
April 6, 2023

The Honorable Tom Carper
Chairman
Committee on Environment and
Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and
Public Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

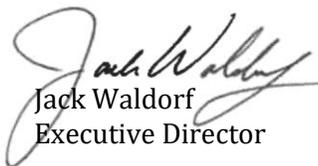
With regard to the Committee's March 29 hearing, "The EPA Good Neighbor Rule: Healthier Air for Downwind States," attached please find Western Governors' Association Policy Resolution 2022-02, Air Quality Protection and Management.

This policy resolution expresses Western Governors' shared perspectives on the importance of cooperative federalism in implementing the Clean Air Act (CAA) and air quality management. The Environmental Protection Agency (EPA) should recognize state authority under the CAA and accord states sufficient flexibility to create air quality and emissions programs tailored to individual state needs, industries, and economies.

Western Governors also emphasize that, in reviewing state plans, EPA should focus on the circumstances facing the individual state. EPA should not reject reasonable state policy choices based solely on national consistency, fear of being legally challenged, or on concerns that such choices might not be appropriate for all states.

Thank you for your attention to this matter and your consideration of this request. Please contact me if you have any questions or require further information.

Sincerely,



Jack Waldorf
Executive Director

Attachment (1)



Policy Resolution 2022-02

Air Quality Protection and Management

A. BACKGROUND

1. Clean air is essential for strong communities and superior quality of life. Air quality is influenced by both human activities and natural phenomena. Baseline air quality and the sources of impacts to that baseline differ based on local industry, geography, population, meteorology, and other state or regional conditions.
2. In the West, high elevations, extreme variations in topography, vast landscapes, and vacillating weather patterns influence air quality. The West is also disproportionately affected by wildfires, high wind dust events, volcanic activity, and international transport of pollutants. Pollutant sources, methods of dispersion, and types of affected areas in the West are very different from those in the eastern United States.
3. The Clean Air Act (CAA) establishes a regulatory structure for controlling, monitoring, and improving air quality through a system of cooperative federalism in which states and the Environmental Protection Agency (EPA) work together as co-regulators and as partners in air quality management.
4. States have the authority to manage air quality within their borders. Many western states have assumed primary responsibility for the implementation and enforcement of the CAA, subject to the minimum requirements established by EPA, through approved State Implementation Plans (SIPs).
5. The CAA obligates all states to develop SIPs to attain and maintain National Ambient Air Quality Standards (NAAQS) for criteria pollutants. The General Conformity Rule requires federal agencies to work with states in nonattainment and maintenance areas to ensure that federal actions conform to any applicable SIP.
6. The Regional Haze Rule was established pursuant to section 169A of the 1977 CAA amendments that requires states to prepare SIPs to protect visibility from human-made air pollution in 156 national parks and wilderness areas designated by congress as Mandatory Federal Class I Areas.
7. Air quality in the West has benefited from significant emissions reductions over the last 40 years. However, the number and types of remaining emissions sources controllable by states are somewhat limited. The CAA directs states, pursuant to their SIPs or Federal Implementation Plans, to reduce criteria pollutant emissions from sources that states can control, not natural or international sources. It also precludes states (except California) from establishing emissions standards for mobile sources, although Section 177 of the CAA allows states to adopt California's motor vehicle emission standards for which waivers have been granted by EPA.

