

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

**Results of a Survey by the  
State and Territorial Air Pollution Program Administrators (STAPPA)  
and the  
Association of Local Air Pollution Control Officials (ALAPCO)**

December 17, 2002

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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 Section 119 of the Clean Air Act, which preempts certain state and local regulation of mobile sources.

Although the Clean Air Act does not preclude state and local air agencies from going beyond the federal program, the truth is that many agencies are still not able to adopt more stringent programs, due to state or local law, regulation, policy or other restrictions. The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) conducted a survey of their members to determine how many are prevented in practice from adopting programs more stringent than those of the federal government. Fifty state and 42 local air pollution control agencies responded to the questionnaire.

## **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), 26 states, from every region in the country, indicated that they are either completely or partially precluded from being more stringent (two reporting that they are precluded outright and 24 that they are precluded with certain exceptions<sup>1</sup>) and 24 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, 22 reported that this restriction is due to state law or regulation, two pointed to government policy, one cited department or agency policy and one reported that the

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<sup>1</sup> Among the exceptions noted are cases in which the agency retains more stringent restrictions or programs that existed before the federal program (e.g., air toxics controls), situations where the agency can demonstrate significant benefits or need or provide a strong justification, when more stringent requirements are necessary to meet the SIP in certain areas, and when a more stringent program is limited to certain types of sources or pollutants.

agency is effectively prohibited because the procedures necessary to adopt more stringent programs have never been developed.

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

Of the 24 states that reported that they are not precluded from implementing more stringent programs, 10 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. Therefore, only 14 states are not prohibited from being more stringent than the federal program and also did not report in the survey any difficulties or barriers to going beyond federal requirements.

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

Of the 48 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), 29 states reported that they adopt such programs “sometimes”, 15 adopt them “infrequently” and four “never” do so. Interestingly, of the 24 states that reported that they are *not* precluded from going beyond the federal program, 10 states indicated that they “infrequently” or “never” do so.

Among the examples of more stringent measures the respondents have adopted include those pertaining to the following:

- Stage 1 vapor recovery
- Wood burning
- Visibility
- Particulate matter
- New Source Review
- Sulfur in gasoline
- Emission offsets
- Hydrogen sulfide programs
- Open burning
- Permits for deferred Title V sources
- Toxic air pollution (e.g., risk assessment, regulating smaller sources, ambient standards, more stringent controls than Maximum Achievable Control Technology)
- Consumer products/architectural products (model Ozone Transport Commission rules)
- “Not-to-Exceed” limits for heavy-duty diesel engines
- Opacity
- Total reduced sulfur
- State standards for Criteria Pollutants
- Acid rain initiatives
- Odor
- Enhanced Inspection/Maintenance
- Continuous Emission Monitors to demonstrate compliance

## **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, 46 states responded that they can, no state indicated that it cannot and three did not respond to the question. However, of those that could adopt a gap-filling program, eight indicated that it is difficult to do so or that there are restrictions (e.g., they must provide a justification or extensive documentation).

*Individual state information is available in Table 1 (page 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), nine local air quality agencies, from various regions of the country, reported that they are completely or partially precluded from being more stringent (four are precluded outright and five are precluded with certain exceptions<sup>2</sup>) and 33 local agencies indicated that they are not precluded.<sup>3</sup>

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

Of the local agencies that are completely or partially precluded from adopting more stringent programs, four reported that this restriction is the result of state or local law or regulation, two pointed to government policy, two cited department or agency policy and one reported that the agency can be more stringent unless it is acting as the agent of the state (although if it is addressing nonattainment pollutants in nonattainment areas, greater stringency is permissible even if acting as the state's agent).

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

Of the 33 local agencies that reported that they are not precluded from implementing more stringent programs, four 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. Therefore, 29 local agencies are not prohibited from being more stringent than the federal program and also did not report in the survey any difficulties or barriers to going beyond federal requirements.

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<sup>2</sup> Among the exceptions noted are provisions to address nonattainment problems or to control sources that are not on a specific list of categories (e.g., agriculture).

<sup>3</sup> It should be noted that out of 42 local agencies, 11 responses were from local agencies in California, where neither the state nor local agencies are precluded from being more stringent than the federal government. In fact, as one respondent noted, "California Health and Safety Code 40702 directs us to adopt rules and regs as necessary to achieve and maintain the state air quality standards. The word 'shall' is used."

