

Examples of Flexibility Sought by State Grantees from EPA

Compiled by ECOS – March 2015

Introduction / Purpose

BACKGROUND: The following is a compilation of areas where state environmental agencies have sought flexibility from the U.S. EPA in their federally-funded grant commitments or in their federal grant administrative procedures. This list was compiled by the Environmental Council of States (ECOS), and reflects examples that were provided by member states to ECOS. The compilation is only a sampling of some of the flexibility that states have pursued – it is not an all inclusive list.

PURPOSE: This compilation is intended to foster and encourage additional flexibility in state grant commitments and administrative procedures. ECOS hopes that the uses for this list could include:

- EPA could use this list to identify ways to expand or propagate these areas of flexibility. This could include encouraging other EPA regional offices to explore flexibilities granted elsewhere, and exploring adoption of flexible approaches that have been successfully implemented by sister program offices.
- States could use this list to identify possible new areas of flexibility to pursue based on the experience of peer states.

MORE INFORMATION: For more information on this list and the flexibility examples contained in it, please contact: Beth Graves, Senior Project Manager, Environmental Council of States (ECOS); bgraves@ecos.org; 202-266-4923.

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CO Greg Naugle Field Services Section Manager Greg.Naugle@state.co.us	Past 3-4 years and ongoing	Yes	CWA: Inspection Flexibility Negotiated a less frequent inspection frequency schedule for major wastewater treatment plants in order to concentrate inspection efforts on historically under inspected sectors and at facilities associated with impaired waters.	Approved conditioned on our use of an EPA inspection prioritization tool for major facilities, and that we would increase inspections of minor facilities on impaired segments.
IA	2008	Yes	Drinking water: negotiated a more comprehensive reporting in DWSRF workplans for the four set-asides State is allowed to provide the totalized funding projections and FTE commitments for groupings within the four set-asides instead of itemized by each individual activity. State sets its own basis for evaluating if each commitment was met. (This is exclusive of NIMS reporting criteria.)	Discussed reporting requirements with region staff and came up with a better solution for both parties.
IA	~2006	Yes	Drinking Water - Timelines for adopting the updates to the federal SDWA regulations. Region has approved fairly open-ended	Kept region staff informed as to rulemaking process and reported implementation efforts each quarter. Allows the state staff to develop and use

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			extension agreements for new and amended rule adoption as long as the state continues to work through the state rulemaking process and is implementing the rule, excepting formal enforcement.	implementation tools while the rule’s being written; reduces problems in the long-term.
IA	?	Yes	Drinking water: timelines for mitigation Region has allowed the state to grant additional time to systems for installation of treatment or connection to alternative source, depending upon the capabilities of the system; it has not forced tighter timelines.	Allows for fewer state resources in formal enforcement and overall quicker compliance. Timing is usually outside the control of the system (weather, construction problems, etc.) or related to grant funding cycles. Provides a less adversarial and more reasoned approach to mitigating violations in systems that are typically willing but struggling to achieve compliance.
IA	FFY 2014	Yes	CWA: Priority permits. EPA originally required pre-selection of specific permits. The state asked for the flexibility to issue X number of permits from the larger candidate pool since they were all state	Discussed the requirements with region staff and came up with a better solution for both parties. It simplified the process for the state at the same time committing to issue more permits than required under the program.

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			<p>permitting priorities. The region agreed and gave the state that flexibility.</p>	
IA	2012/2013	Yes	<p>CWA: Nutrient Strategy.</p> <p>The Strategy implements technology-based effluent limits (TBELs) in Major NPDES permits rather than water quality-based effluent limits (WQBELs). The ability to include nutrient TBELs in NPDES permits will result in facilities implementing nutrient removal far sooner than would have been possible otherwise. Flexibilities to annual average mass limitations in advance of these limits being inserted into NPDES permits have also been worked out.</p>	<p>Iowa’s Nutrient Reduction Strategy is based EPA’s nutrient reduction framework. EPA Region VII was a key stakeholder in its development and the state was in continual discussion with the Region VII team.</p>
IA	2013	Yes	<p>CWA: NPDES Permit Integrated Planning Principles.</p> <p>EPA and the State have agreed to a plan that results in coordination of plant improvements for the Cities of Eldridge and Mount Pleasant. The plan allows additional time to</p>	<p>Open and honest discussions with Region VII staff. In these cases it’s a win-win as communities get a little extra time to meet permitting requirements and the water quality payoff is better in the end.</p>

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			comply with e. coli and ammonia limits while providing for the installation of nutrient removal. Such coordination more efficiently provides for all three treatment system to be installed in an overall shorter timeframe thus implementing a greater degree of water quality protection in the end.	
IA	2014	Yes	CWA: MOA Negotiations. The original MOA between Iowa and Region VII was signed on August 10, 1978. Several attempts have been made to update the MOA, notably in 2006, 2009 and 2010, but these attempts stalled. The state has been working with Region VII on new updates to the MOA since March of 2014. Region VII has been very receptive to our comments, and we have had several discussions where agreements have been reached on specific portions of the MOA.	Open and honest discussions with Region VII staff.
MA	FFY 2013 & 2014	Yes	CAA & RCRA: Inspection Flexibility.	After fairly time-consuming negotiations with significant justification data

