



# SOUTHEASTERN STATE AIR AGENCY AUTHORITY AND ENFORCEMENT STRUCTURES

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Barriers and Solutions: Strategies for  
Effectively Leveraging Energy Efficiency as an  
Environmental Compliance Tool



April 2015 | SEEA Resource Paper Series, Paper 1

## About This Resource Paper Series

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Energy efficiency is widely recognized as a cost-effective, rapidly-deployable resource for air pollution reductions from electric generation units (EGUs) at fossil fuel-fired power plants. However, with the release of the U.S. Environmental Protection Agency’s (EPA) proposed Clean Power Plan (CPP) in June 2014, southeastern states and utilities have voiced concerns regarding a number of barriers and challenges to using energy efficiency as a pollution control strategy within state compliance plans, both under existing air programs and forthcoming regulations under the CPP, once finalized (expected in summer 2015). This SEEA Resource Paper Series seeks to identify resources, strategies and solutions to help states and utilities address these barriers and more effectively utilize energy efficiency as a compliance strategy, where appropriate and cost-effective.

Content developed under this project is generated through targeted outreach and discussions with key regional stakeholders and national experts, surveys of state comments on the proposed CPP and other resources and input provided by EPA, state agencies, and other relevant sources. The authors would like to thank all who have provided feedback to date and look forward to continuing to serve as a resource to states and stakeholders evaluating compliance options as EPA’s proposed CPP evolves.

### Disclaimer

SEEA recognizes that the EPA is still finalizing its CPP, and that there are many unknowns until the final guidelines are released. The materials provided on the [SEEA 111\(d\) web portal](#), along with the resources and discussion contained in this Resource Paper are provided for informational purposes only, and not for the purpose of providing legal advice. Contact your attorney for advice with respect to any particular issue.

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# I. Introduction: State Authority and Enforcement Structures as a Foundation for Energy Efficiency in Compliance Plans

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## A. Southeastern States Have a Diversity of Authority and Enforcement Structures

The Southeast is home to a diversity of state frameworks for administering and enforcing state air programs. SEEA's survey of southeastern stakeholder comments on EPA's proposed Clean Power Plan (CPP) revealed: (1) general questions regarding state authority and enforcement, as well as (2) specific concerns regarding the inclusion of energy efficiency programs and measures within state implementation plans. This paper provides an overview of state air agency authority and enforcement frameworks in the Southeast, with the goal of clarifying options available to states in complying with EPA's proposed CPP, as well as other current and forthcoming air regulations.

## B. This Paper Is a Starting Point for Conversation

This Resource Paper is intended to be a starting point for regional discussion on incorporating energy efficiency programs and measures within state plans. This paper does not attempt to answer the question as to whether any particular state currently has the authority, program management capability and enforcement structure necessary to adopt, implement and enforce energy efficiency measures or programs within a plan under EPA's proposed CPP guidelines or any other air regulations. Rather, this paper provides a high-level snapshot of EPA delegation authorities currently vested in states and general enforcement structures across the Southeast under existing programs.

State air quality agencies carry out compliance and enforcement programs to ensure that emission sources meet the applicable federal, state and local air pollution control requirements within their jurisdictions. In contemplating the role of energy efficiency, where appropriate and cost-effective, in compliance plans for EPA's proposed CPP, state actors are faced with a number of key considerations related to their authority and ability to administer and enforce energy efficiency measures, which are explored in this paper. States have experience exercising choice, administering programs, and designing solutions to meet federal requirements at the state level, and southeastern states are in a unique position to build on this rich history and craft compliance plans that can leverage the full benefits of energy efficiency to meet state policy goals as a cost-effective, rapidly-deployable resource and tool for economic development and job-creation.

## II. State Agency Authority to Develop and Implement Air Programs

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This section will cover:

- A. Delegation authority
- B. Other statutory authority and agency administrative structures
- C. The role of air board or commission oversight
- D. State and agency-level policy goals
- E. Inter-agency and inter-jurisdiction partnerships

### A. Delegation Authority under the Clean Air Act Defines Federal/State Interaction

The role of energy efficiency in a state compliance plan under Section 111(d) of the Clean Air Act is, on a foundational level, defined by the scope of delegated agency authority. The Clean Air Act (CAA) authorizes EPA to delegate significant programmatic responsibility for permitting, monitoring and enforcement activities to state, local and tribal governments. The assumption of partial or full control over one of these programs by a state agency is known as "**delegation.**" Programmatic delegation means that the authority to operate a regulatory program has shifted from EPA to a state, local or tribal regulatory agency.<sup>1</sup> CAA Sections 111 and 112 allow EPA to transfer primary implementation and enforcement authority for most federal standards to state, local, or tribal regulatory agencies.

