



Environmental Council of the States

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October 7, 2022

Mr. Michael Hickey
Environment Branch Chief
White House Office of Management & Budget
Via email transmission to Michael_Hickey@omb.eop.gov

Dear Mike,

On behalf of ECOS President Myra Reece of the South Carolina Department of Health & Environmental Control and other ECOS leaders, I am writing to express appreciation of the chance to meet with you and your staff on September 7 regarding FY24 budget development and state-U.S. Environmental Protection Agency (EPA) collaboration.

As co-regulators with EPA, states are experiencing a significantly increasing workload to protect the environment and public health across the nation. States and the federal government share constituencies and are committed to promoting environmental equity and justice in our communities. States appreciate congressional funding through annual appropriations and other legislation such as the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act (IRA) to ensure key priorities of the Administration are implemented and funded. BIL and IRA funding, in particular, offer significant opportunities to invest in disadvantaged communities and in climate resiliency and adaptation measures. While EPA has been given greatly expanded responsibilities, attention to the management and implementation of these new funds is vitally important, as is the coordination, transparency, and speed of EPA working closely with states. States feel added urgency and pressure to address climate resiliency due to the growing frequency and severity of extreme weather events, and the BIL and IRA funds will assist in addressing these priorities.

ECOS members attending the meeting at OMB highlighted a number of priorities. These include the need for:

- Improved risk communications regarding emerging contaminants. Identifying, responding to, and addressing emerging contaminants are an increasing part of the workload in South Carolina and in many other states that may cross into several media including air, water, and land.
- A clear, reasonable, science-based regulatory framework on per- and polyfluoroalkyl substances. Close cooperation on messaging and implementation is essential to clarity for communities.
- Investments in cybersecurity to protect communities. Cybersecurity extends to dam safety and a number of other regulated community areas as well as state environmental agencies themselves.
- Consistency and coordination on water infrastructure implementation across federal agencies such as EPA and the U.S. Department of Agriculture and on Build

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America Buy America provisions across programs, in particular Clean Water (CW) and Drinking Water (DW) State Revolving Funds (SRFs), congressionally directed spending (CDS), and EPA's Water Infrastructure Finance & Innovation Act program. Coordination priorities may include meaningful collaboration on water and drinking water technical assistance to minimize overlap and duplication between state and EPA efforts.

- Greater flexibility with BIL funding for lead service line activities. This may include allowing funds to be used for up to 100% of the funding for replacing lead pipes including lead water mains; allowing SRFs to contract directly for lead service line inventories; allowing funding to be used to replace indoor lead plumbing where water fountains and faucets serve vulnerable populations; and allowing funding as necessary to alleviate the cost to homeowners to replace privately owned portions of lead service lines. States also recognize the need to invest in improved outreach in this area. For instance, Kansas expanded its outreach to small communities to discuss lead service line replacement and other topics by engaging broadly with its networks of state associations, e.g., Kansas Rural Water, Kansas Municipal Utilities, the League of Kansas Municipalities, Regional Planning Commissions, Kansas Association of Counties, the Environmental Finance Center at Wichita State, the Department of Commerce, the American Council of Engineering Companies of Kansas, and regional media contacts.
- Streamlined exceptional events demonstration package development, as well as EPA resources to review demonstration packages. The rise in particulates and impacts to regional haze due to wildfires means states must monitor wildfires and consider their local surface impacts on the state's ability to demonstrate and maintain the National Ambient Air Quality Standards. States and EPA regional offices need sufficient resources to develop and review exceptional event packages. In addition, Congress has mandated that the U.S. Forest Service conduct prescribed fires. Unfortunately, there is no companion declaration for EPA to respond to increased prescribed fires and their potential impact on state and local air quality attainment.
- Increased state wetland program funding to support climate resiliency and activities on surface waters and wetlands.
- Sufficient investments in data modernization efforts for air, clean water, and drinking water data management among states and EPA. States support effective multi-directional data flows that are not duplicative, burdensome, and expensive but rather focus on efficient data exchange solutions and on providing more accurate information to the public more readily. Previous efforts have failed due to lack of strong coordination. States support additional funding for EPA and states to jointly work to modernize systems and for funding for states to make parallel updates and improvements to delegated programs as needed.
- Performance Partnership Grant (PPG) eligibility for seven new State and Tribal Assistance Grant (STAG) infrastructure grant programs to reduce administrative burden to states and EPA.¹

• ¹ New STAG infrastructure assistance grants created since 2018 that are not PPG eligible currently cover assistance for small and disadvantaged communities, reducing lead in drinking water, lead testing in

States noted that across all priorities shared, federal funding support is key, as are close coordination and cooperation with EPA. In particular, states emphasized the need for federal funding for core programs, in particular Section 105 (air), Section 106 (clean water), and Resource Conservation & Recovery Act hazardous waste programs, and for related environmental justice activities. State implementation of delegated or authorized permitting, inspection, and monitoring activities protects our communities and keeps our economies strong. Investing technical assistance and capital in disadvantaged communities requires administrative resources to properly support desired outcomes.

