr. Faisal Amin
Chief Financial Officer, Office of the Chief Financial Officer
Re: U.S. Environmental Protection Agency's draft FY 2022-2026 Strategic Plan
Comments for Docket ID No. EPA-HQ-OA-2021-0403

I am writing to you on behalf of the Environmental Council of the States (ECOS), the national nonprofit, nonpartisan association of state, territorial, and District of Columbia (hereinafter referred to collectively as "state") environmental agency leaders. The mission 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. The states offer the following input on the U.S. Environmental Protection Agency's draft FY2022-2026 Strategic Plan (Plan). ECOS also encourages EPA to fully consider input from individual states and other associations who offer additional input and suggestions.

States engage on a broad range of environmental policy matters. Overall, states have seen the scope of their environmental agency's work grow significantly over the past years now encompassing addressing climate impacts, energy efficiency, per- and polyfluoroalkyl substances (PFAS), emerging contaminants, and other topics while modernizing programs to include electronic permitting and reporting and with greater expectations to support vulnerable communities without much or any change in federal funding support. Responding to these demands further underscores the need for states and EPA to work closely together, to take time to listen to each other, learn from each other, and provide a foundation of predictable practices from each other as co-regulators. These ideas should be carried throughout the implementation of the goals described in EPA's draft Plan. In addition, to facilitate state-EPA communication as co-regulators, ECOS asks that EPA share with states as it directly reaches out to local communities so states have a working knowledge of where EPA has ongoing initiatives and plans.

EPA's draft Plan includes 7 goals, 4 cross-agency strategies, 60 long-term performance goals, three Agency Priority Goals (APGs), and four Learning Agendas to meet the Foundations for Evidence-Based Policymaking Act (Evidence Act) requirements. ECOS offers comments as follows.

Goal 1: Tackle the Climate Crisis

Objective 1.1: Reduce Emissions that Cause Climate Change

"Long-Term Performance Goals (pg. 8)

- By September 30, 2026, promulgate final rules to reduce GHG emissions from light duty, medium duty, and heavy-duty vehicles; electric utility generating units; and the oil and gas industry.
- By September 30, 2026, EPA's climate partnership programs will reduce expected annual greenhouse gas emissions by 533 million metric tons of carbon dioxide equivalent (MMTCO_{2e})."

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ECOS Comments:

- Many states have experience with implementing climate protection programs. ECOS recommends that EPA work closely with states to benefit from state experience; as well as, understand the challenges faced by states in order to promulgate rules that are achievable and sustainable.
- ECOS recommends that EPA provide additional funding to state agencies as new programs are implemented. ECOS urges EPA to consider air program staffing needs at state agencies when allocating funds. Current staffing challenges could impede states' abilities to manage additional regulatory requirements.

Objective 1.2: Accelerate Resilience and Adaptation to Climate Change Impacts

“Long-Term Performance Goals (pg. 14)

- By September 30, 2026, implement all priority actions in EPA's Climate Adaptation Action Plan and the 19 National Program and Regional Climate Adaptation Implementation Plans to account for the impacts of the changing climate on human health and the environment.
- By September 30, 2026, provide assistance to XX states, territories, local governments, and communities with environmental justice concerns to take action to anticipate, prepare for, adapt to, or recover from the impacts of climate change.”

ECOS Comment:

- EPA has set a goal for September 2026 to implement all priority actions in EPA's Climate Adaptation Action Plan and the 19 National Program and Regional Climate Adaptation Implementation Plans and adds that EPA will work to ensure that its grants, loans, and technical assistance consider climate change. States have not yet seen EPA's national and regional plans and encourages collaboration as states and regions plan annual grant commitments while balancing available resources. States also encourage EPA to provide information on its plans to work with states, territories, local governments, and communities with environmental justice (EJ) concerns and climate change impacts.