See **Appendix A** for a detailed discussion of delegation.

### B. Specific Statutory Authority and Administrative Structures Vary by State

In addition to managing the delegable provisions of the CAA, many southeastern air agencies have state and local statutes that create and define additional air pollution control programs under their jurisdiction. State air agencies are created by state-level statutes, which vary considerably from state to state. These authorizing statutes determine the structure and responsibilities of state air quality agency offices, and provide direction as to the purpose and goals of the agency in carrying out its duties.

Southeastern state air agencies are housed within state environmental departments. A few states have split their environmental department into separate cabinet-level departments, where one department deals with natural resources and state parks, in a separate capacity from the environmental regulatory department, such as South Carolina. Many air agencies house all air program functions within a separate, individual division, while others share certain roles with other resource program areas, such as water



regulatory functions of the larger department. For example, in Florida, the Florida Clean Indoor Air Act is administered by a partner agency, the Florida Department of Health.

See **Appendix B** for a survey of southeastern state air agency authorizing statutes and administrative structures.

## C. State Agency Commissions and Boards Provide Oversight of Air Agencies

The development of a state plan, and the inclusion of energy efficiency within it, is supported by state approval and oversight processes. All southeastern state air agency regulatory policy development, rulemaking activities and enforcement processes are generally subject to oversight by **agency commissions and/or boards**. State agency oversight commissions and boards are distinct from air agencies. They are made up of anywhere from five to twenty-eight members that represent a balance of disciplines and backgrounds related to environmental quality and resource management across a variety of sectors (e.g., government, industry, academia, public health and environmental interest groups). The makeup of membership, term lengths and member responsibilities are typically defined by state statute and/or board charter. Further, the policy goals and directives outlined within state air board statutes or charters are unique from state to state; these policy directives may impact rule development, adoption and the crafting of regulatory plans by the corresponding agency.

In Tennessee, the Division of Air Pollution Control is subject to a Board (the “Air Board”) which is particular to the Division, whereas in other states air agencies are subject to a board or commission that oversees the policy and regulatory rulemaking activities of an entire Department (e.g., Georgia, Kentucky, South Carolina).

Agency rulemaking, State Implementation Plan (SIP) and Section 111 air regulatory plan creation processes are unique to each state. State agencies typically must follow a state Administrative Procedures Act to draft new rules for air programs, unless otherwise directed by state statute. The format and structure of state air rules and regulations varies widely from state to state, and reflect the evolution of state and federal air programs over time. See **Appendix A** for additional state-by-state information. It is important to keep in mind that state plans under the final CPP will not necessarily mirror SIP creation processes. Under Section 111(d), states may have greater ability to craft a compliance plan based on state policy rather than relying on prescriptive federal requirements.<sup>2</sup>

## D. State-Level Policy Goals and Objectives May Influence Air Agency Activities

In the implementation plan development process, state air agencies must also consider whether and how energy efficiency fits into state and agency-level policy goals. State environmental and air agency authorizing statutes (see **Appendix B**) often direct a state agency or department to take into consideration

an enumerated list of factors as they exercise their role as state air regulators. Common focus areas throughout all of the southeastern states surveyed for this paper include the protection of human health and welfare, protection of property and preservation of natural resources. State statutes often include economic considerations, citing economic growth, industrial development and fostering full employment and job creation.

Some air agencies have specific limitations on their authority, while others have the ability to implement standards that are more stringent than federal requirements. See **Appendix C** for a detailed discussion.

