

**The Environmental Council of the States (ECOS) Testimony before the
House Energy and Commerce Committee**

***On the 2008 U.S. Environmental Protection Agency Budget
Presented by Robert W. King, Jr., President Environmental Council of the States and
Deputy Commissioner, South Carolina Department of Health and Environmental
Control***

***Subcommittee on Environment and Hazardous Materials
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Thank you, Mr. Chairman and members of the Committee, for providing the Environmental Council of the States (ECOS) the opportunity to present testimony on the U.S. Environmental Protection Agency's 2008 Budget. My name is Robert W. King, Jr., and I am the Deputy Commissioner for Environmental Quality Control at the South Carolina Department of Health and Environmental Control, and the President of ECOS.

Today I am here representing not only my own state, but also as a voice for all the environmental agencies in the states belonging to our organization.

ECOS members have been following the EPA budget for many years, and very closely since FY2005, the year that reductions in the State and Tribal Assistance Grants (STAG) first began to occur. Our comments are primarily directed to the STAG portion of EPA's budget.

Background

The Environmental Council of States is the national non-partisan, non-profit association of the leaders of state environmental agencies. Our members are the officials who manage and direct the environmental agencies in the States and territories. They are the state leaders responsible for making certain our nation's air, water and natural resources are clean, safe and protected.

States are co-regulators with US EPA and have the challenging job of front-line implementation of our nation's environmental pollution laws. States have increased their capacity and as environmental protection has become increasingly important to the general public, more and more responsibilities have been moved to the level of government best able to carry them out efficiently – State and local governments – which are most efficient because they are closest to the problems, closest to the people who must solve the problems, and closest to the communities which must live with the solutions.

Today states are responsible for:

- Managing most of the delegable environmental and public health programs and rules;
- Issuing environmental and public health standards under the federal laws and for state-specific laws;
- Issuing most environmental permits;
- Collecting nearly 94% of environmental monitoring data; and
- Conducting over 90% of all enforcement actions.

From the earliest days of EPA, funds have been provided to the States to assist them in the implementation of federal programs. States also provide funds for these programs, typically many times over the federal amount. The federal funds are important to states because they are targeted to specific programs and help states meet federal requirements such as permitting, enforcement, monitoring, standards development, rule issuance, and reporting – in short, all the significant components of our co-regulator agreements with the federal government.

States Must Implement New Rules

During the past few years, US EPA has promulgated a significant number of new rules for the states to implement. These are documented regularly in EPA's Regulatory Agenda, which designates the rules that are likely to have an impact on state and local

governments (and others). ECOS has compiled a list of these rules from the period 2000 through 2006. During this time the agency issued 390 new rules with a significant impact on the states. Many of these rules are well-known and involve significant effort. For example, the Clean Air Mercury Rule (CAMR) and the Arsenic in Drinking Water Rule are two of them. States must invest considerable effort to adopt and implement these rules on behalf of the agency, and real costs are involved in doing so. More rules are expected, of course, in 2007 and 2008, and so this trend continues. To be clear, the states believe many of these rules are needed. We acknowledge that they are often crucial in meeting Congress' expectations for environmental protection. Our concern is over our ability to implement them.

Reductions to STAG

If Congress accepts the 2008 proposal for STAG, it will mean that states will have lost over \$1 billion in federal support since 2004. The loss of these funds will certainly result in the deterioration of environmental quality and public health in the United States. The states strongly urge Congress not to accept these proposals. [See Figure 1.]

States are particularly concerned about the potential loss of funds for the air programs and the non-point source water programs, because these are areas we believe should be a high priority for the agency.

In the 2008 budget development cycle, EPA for the first time involved the states in the early stages of the budget's development, and we were very appreciative of this opportunity. The ECOS officers presented information to the agency, and proposed a tier of priorities. Our highest priorities included the programs mandated by Congress in the major environmental statutes. We also had medium priorities and even low priorities. We asked that the high priority areas receive modest increases, and the moderate priorities be held at previous levels, while the low priority areas could be reduced. Our belief was that this would be the best approach to assure the most environmental protection for the areas Congress had entrusted to EPA and the states in a fiscally prudent manner. Our list of priorities is shown in Figure 2. This is a list of the Categorical Grants and Infrastructure

that Congress includes in the STAG portion of EPA's appropriation. The ECOS membership endorsed this approach.

EPA accepted a few of the states' recommendations, but for the most part continued the pattern of the budget from the 2007 cycle. The states nevertheless remain hopeful that continued consultation will result in a budget that supports the states' role as co-regulator and implementer of most federal environmental programs.