B. GOVERNORS' POLICY STATEMENT

Co-Regulation

1. Western Governors value the cooperative federalism in air quality management and believe its application can and should be improved. In some cases, federal agencies disregard state expertise and authority over air quality and/or do not solicit timely, valuable input from states. Limited availability of financial resources exacerbates these tensions.
2. EPA should recognize state authority under the CAA and accord states sufficient flexibility to create air quality and emissions programs tailored to individual state needs, industries, and economies. In reviewing state plans, EPA should focus on the circumstances facing the individual state. EPA should not reject reasonable state policy choices based solely on national consistency, fear of being legally challenged, or on concerns that such choices might not be appropriate for all states.
3. Federal agencies should communicate, consult, and engage with Governors and state air quality agencies as co-regulators. For example, in the Prevention of Significant Deterioration (PSD) program, EPA should work with states to clarify responsibilities and procedures to improve coordination and consultation among state agencies, EPA, and federal land managers, as well as develop guidelines and tools for the program.
4. State CAA programs require financial and technical support from EPA and Congress. EPA must have sufficient resources to perform the research necessary to develop timely tools, templates, and guidance for states to implement effective and efficient air programs.
5. EPA rules and guidance should be clear, timely, and supported by current science and data. EPA should consult with states throughout the drafting process before a potential rule, rule revision, or guidance becomes public. EPA should also provide states with timely implementation guidance when new and revised regulations or standards are published.
6. States require certainty and consistency from Congress and EPA to implement their CAA programs. Congress and EPA should prioritize regulations addressing federally regulated mobile sources, particularly from international aviation and marine sources. EPA should consult with states to ensure adequate and effective implementation of federal programs relied on by states for their CAA programs, such as the New Source Performance Standard (NSPS) for wood heaters.
7. Under current rules and guidance, states must monitor NAAQS throughout a 20-year maintenance period, even when there is no threat of an exceedance and/or the standard has been superseded by a more stringent or different standard. States should be allowed to reduce monitoring in maintenance areas that have appropriately demonstrated air quality in the area is below the NAAQS. This allowance will free resources to address pollutants that remain a concern.

Ozone and Particulate Matter

8. Uncontrollable events and conditions (such as wildfire, lightning, biogenic and geogenic emissions, stratospheric ozone intrusion, and transported ozone from international and

interstate sources) result in elevated levels of particulate matter (PM) and background ozone. Western Governors have significant concerns about the lack of CAA tools available to account for PM and ozone exceedances resulting from factors outside state control.

9. The West needs additional and ongoing research on background, interstate, and international ozone. This research should be transparent, comprehensive, and coordinated with state air quality agencies and regional organizations. With this new information, EPA should reconsider the one percent threshold for significant contribution for interstate ozone transport obligations.
10. Congress should provide dedicated funding for analysis of background and transported ozone in the West, as it has historically done for the eastern United States. Congress should also provide a mechanism for which factors, such as international transport and background, that are beyond states' control are factored out of an ozone attainment determination.

Exceptional Events

11. Exceptional event demonstrations are resource intensive, costly, and place a significant burden on strained state resources, especially when EPA does not review or approve these state submissions in a timely manner. A lack of adequate consultation with and feedback from states, along with detailed and transparent rationale for EPA's exceptional event demonstrations, can exacerbate these challenges. EPA should streamline the process for exceptional event demonstrations, provide additional technical tools for states, and allocate resources to review state demonstrations regardless of regulatory significance status.
12. EPA should consider the resource burden placed on state and local air quality agencies to complete exceptional event demonstrations. State and local agencies can face resource challenges due to the timing of data collection requirements, limited communication with EPA during exceptional event occurrences, and limited clarity around the tier of demonstration that is required for a particular event. More specific guidance and additional EPA resources could help address these challenges. In addition, EPA should develop a database with information on air quality impacts that affect the West (e.g., wildfires, dust storms, volcanic activity, etc.) and provide a clearinghouse with tools that states can use for exceptional event demonstrations.
13. Western Governors believe the states and EPA would benefit from the following approaches to exceptional events demonstrations: (1) aggregation of multiple factors contributing to air quality to prove a single exceptional event exceedance demonstration; (2) regional exceptional event demonstrations; and (3) reference to previously submitted and approved exceptional events demonstrations for repeated event types.

Regional Haze

14. Good visibility in the 122 western Regional Haze Program Class 1 Areas, which include many of the crown jewels of the West's national parks and wilderness areas, positively affects western states' economies. It is important to address mobile and international emissions sources beyond states' control in the context of western states' regional haze planning processes.

15. The profound effects of fire and smoke on visibility at Class I areas in the West should be recognized in the Regional Haze Guidance and Rule.
16. EPA provided Draft Regional Haze Guidance for the second implementation period of the Rule in July 2016, but did not finalize the guidance until just weeks prior to when the second implementation period SIP was due. The clarification memo provided by EPA in July 2021 presents challenges to the state regional haze SIP development process and could be the cause of litigation. No input was requested from states before the memo was finalized. States would appreciate the ability to give input on new guidance before it is finalized, to sustain transparency between EPA and state decision making and permitting regarding regional haze.
17. Given the importance of improved visibility in the West, EPA should provide funding and resources to states throughout the planning and implementation process.