## **E. Interagency Partnerships Are Essential to Effective Implementation of Energy Efficiency Programs**

Since the release of EPA's proposed CPP, some concern has surfaced regarding the lack of jurisdiction of state environmental regulators over energy efficiency programs. In cases where other state agencies such as a public service commission (also sometimes called a public utilities commission) or state energy office may be involved, it is important to develop effective partnerships, and to understand the requirements and timeline needed to develop, approve and deploy energy efficiency programs. In the context of energy efficiency, partnerships are not uncommon. Many state agencies are directed by statute to cooperate with partner agencies and offices in their department, as well as other departments within the state. States may also be directed explicitly in state statute to cooperate and work with other states and/or the federal government.

For example, Kentucky recently passed legislation that directs the Energy and Environment Cabinet to consult with the Kentucky Public Service Commission on any state plan to regulate carbon emissions from existing electric generating units submitted to the U.S. EPA.<sup>3</sup> The statute specifically instructs the cabinet to consult with the Kentucky Public Service Commission to ensure that such a plan:

- Minimizes the impacts on current and future industrial, commercial and residential customers; and
- Does not threaten the affordability of Kentucky's rates or the reliability of electric service.<sup>4</sup>

## **F. Conclusion**

State to state, southeastern air agencies have a great diversity of authorization and administrative structures. However, many similarities also exist. These similarities and differences are important to note in the development of state-specific and multi-state plans. A strong framework, both in terms of state authority and historical precedent of state leadership and inter-jurisdiction cooperation, exists in the Southeast, and may be leveraged for incorporating energy efficiency measures into state compliance plans.

### III. State Agency Enforcement of Air Programs

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This section will cover:

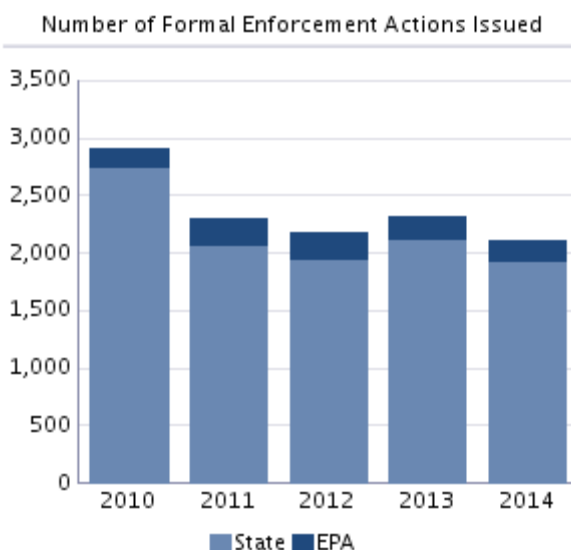
- A. EPA oversight of enforcement actions
- B. Methods of enforcement and penalties
- C. Precedent under Clean Air Act Section 110
- D. EPA enforcement-related guidance on the Clean Power Plan

#### A. EPA Oversees Enforcement of Delegated Air Programs

The development of any state compliance plan requires air agencies to consider the risks of failure to effectively enforce against violations under a plan. Because energy efficiency is a newer compliance tool to many air agencies, enforcement-related issues are an area of specific interest.

EPA oversees state and local enforcement of delegated air programs. State and local agencies perform a significant percentage of the permitting, compliance monitoring, and enforcement activity under the CAA.<sup>5</sup> These agencies are required to facilitate EPA oversight by regularly reporting to EPA on their enforcement and compliance activities. If EPA believes a state or local agency is not appropriately enforcing federal environmental laws, it may take action itself to rectify an alleged violation.<sup>6</sup> The CAA provides that if EPA finds violations of state-issued permits that are “so widespread that such violations appear to result from failure of the State to enforce such permit conditions or limitations effectively,”

EPA must give the state notice of the enforcement failure. If the situation goes uncorrected, EPA may choose to temporarily assume federal enforcement authority until the state provides assurance that it will enforce its programs.<sup>7</sup> Information on EPA enforcement actions can be found in the ECHOnline database.<sup>8</sup>



