



THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

50 F Street, N.W.
Suite 350
Washington, D.C. 20001

Tel: (202) 266-4920
Fax: (202) 266-4937
Email: ecos@ecos.org
Web: www.ecos.org

Robert Martineau
Commissioner, Tennessee
Department of Environment
and Conservation
PRESIDENT

Martha Rudolph
Director of Environmental
Programs, Colorado
Department of Public Health
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Dick Pedersen
Director, Oregon Department
of Environmental Quality
PAST PRESIDENT

Alexandra Dapolito Dunn
Executive Director &
General Counsel

March 24, 2015

Kathy Sedlak O'Brien
Director, Office of Planning, Analysis and Accountability (OPAA)
Office of the Chief Financial Officer
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Submitted via e-mail to: obrien.kathy@epa.gov

Dear Ms. O'Brien:

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 (EPA) draft FY 2016-2017 National Program Manager (NPM) Guidances.

ECOS appreciates the Agency's transition from an annual to a two-year NPM cycle, as well as its work to pursue early state engagement and to highlight opportunities for flexibility in accomplishing the work to protect human health and the environment. The NPM Guidances reflect much of the work that states, regions, and NPMs do together, common goals, and shared initiatives. Given the importance of the co-regulator relationship, we appreciate the ability to work together on these documents in a collaborative way.

ECOS submits the attached comments for your consideration using the required comment template. ECOS also commends to EPA's attention any NPM comments from the media-specific state associations such as AAPCA, ACWA, ASDWA, ASTSWMO, and NACAA.

Again, thank you for the opportunity to provide input on these draft Guidances.

Regards,

Alexandra Dapolito Dunn
Executive Director and General Counsel

cc:

ECOS Officers

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EPA NPM Contacts

Marc Vincent, EPA OCFO
Margaret Walters, EPA OAR
Howard Rubin, EPA OSWER
Maureen Lydon, EPA OECA
Mike Mason, EPA OW
Jennifer Vernon, EPA OCSPP
Reynold Meni, EPA NEPPS
Jill Smink, EPA OEI

FY 2016-2017 EXTERNAL COMMENTS AND RESPONSE TO COMMENTS SUMMARY TEMPLATE
 ECOS response, March 2015

Instructions:

| Comment from State, Tribe, or Other Stakeholder | Commenter(s) | Location in Draft Guidance | NPM Response | Action Taken in Final Guidance |
|--|--|---|--|--|
| <i>Issue Area - Divide comments into general issue areas (e.g., NAAQS, indoor air, etc., where appropriate):</i> | | | | |
| <i>Include your comment.</i> | <i>Organization of Commenter (e.g., ECOS, New England Commissioners, tribe, etc.).</i> | <i>State the section page number the comment is referring to.</i> | <i>The response should include adequate discussion and details to support the decision to modify/retain the draft language. Note: If more than one commenter raises the same issue, please cross-reference the individual responses.</i> | <i>Specify changes made in response to comments and identify all locations in the final Guidance (e.g., page numbers, sections, etc.).</i> |

Template:

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| <i>Issue Area:</i> | | | | |
| ECOS appreciates that beginning with FY 2016-2017, U.S. EPA is implementing a two-year cycle for the NPM Guidances. ECOS supports this transition implemented collaboratively with state partners. In particular, ECOS supports the focus on 1) earlier and more meaningful state engagement in joint priority setting; 2) clear support to pursue flexibility within the NPM Guidance documents including identifying areas where flexibilities can be sought and providing additional guidance for seeking approval; 3) utilization of multi-year grant workplans to allow for better | ECOS | Draft Overview to the FY 2016-2017 National Program Manager (NPM) | | |

