



# Environmental Council of the States

1250 H Street NW, Suite 850 | Washington, DC 20005  
(202) 266-4920 | www.ecos.org

October 2, 2023

U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, D.C. 20460

## **Re: Early Engagement on FY 2025 – FY 2026 National Program Guidance**

Dear U.S. EPA NPG Leads,

On behalf of the Environmental Council of the States (ECOS), I thank you for the opportunity to provide comments on the U.S. Environmental Protection Agency's (U.S. EPA) early engagement for the FY 2025 – FY 2026 National Program Guidance (NPG).

ECOS shared the NPG early engagement information from OECA, OCIR, OAR, OW, and OLEM with its membership and has organized state feedback into the categories below as well as specific input directed to program offices.

ECOS submits these general comments for your consideration across each of U.S. EPA's program offices.

To the greatest extent possible, U.S. EPA program measures should reflect environmental outcomes, as opposed to outputs, and should include metrics for evaluating incremental progress towards these goals.

### *Communication and Coordination*

States and U.S. EPA have a shared mission to protect human health and the environment that cannot be achieved without deliberate coordination. ECOS urges U.S. EPA to commit to early, frequent, and substantive engagement with states as environmental co-regulators. Early coordination on plans for new and proposed policies and regulations is paramount to ensuring a successful and sustainable environmental protection enterprise. States have deep experience and expertise that U.S. EPA should lean on throughout planning and implementation.

To streamline annual grant workplan development, states recommend U.S. EPA support establishment of electronic collaborative forums between regions and states that can be used to develop and negotiate grant workplans such as through MAX and SharePoint. States in regions that utilize online collaboration platforms for Performance Partnership Agreement (PPA) and Performance Partnership Grant (PPG) workplan negotiations have spoken very highly of them. States hope that online collaboration platforms such as the ones used by U.S. EPA Regions 1, 5, and 8 become an option for all states.

Under the [Evidence Act](#) Grant Commitments Learning Agenda, U.S. EPA has taken steps toward a better understanding of current grant reporting and tracking processes across U.S. EPA. ECOS continues to encourage U.S. EPA to take a holistic approach to data collection, considering potential new information needed alongside what reporting may no longer be needed, what information is not being utilized that could stop being collected, and what information U.S. EPA

**Elizabeth Biser**  
North Carolina Department of  
Environmental Quality  
ECOS President

**Jon Niermann**  
Texas Commission on  
Environmental Quality  
ECOS Vice President

**James Kenney**  
New Mexico Environment  
Department  
ECOS Secretary-Treasurer

**Myra Reece**  
South Carolina Department of  
Health and Environmental Control  
ECOS Past President

**Ben Grumbles**  
ECOS Executive Director

may already collect that could be shared more broadly so that states are not reporting information more than once. Collection, review, reporting, and management of data incurs costs to both states and U.S. EPA so conducting a complete review of needed and under-utilized information will allow resources to be better directed where they may be most effective. This review should also include expanded ability for information available in one system to more readily be available through and to other systems. Future data modernization efforts should include this holistic approach to data access to further reduce duplicate data entry and increase data transparency. States have worked closely with U.S. EPA and tribes in conversations about reinvigorating the Exchange Network. States encourage continued engagement and continued momentum for these conversations through the E-Enterprise Leadership Council (EELC).

#### *Funding and State Capacity*

States are the primary implementers and enforcers of the nation's environmental laws and programs are under severe strain with high staffing vacancies and insufficient funding to meet our shared goals for protecting human health and the environment. As U.S. EPA drafts the FY25-26 National Program Guidance, ECOS asks U.S. EPA to use every opportunity to support increased federal funding for states through Categorical Grants, including allowing funding flexibility such as offered through PPGs, [U.S. EPA's E-Enterprise Workload Trade-offs](#), and other mechanisms, to carry out delegated/authorized/primacy federal programs.

ECOS notes that programs under the Inflation Reduction Act and Infrastructure Investment and Jobs Act lean on many of the same oversubscribed resources and staff that states rely on to meet existing and ongoing requirements. States require substantial budget increases to ensure that they can continue to fulfill their current responsibilities while also assuming obligations for new high-priority programs.

As U.S. EPA plans and prioritizes investments in data modernization and technology, ECOS urges U.S. EPA to follow the principles of the [E-Enterprise for the Environment Digital Strategy](#).

#### *Flexibility*

State agencies manage a diverse array of environmental challenges. Flexibility in funding, planning processes, regulatory actions, and Agency guidance allows states to determine the most effective ways to meet national standards while accommodating social, geographic, and economic factors that may be jurisdictionally specific.

As each program office drafts its NPG priorities, U.S. EPA should maximize flexibility for states to use federal grants for the highest priority needs in their areas. U.S. EPA should also work closely with states to adjust resources to meet changing priorities, collaboratively resolve planning issues, and provide flexibility in developing state work plans such as through Alternative Compliance Monitoring Strategies and other means.

#### *Training and Technical Assistance*

As state agencies continue to grapple with recruitment, retirements, and workforce retention, training is crucial to build and maintain institutional knowledge. U.S. EPA should prioritize activities to ensure the development and delivery of training and technical assistance for state agencies, consistent with [ECOS Resolution 18-2](#) on Adequately Funded Training Programs for Environmental Success. ECOS encourages U.S. EPA to engage state agencies to identify priority training topics and effective learning mechanisms.