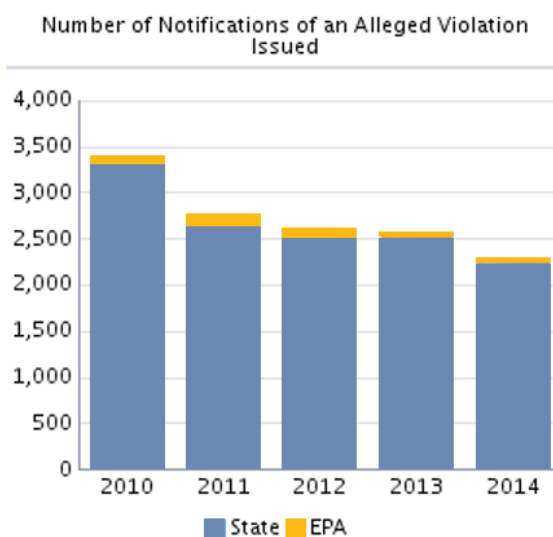
## B. Enforcement Measures and Penalties Vary

EPA and state and local air agencies often provide compliance assistance to help the regulated community understand and comply with regulations. In addition, state and local air agencies issue permits that specify applicable regulatory requirements and include the requirements for compliance activities, including inspections, to ensure permit conditions are being met.

When violations are identified, regulators typically have several options: mandated requirements to install air pollution control devices or process modifications; civil penalties and fines; supplemental environmental improvement projects (in some circumstances); and, in criminal cases, imprisonment. Criminal versus civil enforcement actions generally differ in regard to legal standard, burden of proof required and results of the action. The type of enforcement action can vary considerably from state to state, depending upon local factors, the type of violation and the duration of the violation.

**Civil administrative actions** are non-judicial enforcement actions taken by a state under its own authority, and/or by EPA, without involving a judicial court process. An administrative action may be in the form of: (a) a notice of violation or a notice letter, or (b) an administrative order or order (either with or without penalties) directing an individual, a business or another entity to take action to come into compliance.

**Civil judicial actions** are formal lawsuits against persons or entities that have failed to comply with statutory or regulatory requirements, with an administrative order, or who owe EPA response costs for cleaning up a Superfund site. These cases are filed by the U.S. Department of Justice on behalf of EPA and usually by the State's Attorneys General on behalf of the states.<sup>9</sup> Civil enforcement results include settlements, civil penalties, injunctive relief and supplemental





environmental projects.<sup>10</sup> Civil liability is strict, which essentially means that the existence of a violation itself creates the liability without regard to whether the violator knew about, or was even aware of, the violation.<sup>11</sup> Many southeastern states cap civil fines at an upper limit of \$10,000 per day per violation.<sup>12</sup>

**Criminal enforcement actions** occur when a state and/or EPA enforces against an entity or person through a criminal action, depending on the nature and severity of the violation. Criminal enforcement actions that lead to a conviction may result in fines, restitution costs and incarceration. Criminal actions are usually reserved for the most serious violations, those that are willful, or knowingly committed.<sup>13</sup>

## C. Clean Air Act Section 110 Provides Useful a Useful Starting Point

While the final CPP has not yet been released, the enforcement framework EPA has laid out under CAA Section 110 provides useful precedent. In its *Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans*, EPA details four approaches for approaching energy efficiency, some enforceable and some non-enforceable.<sup>14</sup>

- Measures incorporated using the **Baseline Emissions Projection Pathway** can be state enforceable but not federally enforceable.
- The **Control Strategy Pathway** is an option where measures incorporated through this strategy are federally enforceable once in a SIP.
- The **Emerging and Voluntary Measures Pathway** policy under Section 110 provides some flexibility on the enforceability criteria for voluntary measures included in SIPs by providing that the state, tribal or local agency assure that the emission reductions credited in the SIP occur. Under this framework, a state, tribal or local agency makes an enforceable commitment in writing to monitor, assess and report on the emission reductions resulting from the voluntary measures and take responsibility, in a timely manner, for making up any shortfalls in emission reductions for emerging/voluntary measures.<sup>15</sup> Under current guidance, the overall reduction contribution to a SIP from voluntary and emerging measures is capped at 6% (unless a state is able to successfully make the case for EPA to increase that amount).
- EPA's **Weight of Evidence** approach similarly does not require measures to be enforceable.

Please note: A more in-depth discussion provided under EPA's *Roadmap* document is provided in another forthcoming paper within the SEEA Resource Paper Series. As described below, while the *Roadmap* is a helpful reference, the enforcement framework under the Clean Power Plan may have a greater degree of flexibility.