ECOS has again proposed an alternative budget for the STAG portion of the EPA 2008 budget that addresses our concern with continuing reductions of Congressionally-mandate environmental statutes. This is attached as Appendix I.

Our alternative STAG budget is based on the following principles, agreed upon by the ECOS members:

1. In times of fiscal crisis, when resources are in short supply, the core mandated environmental programs funded through STAG, including infrastructure capitalization, must be funded first;
2. Reductions in EPA's budget, if they must occur, should be shared proportionately by EPA and the States after STAG levels are returned to their 2004 levels; and
3. States should be afforded the flexibility to run their core programs in a manner that will obtain the highest level of attainment with the standards set by Congress and EPA without undue hindrance from EPA, but within its oversight responsibilities.

The combination of reduction in funds and increased numbers of new rules [see Figure 3] is causing great pressure on the state environmental agencies. While states are reluctant to return federal programs to EPA for many reasons, we have begun to see programs returned, as well as delays in implementation of new rules. This combination potentially means increased costs to the federal government as well as delays, as the agency must take over implementation for items that states cannot address. To illustrate our point, we will focus on two of the states' priority areas: drinking water and air quality [continued on page 7].

Figure 1. Losses in Federal Support to States, 2004-2008.

Dollars in thousands. Sources: US EPA, House Appropriations Cmte.

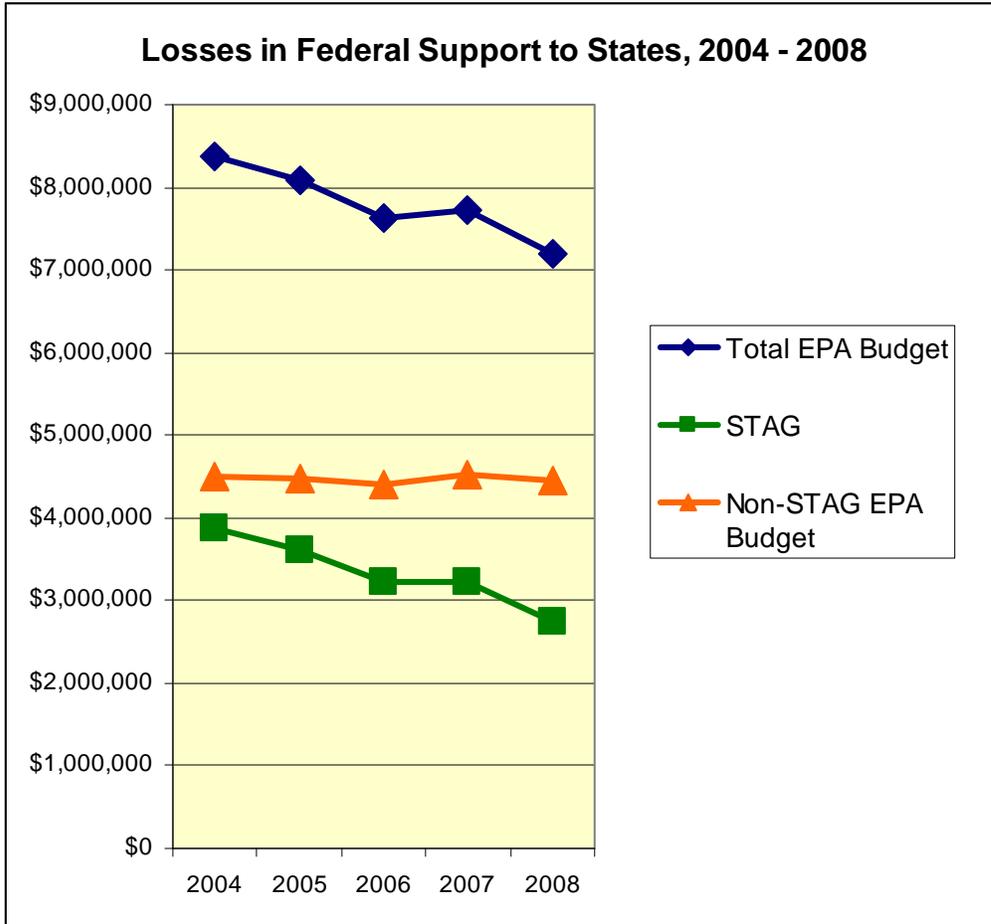
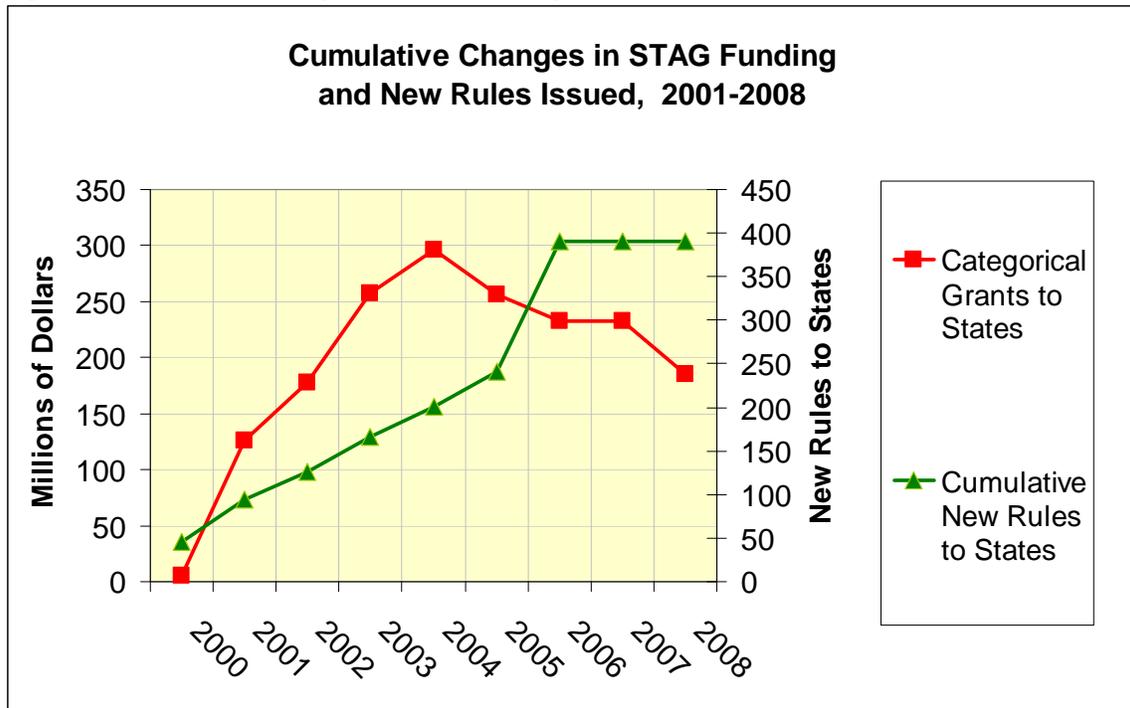


