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# **RESTRICTIONS ON THE STRINGENCY OF STATE AND LOCAL AIR QUALITY PROGRAMS**

## **Results of a Survey by the National Association of Clean Air Agencies (NACAA)**

December 8, 2014

**Restrictions on the Stringency of State and Local Air Quality Programs**  
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The Clean Air Act explicitly allows state and local air pollution control agencies to adopt programs more stringent than those of the federal government. Specifically, Section 116 states that air quality agencies are not precluded from adopting or enforcing any standards, limitations or requirements as long as they are at least as stringent as those required under the federal program. The only exceptions are found in Title II of the Clean Air Act, which preempts certain state and local regulation of mobile sources and fuels.

In reality, while the Clean Air Act does not generally preclude state and local air agencies from adopting measures more stringent than those of the federal government, as a practical matter most agencies are still not able to adopt more stringent programs, due to state or local law, regulation, policy or other restrictions. The National Association of Clean Air Agencies (NACAA)<sup>1</sup> conducted a survey of state and local air quality agencies in September and October 2014<sup>2</sup> to determine how many are prevented in practice from adopting programs more stringent than those of the federal government. Forty-three states (including the District of Columbia) and 29 local air pollution control agencies responded to the questionnaire.

**SUMMARY OF RESULTS**

State Air Agencies – Over one-half of the state air agency respondents (53 percent) reported that they are precluded from adopting measures more stringent than federal requirements or may do so only under special circumstances. Most of those that are wholly or partially precluded (78 percent) stated that the restrictions were due to state law or regulation. Of those that reported that they are not precluded or can go beyond the federal program under certain circumstances, almost one-half (47 percent) do so either “infrequently” or “never.” All but one state respondent reported that they can adopt standards or requirements in the absence of a federal program.

Local Agencies – The situation for the local air agencies is very different. Of the 29 respondents, 26 (90 percent) are not precluded from going beyond the federal requirements and two others can do so under special circumstances. However, of those that can be more stringent than the federal program, 12 (46 percent) do so only “infrequently” or “never.” As with the states, all but one of the local agency respondents reported that they can adopt standards or requirements in the absence of a federal program.

Conclusion – While the law allows state and local air agencies to be more stringent than the federal program, in practice it is not an option on which these agencies can rely. For many, adopting more stringent provisions is difficult or impossible, either explicitly or in practice.

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<sup>1</sup> NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 41 states, the District of Columbia, four territories and 116 metropolitan areas.

<sup>2</sup> Since the survey was conducted in September 2014, it does not reflect changes in state or local practices that may occur following the mid-term elections of November 2014.

As a result of the restrictions facing many state and local air agencies, it is important that federal regulations are effective and adequate to address air quality problems. If federal rules are deficient, the reality is that many state and local agencies find their hands tied with respect to adopting the more stringent programs they may need to meet their air quality goals.

## **DETAILED RESULTS**

### **State Agency Responses**

#### **How Many States Are Precluded?**

When asked whether their air agencies are precluded (either explicitly or simply in practice) from adopting programs, standards, requirements, etc. that are more stringent than those of the federal government (not counting those preemptions contained in the Clean Air Act related to mobile source programs), 23 states, from nearly every region in the country<sup>3</sup>, indicated that they are either completely or partially precluded from being more stringent (five reporting that they are precluded outright and 18 that they are precluded with certain exceptions<sup>4</sup>) and 20 states responded that they are not precluded.

#### **What Precludes the States from Being More Stringent?**

Of those state agencies that are either completely or partially precluded from adopting more stringent programs, 18 reported that this restriction is due to state law or regulation, three pointed to government policy and three did not specify the specific reason but noted that the agency must follow special processes or face administrative hurdles to justify more stringent provisions.

#### **Can Those States that are Not Precluded Actually Institute More Stringent Programs?**

Of the states that reported that they can implement more stringent programs, five either have to provide an in-depth justification for going beyond the federal requirements or overcome procedural barriers and obstacles that make it difficult or onerous to adopt a more stringent program.

#### **How Often Do States Go Beyond the Federal Program?**

Of the 38 states that indicated that they can theoretically adopt a more stringent program (either they are not actually precluded or there are some extenuating circumstances under which they can adopt more stringent programs), 19 states reported that they adopt such programs “sometimes”, 16 adopt them “infrequently” and two “never” do so. Interestingly, of the 20 states that reported that they are *not* precluded from going beyond the federal program, five indicated that they “infrequently” do so.

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<sup>3</sup> The states that responded from EPA Regions 1 and 9 did not report restrictions.

<sup>4</sup> Among the exceptions noted are cases when justification can be made that there is significant endangerment or provisions are needed to protect public health, or when more stringent requirements are necessary to bring an area into attainment or meet State Implementation Plan requirements.

## **Can States Adopt Programs in the Absence of a Federal Requirement?**

When asked if they can adopt requirements in the absence of federal programs or standards, 42 states responded that they can and one state indicated that it cannot. However, of those that could adopt a gap-filling program, 10 indicated that it is difficult to do so or that there are restrictions (e.g., they must provide a justification or extensive documentation). One state that is generally precluded from going beyond federal requirements but can adopt a measure in the absence of a federal program noted that a weak federal rule can be worse than no federal rule.