## D. Flexibility Is A Key Element of the Clean Power Plan

Sections 110 and 111 of the Clean Air Act, while procedurally similar in many ways, are not directly comparable in the context of state plan content and requirements. Under Section 111(d), states have **far greater flexibility** to craft a plan based on state policies, rather than relying on prescriptive federal

requirements and timelines.<sup>16</sup> See **Appendix D** for a comparison of state plans under Sections 110 and 111.

Although EPA initially proposes that the use of all measures, including energy efficiency, in a state plan would render them federally enforceable in the draft rule, EPA is seeking comment on a spectrum of issues related to enforceability. For example, EPA has specifically requested comment on a “state commitment approach,” in which requirements for entities other than affected EGUs would not be federally enforceable components of the state plan. Instead, the state plan would include an enforceable commitment to implement state-enforceable measures that would achieve a specified portion of the required emission performance level.<sup>17</sup> This approach and others will be further clarified in the final rule.

## E. Conclusion

States have a strong history of operating and enforcing air programs in the Southeast. Recognizing that states are likely to be given additional flexibility and control over the design, operation and administration of state plans and enforcement under the final CPP, states should begin to evaluate their existing enforcement structures alongside the programs of partner agencies and programs to determine what resources and experience can be leveraged in state planning processes.

## APPENDIX A:

### Southeastern State Delegation Authority under the Clean Air Act

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In order for states to administer and enforce air programs under the CAA, states must be given “delegation authority” from EPA.<sup>18</sup> In general terms, in order for delegation to occur, the state legislature must have passed authorizing legislation that is at least as stringent as the federal standard while demonstrating the state has adequate resources to run the program (funding, personnel, etc.).<sup>19</sup> The state then files a petition with EPA to request delegation authority under the federal program.<sup>20</sup>

Under these circumstances, the delegated agency becomes the primary implementation and enforcement authority for the delegated standard. Examples of authorities that may be delegated to agencies include: the ability to issue or approve certain applicability determinations, compliance schedule extensions and alternatives to testing or monitoring requirements. The level of EPA review for this flexibility is reflected in EPA’s delegations of authority, examples of which may be found in the Federal Register.<sup>21</sup> The method for application and approval of this flexibility varies as specified in EPA guidance or regulations. However, in general, EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant, or alter the stringency of the underlying standard.<sup>22</sup> The purpose of delegating EPA authority is therefore generally:

- To achieve a balance between local control and nationally consistent environmental protection; and
- To ensure that federal and state expertise and resources are put to their most effective uses.<sup>23</sup>

In order to obtain delegation authority to administer EPA programs or certain aspects of a program under CAA Section 111, states must have the authority to adopt, implement and enforce air program requirements within state plans. Under EPA’s proposed CPP, EPA signaled the intent for states to have the ability to craft “flexible” compliance plans that could be tailored to meet state priorities and particular circumstances.<sup>24</sup> The level of flexibility provided for in EPA’s final guidelines is yet to be determined. However, EPA has indicated that energy efficiency programs and measures will be one of the flexible options available to states under the final guidelines. States will be required to demonstrate their ability to administer and enforce state plans should they seek to obtain or maintain delegation authority.

**Table 1. Delegation Authority Vested in States under Existing Air Programs**

State	New Source Performance Standards Program (NSPS) <sup>25</sup>	National Emission Standards for Hazardous Air Pollutants Program (NESHAPS) <sup>26</sup>	Prevention of Significant Deterioration Program (PSD) <sup>27</sup>	Title V Operating Permits Program <sup>28</sup>	New Source Review (NSR) Program <sup>29</sup>
<b>AL</b>	Yes	Yes	SIP	Interim Status, pending EPA approval	SIP
<b>AR</b>	Yes	Yes	SIP	Yes	SIP
<b>FL</b>	Yes	Yes	SIP	Yes; the state has the authority to enforce some or all of these regulations; some were approved through the SIP process, while others were delegated.	SIP; Florida has requested approval from EPA to administer NSR programs for GHG emissions from new sources. <sup>30</sup>
<b>GA</b>	Yes	Yes	SIP	Yes; the state has the authority to enforce some or all of these regulations; some were approved through the SIP process, while others were delegated.	SIP
<b>LA</b>	Yes; with limitations <sup>31</sup>	Yes; with limitations <sup>32</sup>	SIP	Yes	SIP
<b>MS</b>	Yes	Yes	SIP	Yes; the state has the authority to enforce some or all of these regulations; some were approved through the SIP process, while others were delegated.	NA