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| <p>alignment with the new two-year NPM Guidances; 4) better alignment of the NPM and Grant Guidances to help streamline and facilitate the grant work planning process and potentially reduce workload for states and EPA headquarters and regional offices.</p> <p>ECOS recommends that EPA highlight language from each core NPM Guidance (OAR, OW, OSWER, OECA) that addresses support to pursue flexibility and guidance on how to seek flexibility approval. For instance, OECA includes discussion of flexibility within CMS and general guidelines for seeking flexibility in its Guidance on pages 3-4. ECOS recommends OECA's language along with specific language from the OAR, OW, and OSWER Guidance documents be provided in summary, perhaps as an appendix to the final "overview" document.</p> <p>ECOS commends EPA Regions for negotiating flexible approaches under the new guidance for states to request alternative CMS plans and for regions to review and approve state alternative plans. While states note that in certain instances the process is still challenging, time consuming, and complex, significant progress has been made and agreements reached. ECOS encourages EPA to continue working to</p> | | Guidances (page 4); OAR, OW, OSWER, OECA, NEPPS Guidances | | |

ECOS and states are working with EPA's Office of Grants and Debarment and other EPA offices and regions to look at multi-year state grant workplans to align with the 2-year NPM Guidance cycle. ECOS supports this work and efforts to consider institutionalizing these discussions and decisions through language in Grants Policy Issuance (GPI) and other appropriate means.

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| ECOS also recommends continued alignment and expansion of the issuance of NPM grant guidance on a two-year cycle to coincide with the 2-year NPM Guidances cycle. | | | | |
| ECOS supports work to assist states in meeting their obligations to comply with Title VI of the Civil Rights Act of 1964. The Overview document references work being done on a "Compliance Toolkit for EPA Recipients" developed by OCR. States are working with OCR to develop this toolkit including identification of best practices. ECOS suggests language be expanded to note development of the toolkit by OCR and states. | ECOS | <i>Draft Overview to the FY 2016-2017 National Program Manager (NPM) Guidances page 4</i> | | |
| ECOS urges EPA to include in all final NPM Guidance documents clear reference to the E-Enterprise for the Environment joint governance initiative between states and EPA. Specifically, ECOS requests each NPM include language generally defining E-Enterprise; language regarding how E-Enterprise concepts are being incorporated into each NPM's work; language explicitly recognizing that states need flexibility to adjust their work commitments and required outputs to be able to devote time to continuous process improvement efforts, including joint efforts with other states, tribes and EPA in support of E-Enterprise aligned activities; and language discussing that states may use categorical grant dollars to advance E-Enterprise aligned projects. ECOS also asks each NPM to provide examples in its final Guidance of specific E-Enterprise aligned work it is undertaking and examples of projects that states may similarly be undertaking. This may include efforts such as shared services development or implementation, LEAN and streamlining initiatives, e-permitting, E-Enterprise scoping team participation, development of E-Enterprise architecture and identity management, portal development, and other activities. | ECOS | <i>OAR, OW, OSWER, OECA, OCSPP, OEI, NEPPS Guidances</i> | | |

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| A number of instances are identified for the use of EJSscreen including for review of civil enforcement cases to be initiated and identification of the most important air | ECOS | <i>OECA - pages 17-18,</i> | | |

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| including use cases and other important information. EJSCREEN was released internally for EPA staff use in 2012. State environmental agency staff have not yet had the opportunity to use and understand how to apply this tool and recognize this will take time. Continued close communication between states and EPA is needed related to EPA's plans for EJSCREEN as well as data set updating. These concerns have been conveyed several times to the Agency. | | | | |
| ECOS appreciates the inclusion of language regarding alternative compliance monitoring strategies and the option to discuss flexibilities with state workplans. The OECA Guidance Appendix on draft Annual Commitment System (ACS) measures includes several measures that discuss annual inspection activities. For instance, RCRA 01.s describes the number of inspections of operating TSDFs by states during the year. RCRA 02.s describes the number of inspections of LQGs to be inspected by the state during the year. CWA 07 describes annual CMS plans and numerical end of year report both due by December 31. With a shift to two-year NPM Guidances and corresponding shift to multi-year state grant workplans, states and EPA should consider how measures should be modified to reflect a multi-year cycle and to minimize annual measures relating to state activities to gain the maximum advantage of administrative reporting burden reduction and flexibilities to negotiate state workload over a two-year period. | ECOS | OECA – Appendix 1 - pages 4, 6 | | |
| Under “Implementing the Clean Water Act (CWA) Action Plan,” OECA includes the switch from paper to electronic reporting for the NPDES program. Forty-six states have NPDES delegation. The E-Enterprise Leadership Council (EELC) has endorsed | ECOS | OECA – pages 10 - 12 | | |