Figure 2. The States' Priorities for STAG, 2008

Items are not rank ordered within categories.

CATEGORICAL GRANTS ITEMS
Highest Priority
State and Local Air Quality Management
Public Water System Supervision (PWSS)
Brownfields Categorical Grant
Hazardous Waste Financial Assistance
Underground Storage Tanks
Nonpoint Source (Sec. 319)
Pollution Control (Sec. 106)
Moderate Priority
Environmental Information
Beaches Protection
Homeland Security
Lead
Pesticides Enforcement
Toxics Substances Compliance
Pesticides Program Implementation
Pollution Prevention
Radon
Tribal Air Quality Management
Tribal General Assistance Program
Underground Injection Control (UIC)
Wastewater Operator Training
Water Quality Cooperative Agreements
Wetlands Program Development
Low Priority
Sector Program
Targeted Watersheds
INFRASTRUCTURE ITEMS
Highest Priority
Clean Water SRF
Drinking Water SRF
Moderate Priority
Brownfields Projects
Clean Diesel (moved to EPM accounts)
Infrastructure Assistance: Alaska Native Villages
Infrastructure Assistance: Mexico Border
Infrastructure Assistance: Puerto Rico

Figure 3. Cumulative Changes in STAG Funding and New Rules Issued 2001 - 2008



Budget Effects on State Drinking Water Programs

States implement Federal requirements: 49 of the 50 states (all but Wyoming) have “primacy” (i.e., delegation) for implementing all Federal drinking water requirements within their states. In short, this means that state personnel are the front line personnel communicating with some 160,000 public water systems across the country. There are approximately 90 National Primary Drinking Water Regulations as well as a number of ancillary Federal program requirements (e.g., Consumer Confidence Reports).

