



**Testimony of Teresa Marks, Director, Arkansas Department of Environmental
Quality and President, Environmental Council of the States (ECOS)
before the U.S. House Committee on Appropriations**

Subcommittee on Interior, Environment and Related Agencies, April 16, 2013

I am Teresa Marks, Director, Arkansas Department of Environmental Quality, testifying as President on behalf of the members of the Environmental Council of the States (ECOS) on the FY14 budget for the U.S. Environmental Protection Agency (EPA). My comments address appropriations for the State and Tribal Assistance Grants (STAG) which includes in part 19 Categorical Grants, the Clean Water State Revolving Fund (CWSRF), the Drinking Water State Revolving Fund (DWSRF), and other programs. The FY 2014 President's budget request for EPA is \$8.15 billion and for STAG is \$3.15 billion.

The states are co-regulators with EPA in the implementation of the nation's environmental laws. The U.S. Congress included provisions in most of the major federal environmental statutes -- the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) -- for states to assume authority over the federal programs under the oversight of the EPA and to provide assistance to states to operate these federal programs. A state match is usually required under these statutes, and states -- through general operating funds, fees, and other means -- now provide well over half (in many states, three-quarters) of the funds needed to operate federal programs. States also operate their own programs that address state-specific needs. These state programs, driven by state laws, do not require federal funds but contribute significantly to the public health and environmental quality of the nation and may indirectly support the federal programs. States are on the frontline for protecting the environment, saving lives, and ensuring businesses thrive.

Congress provides assistance to states primarily through State and Tribal Assistance Grants (STAG), which are in part composed of two programs: 24 Categorical Grants (which primarily assists states with the operation of delegated programs) and the CWSRF and DWSRF Infrastructure Funds (which are administered by states and used primarily by local governments).

The core environmental protection activities required by federal (and state) law include permitting, inspections, enforcement, monitoring, standard setting, site cleanup and more. For example, it is estimated that states: conduct 97% of the inspections at regulated facilities; provide 94% of the data in EPA's six major databases; and conduct over 90% of all enforcement actions.

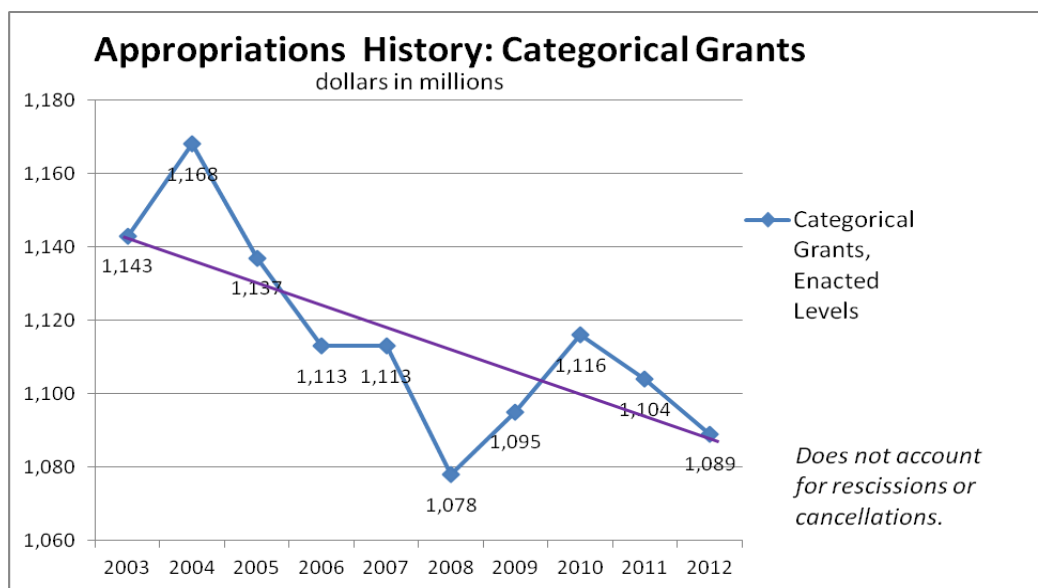
While Congress has enacted an FY13 budget, states are still waiting to learn what the individual FY13 Categorical Grant levels will be. In late April, EPA is scheduled to submit its operating plan to Congress which will then have a month to reply. States understand that sequestration cuts will be applied following establishment of this plan. Following this, headquarters will inform the regions who will then inform the states of the final FY13 grant allocations. As such, in my remarks to you today, I will use FY12 as a basis for comparison.