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

Of the 38 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 stringent programs), 31 states reported that they adopt such programs “sometimes”, four adopt them “infrequently”, two “never” do so and one did not respond.

Among the examples of more stringent measures the respondents have adopted include those pertaining to the following:

- Open burning
- Odor
- Opacity
- Asbestos
- New Source Review (including for minor sources)
- Area Source controls
- Toxic air pollution
- Best Available Control Technology
- Permitting decisions
- Criteria Pollutant ambient standards
- Greenhouse gases
- Radon
- Secondhand smoke
- Medical and municipal waste incinerators
- Vehicle tampering
- Fees
- Nuisance
- Fugitive dust
- Coke ovens
- Emission offsets
- Oxygenated gasoline
- Woodstoves

## **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, 35 local agencies reported that they can, three indicated that they cannot and four did not respond to the question. 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 7-8).*

**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?		
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Other	Sometimes	Infrequently	Never
Alabama			x						x	
Alaska		x		x					x	
Arizona			x					x		
Arkansas		x					Procedure to justify never developed			x
California			x					x		
Colorado		x		x				x		
Connecticut		x		x				x		
Delaware			x					x		
Florida		x			x					x
Georgia			x					x		
Hawaii			x					x		
Idaho	x			x						
Illinois			x							x
Indiana			x					x		
Iowa		x		x					x	
Kansas			x						x	
Kentucky		x		x					x	
Louisiana			x							x
Maine			x					x		
Maryland			x					x		
Massachusetts			x					x		
Michigan			x					x		
Minnesota		x			x			x		
Mississippi		x		x				x		
Missouri		x		x				x		
Montana		x		x				x		
Nebraska			x						x	
Nevada			x						x	
New Hampshire			x						x	
New Jersey		x		x				x		
New Mexico		x		x					x	
New York		x		x				x		
North Carolina			x						x	
North Dakota		x		x					x	
Ohio		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?		
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Other	Sometimes	Infrequently	Never
Oklahoma		x		x					x	
Oregon		x		x				x		
Pennsylvania		x		x				x		
Rhode Island		x		x				x		
South Carolina			x					x		
South Dakota	x			x						
Tennessee			x						x	
Texas		x				x		x		
Utah		x		x				x		
Vermont			x					x		
Virginia			x						x	
Washington			x					x		
West Virginia		x		x					x	
Wisconsin		x		x				x		
Wyoming			x					x		
TOTAL	2	24	24	22	2	1	1	29	15	4

**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?		
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Other	Sometimes	Infrequently	Never
Tucson, AZ	x				x					
Butte, CA			x					x		
Great Basin, CA			x					x		
Lake Co, CA			x					x		
Los Angeles, CA			x					x		
Monterey, CA			x					x		
Sacramento, CA			x					x		
San Diego, CA			x					x		
San Luis Obispo, CA			x					x		
Santa Barbara, CA			x					x		
Siskiyou, CA			x							x
Ventura, CA			X					X		
Fort Collins, CO			x					x		
Jacksonville, FL			x						x	
Palm Beach, FL		x		x					x	
Sarasota, FL			x					x		
Tampa, FL			x					x		
Evansville, IN			x					x		
Indianapolis, IN			x					x		
Linn Co, IA			x					x		
Polk Co, IA			x					x		
Kansas City, KS			x						x	
Lenexa, KS			x							x
Wichita, KS	x			x						
Louisville, KY			x					x		
St. Louis Co, MO		x					cannot be stricter if acting as "agent of state"	x		
Lincoln, NE			x							
Omaha, NE			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?		
	Yes	Yes, with Exceptions	No	State/Local Law or Reg	Government Policy	Dept. or Agency Policy	Other	Sometimes	Infrequently	Never
Albuquerque, NM		x		x				x		
Asheville, NC			x					x		
Dayton, OH			x					x		
Lane Co, OR			x					x		
Pittsburgh, PA			x					x		
Chattanooga, TN			x					x		
Nashville, TN			x					x		
El Paso, TX			x					x		
Salt Lake City, UT	x			x						
Northwest, WA			x					x		
Olympic Reg. WA	x				x					
Spokane, WA			x					x		
Vancouver, WA		x				x			x	
Yakima, WA		x				x		x		
<b>TOTAL</b>	4	5	33	4	2	2	1	31	4	2

■ Not Precluded from Being More Stringent than Federal Government(24)