<b>State</b>	<b>New Source Performance Standards Program (NSPS)<sup>33</sup></b>	<b>National Emission Standards for Hazardous Air Pollutants Program (NESHAPS)<sup>34</sup></b>	<b>Prevention of Significant Deterioration Program (PSD)<sup>35</sup></b>	<b>Title V Operating Permits Program<sup>36</sup></b>	<b>New Source Review (NSR) Program<sup>37</sup></b>
<b>NC</b>	Yes	Yes	SIP	Yes; the state has the authority to enforce some or all of these regulations; some were approved through the SIP process, while others were delegated.	SIP
<b>SC</b>	Yes	Yes	SIP	Yes; the state has the authority to enforce some or all of these regulations; some were approved through the SIP process, while others were delegated.	SIP
<b>TN</b>	Yes	Yes	SIP	Yes; the state has the authority to enforce some or all of these regulations; some were approved through the SIP process, while others were delegated.	SIP
<b>VA</b>	Yes	Yes	SIP	State programs are operated where EPA approval is not applicable.	State programs operated where EPA approval is not applicable.

Sources: Federal Register, EPA Website, Agency Websites, ECOS Survey (2006) and interviews conducted by the authors.



## APPENDIX B:

### Survey of State Air Agency Authorizing Statutes and Administrative Structures

**Table 2. State Air Agency Authorizing Statutes and Administrative Structures**

State	Air Agency Administrative Structure	Agency Commission/ Board/ Oversight Entity	Relevant Statute(s) and Rules	Policy Areas of Focus/ Agency Goals & Purpose
AL	The <b>Alabama Department of Environmental Management</b> (ADEM) oversees the Air Division. <sup>38</sup>	Agency rules and plans generally must be adopted by the <b>Environmental Management Commission</b> .	Alabama Environmental Management Act <sup>39</sup> and the Alabama Air Pollution Control Act <sup>40</sup>  Rules: Division 3 of the ADEM Administrative Code <sup>41</sup>	<ul style="list-style-type: none"> <li>• Protect human health and safety</li> <li>• Prevent injury to plant and animal life and property</li> <li>• Foster the comfort and convenience of the people</li> <li>• Promote the social development of this state</li> <li>• Facilitate the enjoyment of the natural attractions of this state<sup>42</sup></li> <li>• Provide for a coordinated approach and facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions and to provide a framework within which all values may be balanced in the public interest</li> </ul>
AR	The <b>Arkansas Department of Environmental Quality</b> (ADEQ) oversees the <b>Air Division</b> , established 1971. <sup>43</sup> This division is divided into four branches: <ol style="list-style-type: none"> <li>1. Program Support</li> <li>2. Planning and Air Quality Analysis</li> <li>3. Permits</li> <li>4. Compliance Monitoring</li> </ol>	The <b>Arkansas Pollution Control and Ecology Commission</b> is the environmental policy-making entity for the state. The Commission determines the environmental policy for the state and ADEQ implements those policies. <sup>44</sup>	Arkansas Air Pollution Control Code <sup>45</sup>  Air Pollution Control and Ecology Commission regulations, which cover the Air Division, may be downloaded <a href="#">here</a>	<ul style="list-style-type: none"> <li>• Public health and welfare</li> <li>• Least possible injury should be done to human, plant or animal life or to property</li> <li>• Maintain public enjoyment of the state's natural resources</li> <li>• Consistent with the economic and industrial well-being of the state</li> <li>• Collaborative process among all the parties concerned<sup>46</sup></li> </ul>