*Individual state information is available in Table 1 (pages 5-6).*

## **Local Agency Responses**

### **How Many Local Agencies Are Precluded?**

When asked whether they are precluded (either explicitly or simply in practice) from adopting programs, standards, requirements, etc. that are more stringent than those of the federal government (not counting those preemptions contained in the Clean Air Act related to mobile source programs), three local air quality agencies, from various regions of the country, reported that they are completely or partially precluded from being more stringent (one is precluded outright and two are precluded with certain exceptions<sup>5</sup>) and 26 local agencies indicated that they are not precluded.

### **What Precludes the Local Agencies from Being More Stringent?**

Of the local agencies that are completely or partially precluded from adopting more stringent programs, one reported that this restriction is the result of state or local law or regulation and one reported that the agency can be more stringent only if a specific local condition exists.

### **Can Those Local Agencies that are Not Precluded Actually Institute More Stringent Programs?**

Of the local agencies that reported that they are not precluded from implementing more stringent programs, three must either provide a justification for going beyond the federal requirements or overcome procedural barriers and obstacles that make it difficult to adopt a more stringent program.

### **How Often Do Local Agencies Go Beyond the Federal Program?**

Of the 28 local agencies that can theoretically adopt a more stringent program (either they are not actually precluded or there are some circumstances under which they can adopt more

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<sup>5</sup> An example of an exception is when a specific local condition must be addressed.

stringent programs), 16 agencies reported that they adopt such programs “sometimes”, nine adopt them “infrequently” and three “never” do so

### **Can Local Agencies Adopt Programs in the Absence of a Federal Requirement?**

When asked if they can adopt requirements in the absence of federal programs or standards, 28 local agencies reported that they can and one indicated that it cannot. However, of those that could adopt a gap-filling program, three indicated that it is difficult to do so or that there are restrictions (e.g., they must provide a justification or extensive documentation).

*Individual local agency information is available in Table 2 (page 7).*

**TABLE 1**  
**State Agency Responses**

	Is the agency precluded from being more stringent than the federal program?			Why is the agency precluded?			Is the agency ever more stringent than the federal program?			Can agency adopt program in absence of federal program?	
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Sometimes	Infrequently	Never	Yes	No
Alabama			x					x		x	
Alaska		x		x				x		x	
Arkansas			x					x		x	
California			x				x			x	
Colorado		x					x			x	
Connecticut			x				x			x	
Delaware			x				x			x	
Dist. of Col.			x				x			x	
Georgia			x					x		x	
Hawaii			x					x		x	
Idaho	x			x							x
Indiana	x				x					x	
Iowa		x		x				x		x	
Kansas		x		x				x		x	
Kentucky		x		x					x	x	
Maine			x				x			x	
Maryland			x				x			x	
Massachusetts			x							x	
Michigan		x			x		x			x	
Minnesota			x					x		x	
Mississippi	x			x						x	
Missouri		x		x				x		x	
Montana		x		x				x		x	
Nebraska		x			x			x		x	
Nevada			x				x			x	
New Jersey		x					x			x	
New Mexico		x		x				x		x	
North Carolina		x		x				x		x	
North Dakota		x		x				x		x	
Ohio		x		x			x			x	
Oklahoma		x		x			x			x	
Oregon			x				x			x	
Pennsylvania		x		x			x			x	
Rhode Island			x				x			x	
South Carolina			x				x			x	
South Dakota	x			x						x	

	Is the agency precluded from being more stringent than the federal program?			Why is the agency precluded?			Is the agency ever more stringent than the federal program?			Can agency adopt program in absence of federal program?	
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Sometimes	Infrequently	Never	Yes	No
Tennessee			x				x			x	
Utah		x		x					x	x	
Vermont			x				x			x	
Virginia			x					x		x	
Washington			x				x			x	
West Virginia		x		x				x		x	
Wyoming	x			x						x	
<b>TOTAL</b>	5	18	20	18	3	0	19	16	2	42	1

**TABLE 2**  
**Local Agency Responses**

	Is the agency precluded from being more stringent than the federal program?			Why is the agency precluded?			Is the agency ever more stringent than the federal program?			Can agency adopt program in absence of federal program?	
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Sometimes	Infrequently	Never	Yes	No
Huntsville, AL			x					x		x	
Jefferson Co., AL			x				x			x	
Anchorage, AK			x					x		x	
Tucson, AZ		x						x		x	
Lake Co., CA			x					x			x
Butte Co., CA			x				x			x	
Eureka, CA			x				x			x	
Feather River, CA		x				x		x		x	
Monterey, CA			x				x			x	
No. Sonoma, CA			x				x			x	
Ventura, CA			x				x			x	
Boulder, CO			x					x		x	
Pinellas Co., FL			x					x		x	
Gary, IN			x						x	x	
Indianapolis, IN			x				x			x	
Linn Co, IA			x					x		x	
Kansas City, KS			x				x			x	
St. Louis Co, MO			x				x			x	
Reno, NV			x				x			x	
Albuquerque, NM	x			x						x	
Akron, OH			x						x	x	
Lane Co, OR			x				x			x	
Philadelphia, PA			x				x			x	
Pittsburgh, PA			x				x			x	
Chattanooga, TN			x					x		x	
Memphis, TN			x						x	x	
Nashville, TN			x				x			x	
Seattle, WA			x				x			x	
Yakima, WA			x				x			x	
<b>TOTAL</b>	<b>1</b>	<b>2</b>	<b>26</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>16</b>	<b>9</b>	<b>3</b>	<b>28</b>	<b>1</b>