Cooperative Federalism -- Our nation's environmental laws are based on the principle of cooperative federalism under which EPA and the states work together cooperatively to protect human health and the environment.

Since 2000, ECOS has affirmed the belief that early, meaningful, and substantial state involvement in the development and implementation of EPA's work is important to ensure a productive and efficient working relationship. Continued attention to this joint governance model is vital moving forward.

Importance of Funding for Categorical Grants -- On average, federal funding is estimated to be less than one-quarter of the overall cost of program operation. State environmental agencies seek alternate program funding support through user fees, state general funds, and other means to support program implementation. While state funds and user fees are important, the Categorical Grants funds remain an essential resource to meet congressional requirements for protecting public health and the environment.

Resource needs for continued, new and expanded workload in air, water, and waste programs have been documented in various reports.¹ For example, in water, these include: 1) increased focus on the reduction of nitrogen and phosphorus pollution, including nonpoint sources (*Nonpoint Source – Section 319 – grant*); 2) expansion of the National Pollutant Discharge



¹ "Investing in Clean Air and Public Health: A Needs Survey of State and Local Air Pollution Control Agencies, April 2009, NACAA, <http://www.4cleanair.org/Documents/Reportneedssurvey042709.pdf>; "Drinking Water Infrastructure Needs Survey and Assessment," 2007, Fourth Report to Congress, EPA, http://water.epa.gov/infrastructure/drinkingwater/dwns/upload/2009_03_26_needssurvey_2007_report_needssurvey_2007.pdf; State Water Quality Management Resource Analysis, 2002, State Water Quality Management Resource Analysis Task Force, http://www.ecos.org/files/4238_file_Interim_Report_4_02.pdf; Clean Watersheds Needs Survey 2008, Report to Congress, EPA, <http://water.epa.gov/scitech/datait/databases/cwns/upload/cwns2008rtc.pdf>; State RCRA Subtitle C Core Hazardous Waste Management Program Implementation Costs - Final Report, January 2007, ASTSWMO, http://www.astswmo.org/Files/Policies_and_Publications/Hazardous_Waste/Final%20Report%20-%20RCRA%20Subtitle%20C%20Core%20Project.pdf

Elimination System (NPDES) program universe as new sources are added as a result of litigation or new regulations including municipal stormwater, construction stormwater, industrial stormwater, concentrated animal feeding operations, and vessel discharges (*Pollution Control – Section 106 – grant*); 3) drinking water requirements that must be implemented at predominantly small water systems - those serving fewer than 10,000 people that make up the vast majority of water systems. It is important for states to continually shore up the technical, managerial, and financial capacity of many water systems [*Public Water System Supervision - PWSS – grant; DWSRF set-asides (for a variety of state tasks including DWSRF administrative support)*].

While the 19 Categorical Grants are an essential resource, enacted levels for this resource have declined over the past ten years as shown in the chart above². In 2003, Categorical Grants were funded at \$1.143 billion. In 2012, Categorical Grants were funded at \$1.089 billion, \$54 million less than ten years before.