This task has become extremely complex and resource-demanding in recent years as states have been challenged by many new Federal requirements as well as working to ensure that water treatment facilities are as safe and secure as they can be from terrorist threat or natural disasters. (States receive approximately \$100,000 per state per year for this task.)

The most recent rules promulgated by U.S. EPA are extremely resource-intensive for a state agency to implement. The new rules reflect a risk-based approach wherein the specific regulatory requirements that apply are commensurate with the magnitude of the risk. These rules are the next suite of Disinfection By-Product/Microbial Contaminant rules (referred to as LT 2/Stage 2; promulgated in December 2005) and the Ground Water Rule (promulgated in October 2006). These new resource-demanding rules layer on top of a suite of rules issues in the 2000/2001 time frames (arsenic, uranium, Disinfection By-Products Stage 1) that are just now hitting with full force.

For the first time in recent memory, about the half the states said that they were not able to implement all or some of the early stages of implementation of the LT 2/Stage 2 rule and, in those states, EPA Regions, with contract assistance, are implementing those portions of the rule states are unable to implement. This is an unsatisfactory situation in which well meaning Regional or contract personnel are making judgments about water systems about which they are less familiar than state personnel. There is also some question about why EPA has funds for contractors to implement these rules, but not for states.

States are also carefully setting priorities in an effort to address the most pressing public health priorities. But, this comes at a cost, as states must disinvest in many areas. This disinvestment has the net effect of tearing away at the fabric of strong public health protection. For instance, one of the most important activities that states undertake is something called a “sanitary survey” in which state personnel inspect and provide technical assistance related to all aspects of a water utility. The frequency and rigor of these inspections has been reduced in many states in order to meet demands of implementing new rules that have not been adequately funded.

The consequence of declining Federal support and dramatically increased workloads has meant that states are forced to try to make up the difference between what it takes to run these programs and resources available within their states. Many states have instituted or increased fees for various drinking water services they provide or sought increases from

State general funds. However, fee systems or fee increases are simply a “non-starter” in many states. Many states have also been forced to take greater levels of Drinking Water State Revolving Loan Funds (DWSRF) set-aside funds than they typically take. This occurs when funds are transferred from the SRF to the agency in order to help pay for program costs, leaving less funding available for infrastructure improvements.

The DWSRF has not been cut at the levels that the CWSRF has seen. Rather, the appropriated level of the past few years (roughly \$840 million) has never reached the authorized level (\$1 billion). States have seen some modest cuts in both real dollar terms as well as in the eroding effects of inflation on the DWSRF appropriation.

States are only able to partially address the infrastructure needs expressed by water utilities. Aging infrastructure in the U.S. will only make this problem worse in the years to come. The problem is most acute in small and medium water systems. This is because large systems are often able to secure their own funding on the bond market. According to US EPA, the drinking water infrastructure gap in 2002 was between \$154 billion and \$446 billion, with a point estimate of \$274 billion.

Budget Effects on State and Local Air Quality Programs

The 2008 proposed EPA budget will cut \$35.1 million from state and local air programs. This cut comes at a critical time for states and localities. States are juggling the many responsibilities associated with putting together three – and in some cases four – sets of state implementation plans (SIPs). They are also beginning to prepare to implement the new National Ambient Air Quality Standard (NAAQS) that EPA issued last year for fine particulate matter (PM_{2.5}).

States are required under the Clean Air Act to develop SIPs to show how they will attain or maintain NAAQS for so-called criteria pollutants, like ozone (smog) and particle pollution (soot). If the proposed \$35.1-million budget cut is enacted, on average, each state will lose \$700,000 (i.e., an average reduction of approximately \$340,000 in fine particulate monitoring and \$360,000 from the other elements of the air quality program).

The severity of the proposed cuts for FY 2008 is so great that, in many cases, state and local air agencies would have to lay off existing personnel and/or not fill empty positions.

Many agencies would have to cease operating existing monitors or otherwise curtail their monitoring programs. The reductions would impair their ability to inspect sources and carry out enforcement activities, making clean air requirements less effective.

Additionally, permits for minor sources will take longer to process and customer service will diminish.

The funding cuts could seriously impair the ability of state and local agencies to prepare new plans for implementing ozone and particulate matter standards. The development of effective State Implementation Plans (SIPs) is essential to ensure that measures will be adopted that reduce air pollution and protect public health.

The budget cuts would be further exacerbated by the proposal to shift the fine particulate monitoring program from Section 103 to Section 105 authority, requiring a 40-percent match. Some agencies do not currently have additional funds for the match. Because of two-year legislative cycles or the timing of budget development, some agencies can not supply additional matching funds without a reasonable transition period in which to make adjustments. They could be forced to turn away grant funds.