Goal 2: Take Decisive Action to Advance Environmental Justice and Civil Rights

Objective 2.1: Promote Environmental Justice and Civil Rights at the Federal, Tribal, State, and Local Levels (pg. 22)

ECOS Comments:

- States have chosen different policy responses to Title VI and EJ concerns, both working within existing authorities and, in some cases, enacting new state laws.
- Although EPA has prioritized Title VI and EJ, states do not know what EPA expects of them. This is a particular concern with respect to permitting.
- ECOS asks EPA to articulate its specific expectations of states to address Title VI and EJ issues. ECOS also asks EPA to state the legal authority supporting any requirement EPA would place on the states, particularly for any new requirements EPA would impose in permitting under the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), Safe Drinking Water Act (SDWA) or other relevant statute.
- ECOS requests that EPA provide clear guidance of any future financial assistance expectations under Justice 40 and that EPA ensures the states are an active participant in conversations regarding EPA's development and implementation of Justice 40

requirements. EPA and states should also coordinate closely on any new reporting requests to minimize administrative burden. It is expected that there may be new metrics but tracking of key data to support these metrics may not currently exist. States ask that EPA recognize that many states have no additional resources to dedicate to this important endeavor, and states will need to reallocate resources from other programmatic initiatives.

- ECOS encourages EPA to coordinate with states and local governments that are already conducting outreach and engagement in underserved communities. This can ensure that communities are not further burdened by receiving multiple requests for meetings on the same topics from more than one government entity. EPA should aim to coordinate engagement between federal, state, and local agencies on related topics whenever possible.
- For states who may have state-specific definitions of environmental justice communities under their own statutes and regulations, EPA should consider how best to integrate its own definition of "Underserved Communities" with those states. This may help improve alignment between EPA and these states when identifying priority environmental justice areas.

Objective 2.2, "Strategies"

Ensure that EPA Decision Making Incorporates Meaningful Community Involvement and Analyzes for Disproportionate Impacts” (pg. 26)

ECOS Comment:

- Where state environmental justice mapping tools exist, ECOS suggests that EPA consider creating guidance on whether and when it is appropriate to rely on these state environmental justice mapping tools in addition to EJScreen when analyzing disproportionate impacts. This would further improve alignment with these states.

Objective 2.3: Strengthen Civil Rights Enforcement in Communities with Environmental Justice Concerns (pg. 29)

ECOS Comments:

- ECOS recommends that EPA include a strategy to proactively train and support states on Title VI requirements and related state reporting obligations.
- EPA should work with states to gather and publish examples where environmental justice considerations have been incorporated into permitting decisions and that have withstood legal challenges.

Goal 3: Enforce Environmental Laws and Ensure Compliance (pg. 31)

ECOS Comments:

- States are interested in how EPA plans to define "overburdened communities" as well as the legal authority to do so as it implements plans related to PFAS, EJ, and other topics.
- States note EPA's inclusion of the LTPG, "By September 30, 2026, ensure the number of "Referred No Complaint Filed" (RNCF) civil judicial cases that are more than 2.5 years old is no more than 93" and its focus on timely enforcement action. Some states do not have criminal enforcement programs and refer cases to EPA or to the Department of Justice (DOJ) for follow-up. In some instances, these cases do not receive timely attention which may result in uncontrolled or continuing environmental impacts to

communities. States encourage EPA to regularly engage with DOJ to keep a spotlight on these referrals to reach timely conclusion and to highlight the link between environmental harm with potential harm to human health.

- ECOS has a resolution related to this goal and encourages EPA’s consideration of the statements made therein. Resolution 11-2: “Respectful Use of Data” encourages U.S. EPA to support collaborative data stewardship with joint governance processes, such as the ECHO Governance Team, that provide forums for states and U.S. EPA to cooperate and make joint recommendations on data quality concerns, change management, and data context and presentation. (Objective 3.2)
- Under Objective 3.2, EPA acknowledges the work through E-Enterprise for the Environment to modernize its key compliance information system, Integrated Compliance Information System or ICIS database, for water and air programs. ECOS notes that the Office of Water is leading a similar modernization of drinking water information (currently managed via the Safe Drinking Water Information System or SDWIS). As the SDWIS modernization is further along, states encourage OECA to consider lessons learned from the SDWIS effort to inform the ICIS modernization work. ECOS also stresses the importance of taking the time upfront to adequately understand the broad needs of states and EPA. A successful modernization will include those needs in a concept of operations and consider an analysis of solution alternatives that will improve data sharing and adapt to future program requirements. States will also need sufficient time and Categorical Grant resources to modernize their information sharing capabilities and adapt their workflows and technology to the modernized solution.