States seek OMB support to work with Congress to provide funding for CDS or earmarks from an account separate from the CW and DW SRFs. In FY22, EPA reduced state capitalization grants across the board – totaling 27% of the CW SRF appropriations and 35% of the DW SRF appropriations – to accommodate CDS, which creates uncertainty regarding the long-term viability of SRFs. For example, in Washington State, earmarks reduced Washington's FFY 2022 CWSRF base capitalization grant by 28%, from \$27M to \$20M, removing \$7M in projects and capital funding from the revolving fund and resulting in a reduction in projects funded today and project funding in the future through loan repayments. This reduces the future strength and buying power of the CWSRF. In addition, most earmark projects do not appear to be for disadvantaged communities, yet these are federal grants provided from funds removed from the SRF loan program. EPA's Region 10 office is staffing up to oversee spending for the earmarked projects, which creates both an opportunity for coordination as well as potential confusion among funding recipients regarding requirements for the projects. Michigan estimates a reduction of 18 to 20 full-time equivalents (FTEs) within its DWSRF program and 5 FTEs within its CWSRF program. The state eliminated its Small System Technical Assistance water track enhancements due to a lack of available funding. In addition, Michigan reports that its wellhead protection set-aside is unable to provide continued resources for Wellogic enhancements, and wellhead protection grants to local governments will need to pause due to the lack of funding available. In addition to citing a need to reassign the source of CDS funds, states reinforced the need for funding for administration of CDS funds in future years should they continue.

In response to OMB's questions for additional information raised during our meeting, ECOS would like to take this opportunity to offer the following supplemental information. With regard to the question on challenges states are seeing with BIL funding for recycling programs, Washington State notes that there is a lack of transparency in EPA's grant application process, that EPA is phasing distribution of the funding, that tribes must compete with state and local governments in the first phase although Washington's tribes are in desperate need of solid waste infrastructure funding, and that EPA regional offices need to be more closely involved in communications. In response to a question on BIL recycling support, Kansas says that its smaller disadvantaged communities need support to apply for and administer federal grants or

schools, drinking water infrastructure resilience and sustainability, technical assistance for treatment works, sewer overflow control, and water infrastructure and workforce investment.

will not be able to access this funding. Kansas has an established solid waste reduction grant program that has demonstrated success in supporting local recycling programs, yet the state's funding is not adequate to fund all of the applications it receives. For EPA to effectively distribute the federal funding, states should be allowed to apply for the competitive grant money to supplement state grant programs, like in Kansas. States would be willing to work with EPA to incorporate metrics for federal reporting purposes.

In addition to the points noted above, ECOS is pleased to share with you the following recent documents noting ECOS positions and priorities:

- [ECOS State Survey on Offsite Compliance Monitoring: A Summary of Findings](#), September 16, 2022
- [ECOS letter to EPA on Clean Water Act Section 401 Water Quality Certification Improvement Rule](#), August 8, 2022
- [ECOS comments](#) to EPA on its FY23-24 draft National Program Guidances, July 15, 2022
- [ECOS letter](#) to the U.S. Department of Justice on Settlement Agreements involving payments to non-governmental third parties, July 11, 2022
- Recent ECOS letters on proposed EPA adjustment waivers for Build America Buy America on [selected EPA funding programs](#) (July 27, 2022) and on [SRF projects that have initiated design planning](#) (June 29, 2022);
- [ECOS letter](#) to EPA on its PFAS health advisories, June 15, 2022
- [ECOS FY23 Budget Testimony to the U.S. Senate Appropriations Committee](#), June 10, 2022
- [ECOS White Paper](#): Processes and Considerations for Setting State PFAS Standards, 2022 Update, March 2022, and
- [Testimony](#) to the U.S. Senate Environment & Public Works Committee of Laura Watson, Director, Washington State Department of Ecology, and Chair, ECOS Water Committee, on the Clean Water State Revolving Formula, March 16, 2022.

As highlighted in the meeting, ECOS has established the ECOS Environmental Justice Workgroup led by our members in California and Nebraska, which meets monthly with EPA to coordinate plans and share input. ECOS has also established the ECOS Infrastructure Workgroup led by New Jersey member, which meets with a state representative from each EPA region monthly to elevate topics for discussion with EPA and facilitate sharing across states.

ECOS greatly appreciates the participation of Scott Burgess at our 2022 Fall Meeting in late September. At this meeting, our members updated the ECOS bylaws to rename the Waste Committee the Land & Materials Committee, which better reflects current work.

If ECOS staff can be of further assistance, please don't hesitate to reach out to Beth Graves (bgraves@ecos.org) or me (bgrumbles@ecos.org).

Regards,



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ECOS Executive Director

cc: ECOS President Myra Reece, South Carolina Department of Health and Environmental Control
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