Below, ECOS also encourages U.S. EPA to consider any NPG comments from individual states, as well as from the media-specific state associations such as AAPCA, ACWA, ASDWA, ASTSWMO, and NACAA.

### **Office of Air and Radiation**

#### *Exceptional Events*

ECOS asks OAR to address exceptional events in the draft NPG. More frequent and intense wildfires have triggered an unprecedented number of regulatorily significant smoke events that are impacting states' ability to comply with the National Ambient Air Quality Standards (NAAQS). ECOS asks OAR to work with states to better integrate the increased frequency of exceptional events into NAAQS implementation, attainment planning, and State Implementation Plan development.

U.S. EPA should work with states to assess the performance of the Exceptional Events Rule and consider improvements to the exceptional events demonstration process to make it less resource intensive. Current rules and processes for exceptional events demonstrations should be streamlined and updated to better account for the increased frequency of wildfires, the need to reduce fuel load through prescribed burns, and other events that trigger short-term exceedances and nonattainment.

#### *Funding and State Capacity*

ECOS underscores the critical need for additional resources to ensure that states have the capacity to monitor and assess air quality, develop implementation plans and emissions reduction strategies, permit facilities, and ensure compliance.

ECOS reaffirms the importance of retaining the funding authority for fine particulate matter (PM<sub>2.5</sub>) monitoring under Section 103 of the Clean Air Act. Section 103 does not require agencies to provide matching funds. This feature is critical because it allows those agencies that are unable to secure matching resources to accept federal grants and continue this important monitoring program. ECOS also continues to encourage U.S. EPA to maximize the use of Section 103 authority for any new funding opportunities that may emerge.

#### *Data and Technology Investments*

OAR has indicated interest in modernizing and unifying its monitoring and emissions data infrastructure. This will have major workflow and resource implications for co-regulators. ECOS strongly supports substantive and early engagement with state agencies so that they may inform and plan for any modernization efforts.

OAR should also continue to collaborate with states on the Combined Air Emissions Reporting System (CAERS) to ensure that it fully meets the established project goals. As U.S. EPA considers the role of CAERS in supporting proposed modifications to the Air Emissions Reporting Requirements (AERR) rule, U.S. EPA should be sure to provide adequate flexibility to accommodate states that opt in to CAERS while preserving the ability for other states to operate their own reporting programs and systems, for clear guidance for states who want to operate independently, and for timely U.S. EPA decisions on equivalency of state reporting systems.

#### *Emerging Contaminants*

ECOS emphasizes the importance of a multi-media approach to addressing emerging contaminants, especially considering the impact of air emissions releases on existing industrial

contamination. Even in the absence of regulations, OAR should work to ensure that air pollution from emerging contaminants such as PFAS does not enter water and exacerbate the challenges faced by OSW.

### **Office of Enforcement and Compliance Assurance**

Guiding documents like the NPG and the State Review Framework (SRF) are important for directing the implementation of environmental laws and policies. States request that OECA make the basic Compliance Monitoring Strategy documents readily accessible for states to help ensure a consistent understanding of roles and responsibilities over the length of key planning and review cycles. This will help prevent misunderstandings and unwelcome surprises. In particular, new metrics reflecting U.S. EPA-directed priorities should be developed in collaboration with states as co-regulators and inclusive of cooperative federalism principles. Priorities should be communicated early on to establish clear expectations of states and prevent retrospective review and evaluation of programs that were not in place at the outset of metrics tracking.

States appreciated working with OECA on its Compliance Learning Agenda and are eager to continue discussions regarding inclusion of offsite compliance monitoring to supplement compliance assurance.

States would benefit from clarity around minimum criteria that each state needs to follow when working on enforcement in environmental justice areas (for example: what additional corrective actions do we need to include or penalty adjustments) to ensure that all agencies and U.S. EPA are consistent.

OECA is leading efforts to modernize U.S. EPA's Integrated Compliance Information System (ICIS) where states report compliance and enforcement information for the Air and NPDES programs. States have invested significant time in discussions and providing recommendations and feedback on the modernization and encourage U.S. EPA to invest in strong management for this important effort.

### **Office of Land and Emergency Management**

All levels of government, the private sector, academia, and nongovernmental organizations are seeing the value of sustainable materials management as a strategy to help reduce carbon pollution and other environmental stressors, increase equity and community resilience, and grow the economy. ECOS will continue to emphasize the importance of market-based and customized solutions in each state so that we maximize landfill diversion and ensure materials continue to have productive economic use and looks forward to working with U.S. EPA in this area.

### **Office of Water**

States face new challenges as they incorporate climate change, emerging pollutants, changes in federal water law, and other priority areas into existing regulatory and non-regulatory processes. ECOS asks U.S. EPA to continue to engage with states on these emerging areas and changes through the development of updated and improved guidance, training, tools, and other clarifying resources.

As U.S. EPA continues to implement the Drinking Water - State, Federal, Tribal Information Exchange System (DW-SFTIES), ECOS urges U.S. EPA to provide adequate funding to state agencies to support the transition to the new system.

Thank you again for the opportunity to provide comments.

A handwritten signature in black ink, appearing to read "Ben Grumbles". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ben Grumbles  
ECOS Executive Director