State	Air Agency Administrative Structure	Agency Commission/ Board/ Oversight Entity	Relevant Statute(s) and Rules	Policy Areas of Focus/ Agency Goals & Purpose
FL	<p>The <b>Florida Department of Environmental Protection</b> oversees the <b>Division of Air Resource Management</b> (DARM).</p> <p>Florida's air quality control program is divided into four offices:</p> <ol style="list-style-type: none"> <li>1. Office of Business Planning</li> <li>2. Office of Air Monitoring</li> <li>3. Office of Permitting and Compliance</li> <li>4. Siting Coordination Office</li> </ol>	<p>DARM adopts rules necessary to implement state and federal air program requirements. The <b>Florida Environmental Regulations Commission</b> sets standards and rules that protect Floridians and the environment based on sound scientific and technical validity, economic impacts and risks and benefits to the public and Florida's natural resources.<sup>47</sup></p>	<p>Chapter 403 of the Florida Statutes, entitled "Environmental Control," provides the legal authority for most of the activities of the air resource management program within the Department of Environmental Protection.</p> <p>Current air regulations may be found in the Florida Administrative Code and are available for download <a href="#">here</a>.</p>	<ul style="list-style-type: none"> <li>• Health, peace, safety and general welfare of the people of this state</li> <li>• Prevent injury to plant and animal life and property</li> <li>• Foster the comfort and convenience of the people</li> <li>• Promote the economic and social development of state</li> <li>• Facilitate the enjoyment of the natural attractions of state</li> <li>• Support coordinated statewide program</li> <li>• Ensure a continuing growth of the economy and industrial development</li> <li>• Provide incentives for the adoption of new technology at industrial facilities<sup>48</sup></li> </ul>
GA	<p>The <b>Department of Natural Resources</b> oversees the <b>Environmental Protection Division</b> (EPD). The <b>Air Protection Branch</b> of EPD oversees air programs.</p>	<p><b>Board of Natural Resources</b><sup>49</sup></p>	<p>Georgia Air Quality Act<sup>50</sup></p>	<ul style="list-style-type: none"> <li>• Safeguard public health, safety and welfare</li> <li>• Maximum employment</li> <li>• Industrial development<sup>51</sup></li> </ul>

State	Air Agency Administrative Structure	Agency Commission/ Board/ Oversight Entity	Relevant Statute(s) and Rules	Policy Areas of Focus/ Agency Goals & Purpose
<b>KY</b>	Within the <b>Energy and Environment Cabinet</b> , the <b>Department for Environmental Protection</b> houses the <b>Division of Air Quality (DAQ)</b> , one of six divisions in the Department. <sup>52</sup>	The <b>Kentucky Environmental Quality Commission</b> is an independent commission that oversees Cabinet activities and policy. The Commission is mandated to prepare reports on environmental trends and conditions in the state. <sup>53</sup>	Kentucky Revised Statutes Chapters 224.20  Kentucky air rules can be downloaded <a href="#">here</a> . Title 401, Chapters 50-65 of the Kentucky Administrative Regulations cover air programs.	<ul style="list-style-type: none"> <li>• In fixing standards, the cabinet shall require the use of all available, practical and reasonable methods.</li> <li>• Public benefit</li> <li>• Existing physical conditions and appropriateness for residential versus industrial areas of the state</li> <li>• Health of the public</li> <li>• Damage to or interference with enjoyment of property</li> <li>• Give reasonable consideration to the interests of all parties concerned.<sup>54</sup></li> </ul>
<b>LA</b>	The <b>Louisiana Department of Environmental Quality (LDEQ)</b> houses the <b>Air Permits Division, Public Participation and Permit Support Services Division</b> under the <b>Environmental Services Branch</b> of the Department, while the <b>Environmental Compliance Section</b> of the Department oversees the <b>Enforcement, Assessment and Inspection Divisions</b> .	The <b>Secretary of Environmental Quality</b> is authorized to create rules and make plans related to air regulatory programs. The Secretary is specifically authorized by statute to develop emissions credit trading and banking systems.	Chapter 5 of the "Louisiana Environmental Quality Act." <sup>55</sup> Title 33 Air Rules can be accessed <a href="#">here</a> . <sup>56</sup>	<ul style="list-style-type: none"> <li>• Health and welfare of the citizens of the state</li> <li>• Employment and industrial development</li> <li>• Utilize efficient methods of regulation</li> </ul>