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Douglas Fine Assistant Commissioner for Planning and Evaluation Douglas.Fine@state.ma.us			Inspect the major facilities (Large Quantity Generators, Air Operating Permit Sources, and facilities whose air emissions have been restricted to within 80% of the Air Operating permit threshold) less frequently than called for under EPA’s national Compliance Monitoring Strategy. In exchange, inspect a greater number of smaller/”minor”, carefully-targeted sources subject to air and RCRA requirements which the state believes to have a higher risk of noncompliance. (This is a multi-year proposal that has been proposed again for FFY15, and is expected to be approved.)	needed, this was approved by EPA Region and HQ as an alternative compliance management strategy. Particularly time-consuming was the development and approval of information about which facilities MA was substituting. A condition of approval was additional reporting and analysis is required by EPA beyond that required for compliance assurance activities performed under the national compliance monitoring strategy guidance. (Note that for RCRA, the same flexibility has been requested by MA each year and development/ review/approval beyond FY14 has been more simple.)
ME	FFY 2015 and Beyond	Pending Decision	RCRA: Inspection Flexibility. Proposed the development of a Small Quantity Generator (less than 100 kg/mo.) training program, including an interactive web-based training system. Will focus on appropriate	EPA is working with State on details and how it may serve as a model for larger quantity generators.

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			handling, storage and disposal of hazardous materials and wastes, including reduction and reuse strategies. Will reduce the number of annual inspections for thousands of small businesses and operators who handle and generate below the federal regulatory thresholds.	
ME	FFY 2015 and Beyond	Approved	CWA: Programmatic flexibility. Convert draft nonpoint source (NPS) TMDLs to Watershed Improvement Programs. Provides a long-term comprehensive approach to identifying water quality problems and creates solutions and strategies for improvements.	
MO	FFY 2010-2012	Yes	CWA: Programmatic Flex from 319 to106 included in the PPG.	Flexibility granted.
MO	FFY 2014	Yes	RCRA: Programmatic flexibility. The state requested and received flexibility to include additional non Multi-Year Facility	Flexibility granted.

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			<p>Planning Strategy (MYFPS) tasks/activities completed by the department in their annual report under the Resource Conservation and Recovery Act Performance Partnership Grant (RCRA-PPG), including those items impacting MYFPS goals. EPA may, for grant work plan purposes, consider these non MYFPS tasks/activities the equivalent of the planned MYFPS tasks/activities when appropriate (e.g., when these tasks/activities are similar in scope and level of effort). The state was also given the flexibility to defer groundwater monitoring evaluations in favor of increasing corrective action activities, where appropriate. The state will report to EPA any Comprehensive Monitoring Evaluations (CMEs) or Operation & Maintenance (O&M) reports that will be deferred and indicate the corrective action activities that will be performed as a substitute of those activities. CME’s and O&Ms may be used as surrogates for post-closure care inspections per EPA’s policy on inspection flexibility.</p>	

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MO	FFY 2013	Partial	CWA: Programmatic/Admin Flex in PPG using 319 funding and Exemption from 50% Watershed Project Funding.	Use of both flexibilities not approved. EPA disapproved the 50% exemption request, but approved another year of Programmatic flex similar to previous years.
NE	FY 2013 and FY 2014	Yes	CAA, CWA, RCRA: Funding flexibility. Air Section 105, RCRA, UIC, and Water Section 106. The department negotiated an agreement with Region VII that PPG funds could be used to respond to certain types of spills/accidents by our Emergency Response personnel. This is negotiated in our PPA and allows us to use PPG funding to minimize environmental impacts/damages by providing support and advice to first responders. The flexibility in both the process and the use of PPG funds has been beneficial to the department’s ability to provide this service in the state.	
NE	ongoing	Yes	PPG: Admin flexibility. Exceptions Only State Grant Workplan	

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			Negotiations. When NE negotiates its PPG, it negotiate the first year of the two or three year PPG and then in the off year, do exceptions only negotiations. The state only negotiates priority changes or if there are changes in funding for a program. The state and region do not reopen the whole PPG for negotiations.	
NE	On-going	Yes	All Programs: Flexibility with regulation changes. The state has negotiated processes on how it interacts with the region regarding regulation changes, and other items which require Regional approval. This has assisted both Nebraska and EPA to make our working together more smoothly.	
NC	FFY 2014	Yes	CWA: Flexibility for Non-Point Source 319 Grant. Flexibility was sought in the requirement to allocate 50% of funds to watershed project	Approved because NC was able to meet exemption requirement in 319 program guidance (Section IX. G., page 40). NC documented state grant funding (and associated non-federal match)