Goal 4: Ensure Clean and Healthy Air for All Communities

Objective 4.1: Improve Air Quality and Reduce Localized Pollution and Health Impacts (pg. 40)

“Long-Term Performance Goals

- By September 30, 2026, reduce ozone season emissions of nitrogen oxides (NO_x) from electric power generation sources by 21% from the 2019 baseline of XX.
- By September 30, 2026, improve measured air quality in counties not meeting the current National Ambient Air Quality Standards (NAAQS) from the 2016 baseline by 10%.
- By September 30, 2026, strive to ensure all people with low socio-economic status (SES) live in areas where the air quality meets the current fine particle pollution (PM_{2.5}) National Ambient Air Quality Standards.
- By September 30, 2026, ensure U.S. consumption of hydrochlorofluorocarbons (HCFCs) is less than 76.2 tons per year of ozone depletion potential. 31”

ECOS Comments:

- ECOS recommends that EPA continue to work closely with states as the “Long-Term Performance Goals” under Goal 4.1 are achieved. Through close coordination with state environmental agencies, the expertise found at the state level may be leveraged to produce benefits on a national scale. Additionally, as EPA works to implement the goals outlined in this Plan, coordination with states will ensure that proposed deliverables and deadlines are coordinated with deliverables and deadlines currently in place in existing regulations.
- With respect to the first LTPG on NO_x reduction from electric power generation by 21% from a 2019 baseline, ECOS notes that many areas of the country are in attainment and states may have already taken proactive, early steps to reduce NO_x. A national goal

should take into account local and regional areas and activities and not impose further reductions where they may be other, more pressing priorities.

- ECOS supports EPA's statement that EPA will continue to operate the State Plan Electronic Collaboration System (SPeCS) and the Combined Air Emissions Reporting System (CAERS). Both SPeCS and CAERS are products of E-Enterprise for the Environment teams that were designed, and continue to be improved, iteratively and with ample state involvement. This collaborative process should serve as an example for the development of future policies, regulations, and implementation tools.
- Many states have extensive experience with community engagement and involvement and approach it in different ways. ECOS encourages EPA to work closely with state agencies when determining how to implement goals related to engagement with low-income and marginalized communities. A dialogue between state leadership and EPA has already been established through the ECOS EJ Workgroup and Steering Committee. This established pathway could be used to engage with states in this context as well.
- ECOS is interested in understanding the specific metrics EPA will use to identify “low-income and marginalized communities that for decades have been overburdened with air pollution and other environmental hazards.” Many states have already undertaken efforts to establish metrics for determining which communities to prioritize in this context. ECOS urges EPA to develop these metrics openly and with input from state agencies throughout the process.
- ECOS recommends that EPA provide additional funding opportunities to state agencies to maintain and improve the national air monitoring system. ECOS also urges EPA to consider the air program staffing needs when allocating funding to states. Funding for equipment may be difficult to accept if staffing challenges impede states’ abilities to manage additional or updated equipment.
- ECOS asks that EPA distribute funding for air monitoring to states through CAA §103(a-c), not CAA§105, in order to facilitate air monitoring in states where they may not be able to provide the 40% match or Maintenance of Effort required by CAA§105. This is especially recommended when the funding source is one-time funding.

Goal 5: Ensure Clean and Safe Water for All Communities (pg. 46)

ECOS Comments:

- The Bipartisan Infrastructure Investment and Jobs Act includes significant funding for investment in clean water and drinking water systems. These funds will also support goals related to investments in vulnerable and disadvantaged communities, to address emerging contaminants, and to assist in meeting compliance obligations. States urge EPA to facilitate discussions across its water and compliance offices and other related programs such as its Water Infrastructure Finance and Innovation Fund (WIFIA) and to work closely with states so investments are coordinated and prioritized to the extent practicable to address pressing human health and environmental priorities.
- EPA notes in the Plan it will promote and certify water operators, who are critical to providing safe drinking water. States agree that we need creativity to address the graying water and wastewater workforce and provide capable operators to keep drinking water and wastewater systems operating in compliance. Possible ideas may be for EPA to work with the Department to identify returning military; to develop special accreditation courses community colleges could offer to help build up a pool of potential candidates and grow local candidates who may want to work in a small town and could help create a more diverse workforce; and collect and promote promising practices such as those in use

in Washington, Rhode Island, and Pennsylvania to build skills through a Department of Corrections partnership to run water and wastewater plants. In the past, EPA offered a fellowship program that provides an incentive to those in state service to seek further training and perhaps an option like this could be offered again. States note the Safe Drinking Water Act includes required qualifications and these required skills should be scaled to the system size. The Bipartisan Infrastructure Investment and Jobs Act includes language related to investment in the water and wastewater utility workforce sector, to develop innovative activities and strategies, and to ensure its sustainability. States urge EPA to seek out state examples as it works to address challenges with recruitment, training, and retention of utility operators.