Of the 19 Categorical Grants, in FY12, five grants represent 78% of the total funding. These top five grants provide core support for the majority of state-delegated efforts, including standards setting, permitting, inspections, enforcement, monitoring, and support of state and national databases. The remaining grants provide important resources in areas such as underground injection control, underground storage tanks, pesticides, brownfields, wetland program development, beaches protection, and environmental information. The largest five grants in order of funding with required state cost share are as follows:

Grant	FY12 Enacted	% State Cost Share
Pollution Control (Section 106)	\$238 million	Maintenance of Effort (MOE) ³
State and Local Air Quality Management (CAA Section 103, 105, and 106)	\$236 million	CAA Section 105 grants require 40% match plus Maintenance of Effort (MOE)
Nonpoint Source (Section 319)	\$164 million	40%
Public Water System Supervision (PWSS)	\$105 million	25%
Hazardous Waste Financial Assistance	\$103 million	25%

Many states have faced this declining federal funding support while also dealing with their own budget reductions resulting in hiring freezes, furloughs, lay-offs, and other budget reduction measures. States also face “fee fatigue” from their regulated community and local legislatures as a result of efforts to seek additional funding.

The FY14 President's Budget request for EPA proposes \$1.136 billion for Categorical Grants, an increase of \$47 million over 2012 enacted level. States seek your support for this funding level.

Advancing Information and Data Exchange -- States and EPA continue to discuss ways to make the national environmental protection system more accessible, effective, and efficient by enabling state and federal regulators, regulated entities, and the public to take advantage of advances in monitoring, reporting, and information technology.

² Source: FY13 Budget in Brief, EPA, <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100DRB5.txt>

³ For recurrent programs, MOE is equal to state and interstates' 1971 expenditures.

States and EPA agree there is tremendous value to be gained in jointly pursuing an initiative, E-Enterprise for the Environment, grounded on the open and transparent exchange of information and data. The states and EPA jointly acknowledge that its success is dependent upon the development of a shared governance structure that embraces cooperative federalism, delegation, and effective EPA/state collaboration, while working within the limited amount of resources currently available to further this effort.

Since August 2012, states and EPA have worked to define the scope of E-Enterprise and to determine how to work together on this large, complex, multi-year effort. States and EPA need to respect state delegated authorities including data access and to consider integration of existing state systems. Additionally, conversations need to continue about how to collect only data this is truly needed as each data point has a cost to the generator to produce as well as to the recipient to manage. While issues remain, states believe this effort holds significant promise and have committed to working with EPA.

For this jointly managed effort, states in principle support funding in the FY14 President's Budget request, support meaningful joint budget planning and priority setting, and oppose set-asides of Categorical Grant funds.

Unexpended Appropriations -- States and EPA have been working to address unexpended appropriations, which are comprised of both unobligated and obligated funds.

- Effective October 1, 2010, EPA issued Grants Policy Issuance (GPI) 11-01, "Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreements." For STAG or Leaking Underground Storage Tank appropriations, EPA proposed the total project period would not exceed 5 years. For SRF and State Superfund Cooperative Agreement Program awards, the total project period would not exceed 7 years unless a longer period is authorized by statute or regulation.
- Effective October 1, 2012, EPA issued Grants Policy Issuance (GPI) 12-06 "Timely Obligation, Award and Expenditure of EPA Grant Funds." This policy seeks to streamline grant processes and improve grant outlay rates.

In the FY13 enacted budget, Congress rescinded \$50 million from unobligated balances in STAG grants, including \$5 million from Categorical Grants. Congress did not stipulate rescission of obligated balances which have been committed. However, by rescinding unobligated balances, Congress may be rescinding money that no state ever had a chance to spend as it may never have been awarded.

States oppose rescissions of either unobligated or obligated STAG funds. Through the two policies described above, states and EPA have worked together to streamline grant processes to expedite timely grant awards by EPA and timely expenditure of funds by states.

States respectfully request that if Congress continues to rescind unobligated funds from the STAG account of EPA's budget, that no funds less than three years old be targeted. For instance, FY13 appropriations would be considered year zero money, FY12 appropriations would be considered year one money, and FY11 appropriations considered year two money. If Congress continued to direct such, rescissions would be of FY10 or older funds.