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			implementation and to support state positions on watershed project funding that EPA didn't believe matched the eligible activities listed in new 319 program guidance.	exceeding NC's total 319 allocation in FY14 was used for watershed restoration projects implementing watershed based plans.
VA	FY 2008	Ultimately	Implement Risk based strategy for annual inspections.	Originally introduced through PPA negotiations.
VA	2011	Yes	CAA: Programmatic Flexibility. Streamline SIP process including a LEAN process to streamline this effort.	Through PPA
CO Gordon Pierce Technical Services Program Manager Gordon.Pierce@state.co.us	FFY 2012	No	CAA: Request to modify SIP. Asked if a CO SIP could be amended to allow use of an alternative nearby CO monitor to replace another one that had to be removed (removal was approved by EPA).	We were told to do so other portions of the SIP, such as the emission inventory and SIP conformity budgets would have to be updated. They also asked that we not use the MOBILE 6 model because it was antiquated, and asked that we use the MOVES model. We believe that this was unnecessary in light of the fact that

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				the CO levels were very low (about 12% of 1-hr NAAQS), and EPA had approved similar requests in another Region under the CO limited maintenance plan guidance.
MA Douglas Fine Assistant Commissioner for Planning and Evaluation Douglas.Fine@state.ma.us	FFY 2014	No	CWA: Programmatic Flexibility for Non-Point Sources. Refine the current approach to Watershed-Based Plans (WBPs) by developing basin-scale WBPs in six major basins rather than at the smaller sub-basin scale. Also, streamline the process for EPA approval of WBPs by eliminating the requirement for MA to respond in writing to EPA’s review, and instead to resolve EPA comments via more informal negotiations.	No reason given.
MA Douglas Fine Assistant Commissioner for	FFY 2014	No	CAA: Programmatic Flexibility. Delay establishment of the state’s second near-road monitor for NOx until Jan. 2016 and in FY14 use the funds which had been designated for the	EPA has designated these funds nationally for near-road monitoring, and Region I received these funds specifically for establishing a 2 nd monitor in metropolitan Boston. Therefore, MA

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Planning and Evaluation Douglas.Fine@state.ma.us			2 nd near-road monitor for core air program activities instead (e.g. permitting, compliance, enforcement). MA’s current near-road monitoring station is in Boston, sited in one of the highest traffic areas of the state (near I-93 and the Central Artery). This monitor is measuring low levels -- less 50% of the standard of the one-hour NO2 standard. MA does not see an environmental / monitoring value for installing a second near-road monitor. Installing an additional near-road monitor will likely cost about \$100k.	cannot use those funds for other activities. If MA does not install this 2 nd near-road monitor, EPA will not be able to approve MA’s Annual Monitoring Network Plan.
MO	FFY 2014	No	Superfund: Funding Flexibility. The state requested clarification that training for approximately 6 direct site-specific staff dedicated to Support Agency Cooperative Agreements (SACA) within the Superfund Combined Cooperative Agreement (SCCA) could be allocated site-specifically to the SACA portion of the grant. Although training had been specifically included in the state’s work plan	EPA Region VII initially gave verbal approval to use SACA funding for training as long as the state received pre-approval from Region VII prior to each training. However, after further consideration, the state was told they could not use SACA funding for training and would need to remove the training reference in the work plan since training is an eligible Superfund Core

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			under SACA for some time, the state had previously charged these costs to the Core portion of the agreement, which funds non site-specific administrative costs under the SCCA. As the availability of Core funding dollars remained stagnant or declined, the state had hoped to use the flexibility in funding to stretch its Core dollars further and avoid using limited state funding	Cooperative Agreement Activity. In addition, the state has recently been told the Pre-Remedial portion of the cooperative agreement could no longer be used to fund training costs for staff funded under that portion of the SCCA grant for the same reason.
MO	FFY 2014	No	CWA: Funding Flexibility. Exemption from 50% Watershed Project Funding for the FFY14 319 grant workplan.	Not approved; Missouri seeking a waiver for this fiscal year. The Region stated the exemption request needed to be approved by EPA HQ. EPA Region 7 stated there are stricter guidelines in the new 319 guideline with regard to nine element plans and they will need to review each MO WBP before accepting them for implementation projects funded with 319 or implemented using state leverage funds for the Exemption.

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Not identified	Potential Future Request		NPDES--Adjust inspection schedule with EPA through their Compliance Monitoring Strategy (CMS). For majors in compliance with permit requirements, one inspection in five years and one assistance visit in the 5 years is more than adequate. Majors and Minors with compliance problems should receive more inspections and assistance visits.	
Not identified	Potential Future Request		NPDES-- Using our AWIN model we have identified many communities struggling with sustainability. These communities need our assistance and flexibility to even maintain their existing infrastructure. Many will have a significant population decline making paying for infrastructure even more difficult than just inflationary costs. Continue long term compliance schedules. Let community grow down to compliance.	
Not identified	Potential Future Request		NPDES--10 year permits or longer. Plants are designed for 20 years.	

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Not identified	Potential Future Request		NPDES-- Eliminate required reports when EPA already has data. EPA HQ should also stop asking for reports from the regions early who then ask the state 3 weeks before a report is due.	