Wildfire and Prescribed Fire

18. More frequent and intense wildfires are steadily reducing the West's gains in air quality improvement. Smoke from wildfires can cause air quality to exceed the NAAQS for particulate matter and ozone, affecting public health, safety and transportation. The presence of smoke in western states is increasingly persistent and seasonal in nature, which can further exacerbate public health effects, especially for vulnerable populations.
19. Effective forest management techniques, including mechanical thinning of forests and prescribed burns, can dramatically reduce the size and severity of wildfires and their corresponding effect on air quality. Prescribed fire, which is managed according to state SIPs and smoke management programs, can reduce these effects, but is currently underutilized in some areas.
20. Western Governors support the use of prescribed fire to reduce the air quality effects of uncharacteristic wildfire in the West. Federal and state land managers should have the ability to use prescribed fires when weather and site conditions are appropriate and public health is protected.
21. Prescribed fire practices should include smoke management planning coordinated between state land managers, state air agencies, state health departments, EPA, other federal agencies, and federal land managers. State or regional prescribed fire councils can help facilitate this coordination.
22. Western Governors call on EPA and federal land managers to improve existing air quality tools and create additional air quality tools for states to encourage prescribed fire. These should include simplified exceptional events guidance for prescribed fire, and tools to address the air quality effects from wildfire in the West.
23. Western Governors emphasize that fire management and smoke effects cross state lines, and request that EPA work with the U.S. Forest Service (USFS), Bureau of Land Management, and other public land management agencies to develop a framework for proposing, reviewing, and approving prescribed fire events across interstate, regional areas and entities.

24. Western Governors appreciate EPA, USFS, the Department of the Interior, and the National Institute of Standards and Technology's collaboration to publish a report comparing the air quality and health effects of smoke from prescribed fire and wildfire. Western Governors encourage EPA, the Centers for Disease Control and Prevention, and other federal public health agencies to continue researching interactions between smoke and public health. Such research will inform western states' efforts to expand the use of prescribed fire as a wildfire mitigation tool.

Methane Emissions

25. Oil and gas operations are an important economic activity in the West, and western states regulate these operations through comprehensive programs. Methane is also a potent greenhouse gas emitted from a variety of sources, including oil and gas operations, coal mines, landfills, agriculture, wastewater facilities and natural sources. There are environmental and economic benefits of reducing methane emissions and opportunities for the beneficial use of this natural resource.
26. Many western states – in cooperation with industry in those states – have already implemented regulatory strategies that reduce methane emissions from oil and gas operations, while expanding the use and sale of methane.
27. In any federal methane regulation, federal agencies should: (1) ensure that the capture, commoditization, and sale of methane is promoted; (2) give states the flexibility to integrate a variety of technologies and tools to achieve methane emission reduction standards; (3) recognize methane emissions reductions that result from existing state regulation of volatile organic compounds; (4) ensure federal rules are coordinated with states to ensure alignment of federal and state regulatory structures; and (5) work with states to ensure the consistent use of a single, clear method of quantifying methane emissions.

Hydrofluorocarbon Emissions

28. Hydrofluorocarbons (HFCs) are a category of gases used in refrigeration and industrial applications that have the potential to contribute significantly to climate change. The federal American Innovation and Manufacturing Act of 2020 established federal restrictions on HFC production and consumption and will lead to a significant phasedown by 2036, but more action is needed.
29. California and Washington have passed laws creating more rigorous HFC restrictions than those in federal law. This includes the establishment of refrigerant management programs aimed at reducing HFC leaks during product lifetimes, and promoting reclamation and disposal at end of life. Congress should pass similar legislation that does not preempt state authority, but can take advantage of the opportunity to phase out these super pollutants and promote the transition to readily available substitutes.
30. Federal agencies should promote and fund research, development, and deployment of low-Global Warming Potential refrigerant alternatives to aid manufacturers, lower costs, and incentivize industry transitions to products compliant with state HFC restrictions. This includes updating federal building codes to safely allow the use of alternative refrigerants.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

This resolution will expire in December 2024. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.