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| support for a NPDES e-reporting pilot that would include development of e-reporting tools for various NPDES data flows that the rule addresses. EPA has identified some potential states as partners for particular work under this pilot. Given the potential for state shared services and the need to align with state reporting systems as appropriate, ECOS recommends a joint governance team be established to oversee this work and to provide timely and meaningful state engagement. This work would be distinct from EPA's efforts to finalize the rulemaking. | | | | |
| States and EPA are working collaboratively on E-Enterprise for the Environment. One of the goals of this initiative is to improve environmental protection through better program performance. One of the ways this could be achieved is through promotion, adoption, and integration of advanced information and monitoring technologies. OECA's Guidance includes a section on, “Advancing Next Generation Compliance.” ECOS recommends language be added noting state-EPA collaboration through E-Enterprise for the Environment and recognizing states and EPA will be jointly developing plans related to advanced monitoring. | ECOS | OECA – pages 2, 12 - 14 | | |
| OECA's Guidance recognizes on page 11 that, “(r)obust compliance monitoring and enforcement are critically important for identifying and addressing violations and promoting deterrence. While individual facility inspections and enforcement actions remain a critically important part of addressing noncompliance, this alone is not sufficient to achieve the improvements in compliance we need.” States agree that many strategies are needed to ensure compliance. As one example, based on 2002 state legislation, New Hampshire DES offers training to hazardous waste generators. The program requires each hazardous waste generator that generates more than 220 pounds of hazardous waste in one month to have on staff at the facility where the hazardous waste is generated, a Hazardous Waste Coordinator (HWC) certified by DES. The goal of the certification program is to empower each HWC to be responsible for ensuring that the generator is aware of, and in compliance with, | ECOS | OECA - page 11 | | |

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| <p>applicable requirements relating to hazardous waste management, including but not limited to storage, transportation, and disposal. This first-in-the-nation certification program for HWCs is being implemented to provide a forum for educating generators in the complex regulatory area of hazardous waste management. Future certification courses will be designed to encourage generators to move "beyond compliance", by developing resource conservation, waste minimization, and recycling programs at their facilities. The state has seen positive results in improved compliance by hazardous waste generators and is seeking to further measure results. There are other examples of state initiatives to effectively incorporate compliance assistance as part of an overall integrated compliance assurance program.</p> | | | | |
| <p>ECOS recommends the OECA Guidance include specific language related to compliance assistance as one possible element of an overall integrated compliance assurance program.</p> | | | | |
| <p>ECOS commends EPA for its outreach and engagement with states on Next Generation Compliance (NGC), and encourages EPA to: analyze, document and report on pilot projects in ways that expedite adoption by others; pursue avenues to more quickly share NGC information with states not yet able to participate in EPA visits on NGC; compile and share with states successful state examples of NGC activities across all media programs; consider longstanding collaborative programs supporting compliance and protection, such as the National Vehicle Mercury Switch Recovery Program supporting the Electric Arc Furnace Steelmaking Area Source NESHAPs, for focused NGC activities; coordinate with states when releasing to the public new data generated by NGC actions; and ensure that NGC approaches result not only in improved compliance but also significant streamlining regarding electronic data exchange and reporting.</p> | ECOS | OECA - pages 12-14, etc. | | |
| <p>In addition to the Environmental Justice activities listed in the draft guidance, ECOS</p> | ECOS | OECA - pages | | |

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| <p>would encourage EPA to gather, compile, and share with states best examples through case studies and recommendations for implementing environmental justice through compliance and enforcement programs. These examples should not only be federal, but also be from states who have had successes in this arena.</p> | | 17-18 | | |
| <p>For FY16 – 17, OEI notes it will issue a revised EPA Quality Policy and Procedure. ECOS understands that when EPA updates its quality standard for external organizations (including states), the policy for external organizations will need to align with EPA's internal quality policy. States have offered to provide input to EPA as it develops its quality policy as requirements to states will follow. ECOS asks OEI to engage with states through ECOS early and to offer opportunities for state input during its internal quality policy development.</p> | ECOS | OEI – page 14 | | |