- ECOS has three resolutions related to this goal and encourages EPA’s consideration of the statements made therein.
 - Resolution 16-5: “Addressing Serious Needs Regarding Drinking Water and Clean Water Infrastructure Investment” supports the EPA goals to leverage more funding under the State Revolving Fund programs and supports timely awards to small, rural, or underserved communities. (Objective 5.1)
 - Resolution 04-3: “Small Community Challenges” requests that the federal government work with state and local governments to address current and future small community drinking water and wastewater requirements and to assist small communities in managing their regulatory requirements; and that federal funding for small communities be directed to states to provide small communities the technical and compliance resources they need. (Objective 5.1)
 - Resolution 10-5: “Improving Cooperative Management of Programs to Reduce Nonpoint Source Pollution” supports the Plan goal to address sources of water pollution and ensure water quality standards are protective. Per this resolution, ECOS encourages EPA to ensure that there is continued collaboration with states to develop and implement consistent and effective nonpoint source pollution control strategies, and also encourages continued partnerships among federal agencies in this area. (Objective 5.2)

Goal 6: Safeguard and Revitalize Communities

Objective 6.1: Clean Up and Restore Land for Productive Uses and Healthy Communities (pg. 59)

ECOS Comment:

- This goal includes performance and priority goals related to Superfund, brownfields, RCRA corrective action cleanups, and Leaking Underground Storage Tank clean ups. Through ECOS, states have discussed sustainable program funding. With the movement towards electric vehicles, states and EPA should consider the financial impact to programs funded through potentially diminishing petroleum fees. Similarly, if addressing climate change increases Superfund remedial cleanup costs, state cost share proportions may also increase in specific cases. The same is true if additional federal infrastructure dollars are provided for Superfund remedial projects but state revenues have not increased to meet the required state match for new projects. EPA and states should work together to discuss potential impacts and decision-making processes.

Cross-Agency Strategy 1: Ensure Scientific Integrity and Science-Based Decision Making “Long-Term Performance Goals

- By September 30, 2026, YY% of ORD Research Products will meet partner needs compared to the FY 20ZZ baseline of XX%.”

ECOS Comment:

- States appreciate EPA’s goal to have its research products meet partner needs. The Environmental Research Institute of the States (ERIS) produces a state research needs assessment every two years, the most recent published in [February 2020](#) with forty-three states and territories responding. ECOS encourages EPA to consider this input and continue to regularly engage with states through ERIS and other means to determine current challenges and research needs. States also encourage EPA to seek direct state input as it determines the extent ORD research meets state needs to provide external input and additional objectivity to this metric.

Cross-Agency Strategy 4: Strengthen Tribal, State, and Local Partnerships and Enhance Engagement (pg. 89)

ECOS Comments:

- States appreciate EPA’s inclusion in the Plan that states and tribes are encouraged to use [E-Enterprise Workload Tradeoffs](#) (pg. 91) to adjust grant work plans to focus on collaborative efforts related to work modernization. Modernization may facilitate more efficient work processes and more transparent and accessible public display of information and the ability to deploy limited resources strategically through tradeoffs is an important flexibility.
- As EPA moves to revise the 2020 Clean Water Act Section 401 Certification Rule, ECOS urges the agency to preserve states’ ability to help protect the water quality of federally regulated waters within their borders, and to consider state regulations in the creation of criteria for federal agencies establishing what constitutes a “reasonable period of time” to complete CWA Section 401 review.
- States believe EPA and states should seek to resolve disagreements that arise out of oversight processes at the lowest staff level possible. EPA and states should also work together to ensure that their senior staff understand when and how to elevate federal-state disagreements that lower-level staff cannot resolve. These include disagreements about priorities, technical or policy matters, and timelines. States support clear processes to elevate issues if needed and encourages EPA to work with states to define these mechanisms.