Perhaps most troubling of all, if the proposed reductions occur, several local air quality agencies face the very real possibility of having to close their operations entirely. This would be a terrible loss for those local areas.

Specific activity work in FY 2008 that would be affected by the proposed FY 2008 budget cuts includes:

- *Preparation of PM_{2.5} SIPs.* SIPs to meet the 1997 PM_{2.5} NAAQS are due in April 2008. The effort of states and localities to put together these SIPs in a timely manner has already been hampered by EPA's failure to issue its rule implementing the PM_{2.5} standards. The proposed budget cuts will only harm this effort further.

- *Preparation of regional haze SIPs.* Regional haze SIPs are due in December 2007. While states receive assistance from Regional Planning Organizations (RPOs) for the analysis underpinning their SIPs, funding for RPOs is also proposed to be cut.
- *Finalizing ozone SIPs.* SIPs to meet the 1997 ozone NAAQS are due in June 2007. Though this deadline falls in FY 2007, states may be late in submitting their SIPs because of a D.C. Circuit Court decision vacating the “Phase 1 Rule” EPA issued to implement the 8-hour ozone standard. (*South Coast Air Quality Management District v. EPA* [No. 04-1201, et al.]). Given the *South Coast AQMD* decision, states and EPA may request clarification and additional analyses regarding ozone SIPs during FY 2008.
- *Finalizing Clean Air Interstate Rule (CAIR) SIPs.* EPA promulgated CAIR to address interstate transport of sulfur dioxide and nitrogen oxide in the East; CAIR covers 28 states and the District of Columbia. CAIR SIPs were due in FY 2007, but EPA’s target date for approving CAIR SIPs is not until December 2007, so during FY 2008 EPA may request additional analyses or information from states covered by CAIR.

Some other efforts performed by the state and local air agencies may have to be reduced if this budget cut is enacted, including:

- *Implementation of the Maximum Achievable Control Technology (MACT) standards*
- *Implementation of new standards for area sources of HAPs*, currently being developed by EPA under court-order
- *Implementation of Residual Risk standards*, also currently under development by EPA
- *Finalization of the Clean Air Mercury Rule* including implementation expected to begin in 2008
- *New, Modifying, And Minor Sources.* The proposed elimination of \$15.6 million from the Section 105 grant program will impair the ability of state and local air agencies to issue permits to new, modifying, and minor sources.
- *Enforcement.* Some states may have to curtail enforcement actions, response to citizen’s complaints, and compliance assistance efforts

Finally, EPA’s budget proposes to cut air monitoring support for states. EPA monitoring regulations impose new requirements that state and local air agencies are already struggling to meet. The most challenging of these is the requirement for daily sampling at numerous PM_{2.5} monitors nationwide that were formerly sampled on a less frequent basis. While such enhanced monitoring is needed to gauge compliance with the new, lower daily standard, many air agencies simply cannot afford to deploy the personnel required to perform such daily sampling in addition to their other required activities. Many agencies anticipate eliminating PM_{2.5} monitors, which could result in the

remaining monitoring network being inadequate to provide even minimally acceptable PM2.5 data for planning and other purposes.

An Alternative: The States' STAG Budget Proposal

The states propose an alternative budget for Congress' consideration [see Appendix I]. This budget prioritizes our needs, with proposed increases for the environmental programs that states agree are the most important, with flat funding for more narrow programs (either because not every state is affected, or because a single pollutant is addressed), and even reductions for low priority programs.

We understand that budget increases can more easily occur in some areas, if decreases occur in other. Our budget suggests where reductions might occur both in STAG and elsewhere in EPA's budget without hampering the implementation of the nation's environmental statutes or reducing staff at US EPA.

We have begun dialogue with many of you on this matter and hope to have continuing discussions in a few weeks when ECOS meets in the capital area.

Although the primary interest of ECOS is the STAG programs, we are also concerned about reductions in the Inspector General's budget and in proposals that will result in the cleanup on fewer superfund sites being completed.

Conclusion

The states are thankful for the opportunity to present our views to the Committee and we welcome the opportunity to discuss these matters in a public forum. It is our hope that Congress can assist us as we implement the nation's environmental statutes as a co-regulator with the US EPA.

Thank you, Mr. Chairman, for this opportunity to testify.

Appendix I. The States' Proposal to Congress for EPA's 2008 STAG Budget