Draft Learning Agenda (pg. 94)

ECOS Comments:

- EPA includes in its Plan its approach to meeting the Evidence Act requirements. Three of the four EPA Learning Agendas directly relate to state work, including: Drinking Water Systems Out of Compliance (what EPA/state drinking water program policies are most effective in increasing system compliance); Grant Commitments Met (how can EPA assess the extent to which commitments achieve the intended environmental results and identify possible next steps in establishing a comprehensive grant reporting system); and Air Pollution Benefits (under development). States encourage EPA to more comprehensively engage with states in the development of plans particularly related to potential new reporting or administrative efforts to minimize burden, more fully take

advantage of existing reporting, and discontinue low value reporting where information is no longer needed or used.

- EPA has identified drinking water systems out of compliance as a Learning Agenda priority question; under Objective 5.1, has set a LTPG to reduce the number of community water systems still in noncompliance with health based standards from 3,508 to 600; in June 2019, had set a National Compliance Initiative for FY20-23 on “reducing noncompliance with drinking water standards at community water systems (CWS);” and in the FY2018-2022 EPA Strategic Plan, set a goal to reduce by 25% the number of CWSs out of compliance with health-based standards, noting in FY2018, there were health-based violations at 7% of the CWSs. [EPA’s FY20 Annual Performance Report](#) (pg. 12-13) notes that 2,542 of the 3,508 CWS with health-based violations as of September 30, 2017 returned to compliance and noted EPA provided technical assistance and other grants; provided funding to the Rural Community Assistance Partnership and the National Rural Water Association; conducted engagements with states, tribes, and communities to strengthen drinking water systems; and trained utilities on resiliency. These goals and actions by EPA and separate actions by states reflect a good deal of sustained attention on these systems over time and new approaches on the limited number of CWSs out of compliance may be needed. If challenges exist with particular types of CWSs such as mobile home parks, what tools would help achieve improved water quality while not adding to burdens in vulnerable communities? Understanding the challenges more specifically will help inform approaches. States encourage EPA to consider lessons learned from the FY20-23 NCI focus to date and the FY 2018-2022 Strategic Plan focus in this area. States also encourage collaboration with multiple EPA offices, the Rural Community Assistance Partnership, and the National Rural Water Association to together with states consider alternative future options to address concerns that money or inspections and enforcement alone may not solve.
- The Plan notes that state and EPA datasets may not be similar. There may be known reasons for this such as time lags between the Enforcement Targeting Tool and the updated SDWIS-State database or that suspected noncompliant systems have already returned to compliance. States and EPA should work together to establish a clear, shared understanding of historic and new CWS out of compliance.

PFAS

ECOS Comments:

- EPA has noted that PFAS is likely to have land, water, and air health impacts. States appreciate EPA’s PFAS Strategic Roadmap released in October 2021 and encourage EPA to refer specifically to it in its final 2022-26 Strategic Plan and to increase the involvement of the states in achieving a successful PFAS initiative. These include, but are not limited to, commitments to use federal statutes to advance testing and cleanup initiatives, establish a Maximum Contaminant Level for PFOA and PFOS ahead of the Roadmap’s deadline, complete various important research initiatives, and designate PFAS through a science-driven process as hazardous under federal cleanup and air statutes by dates identified in the Roadmap. ECOS acknowledges that while some of the envisioned deadlines are ambitious, but they are necessary and should be expedited when possible. It is vital that the EPA’s process be scientifically driven, that the proposals be actionable, and ultimately that this package protect the public from PFAS contamination.
- In addition, state environmental agencies encourage EPA to use the Roadmap as a basis for increased state-federal and federal agency-wide coordination via the new White

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House Council on Environmental Quality Interagency Working Group and other forums. ECOS particularly emphasizes the importance of EPA working across the federal government to ensure cooperation in federal site cleanups. ECOS stands ready to assist in facilitating efficient and effective completion of the efforts outlined.

Thank you for your consideration of this input. Our members stand ready to contribute further to this discussion. Please feel free to reach out to me or my staff to answer any questions or help facilitate the involvement of state environmental agency leaders.

Regards,

A handwritten signature in blue ink that reads "Donald S. Welsh". The signature is written in a cursive, flowing style.

Donald S. Welsh
ECOS Executive Director