State	Air Agency Administrative Structure	Agency Commission/ Board/ Oversight Entity	Relevant Statute(s) and Rules	Policy Areas of Focus/ Agency Goals & Purpose
MS	<p>The <b>Mississippi Department of Environmental Quality</b> (MDEQ) oversees the <b>Air Division</b>. Air permitting is handled by the <b>Environmental Permits Division</b> (EPD).<sup>57</sup></p>	<p>The <b>Mississippi Commission on Environmental Quality</b> is empowered to formulate MDEQ policy, enforce rules and regulations, receive funding, conduct studies for using the State's resources and discharge duties, responsibilities, and powers as necessary.<sup>58</sup></p>	<p>Title 49 of Mississippi Code Annotated Mississippi's Air Regulations can be found in Part 2 of Title 11 of the Mississippi Administrative Code. <u>11 Miss. Admin. Code Pt. 2</u></p>	<ul style="list-style-type: none"> <li>• Public health and welfare, physical property of public</li> <li>• Wildlife, fish and aquatic life</li> <li>• Domestic, agricultural, industrial, recreational and other legitimate beneficial public uses of air and water</li> <li>• Cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives</li> </ul>
NC	<p>The <b>Division of Air Quality</b> (DAQ) is within the <b>North Carolina Department of Environment and Natural Resources</b> (DENR), and consists of five sections located in the central offices in Raleigh and seven regional offices located across the state. The sections are further broken down as follows:<sup>59</sup></p> <ol style="list-style-type: none"> <li>1. Administration Section</li> <li>2. Ambient monitoring section</li> <li>3. Permitting section</li> <li>4. Monitoring Section</li> <li>5. Technical Services Section</li> </ol>	<p>The <b>Environmental Management Commission</b> adopts most rules dealing with air quality.</p>	<p>North Carolina Environmental Policy Act of 1971<sup>60</sup> Rules can be found in the North Carolina Administrative Code <u>here</u>.</p>	<ul style="list-style-type: none"> <li>• Emphasize role as trustee for future generations</li> <li>• Health and well-being</li> <li>• Conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony.</li> <li>• Safe, healthful, productive and aesthetically pleasing surroundings;</li> <li>• Attain widest range of beneficial uses of the environment without degradation, risk to health or safety</li> <li>• Preserve the important historic and cultural elements of our common inheritance.<sup>61</sup></li> </ul> <p>Note: DAQ does not deal with indoor air pollution issues, workplace safety, second-hand smoke, asbestos, mold contamination, radon and radiation protection.</p>

State	Air Agency Administrative Structure	Agency Commission/ Board/ Oversight Entity	Relevant Statute(s) and Rules	Policy Areas of Focus/ Agency Goals & Purpose
SC	<p>The <b>South Carolina Department of Health and Environmental Control</b> (DHEC) oversees the <b>Bureau of Air Quality</b>. The Bureau has five divisions:</p> <ol style="list-style-type: none"> <li>1. Division of Air Assessment and Regulation</li> <li>2. Division of Emissions, Evaluation &amp; Support</li> <li>3. Bureau Support and Records</li> <li>4. Division of Engineering Services</li> <li>5. Division of Compliance Management<sup>62</sup></li> </ol>	<p>The <b>South Carolina Board of Environmental Control</b> oversees Department development of rules and regulations.<sup>63</sup></p>	<p>South Carolina Code of Laws §48-1-10 Air program rules can be found <a href="#">here</a>.<sup>64</sup> Also see the “South Carolina Energy Efficiency Act”<sup>65</sup></p>	<ul style="list-style-type: none"> <li>• Public health, safety and welfare of its citizens</li> <li>• Maximum employment</li> <li>• Industrial development of the State</li> <li>• The propagation and protection of terrestrial and marine flora and fauna</li> <li>• Protection of physical property and other resources<sup>66</sup></li> </ul>
TN	<p>The <b>Tennessee Department of Environment and Conservation</b> (TDEC) oversees the Division of Air Pollution Control (APC)<sup>67</sup></p>	<p><b>Tennessee Air Pollution Control Board</b> oversees Department air programs and regulatory planning processes.<sup>68</sup></p>	<p>The Tennessee Air Quality Act. Tennessee Code Annotated §68-201 <i>et seq.</i> Air regulations can be found <a href="#">here</a>.<sup>69</sup></p>	<ul style="list-style-type: none"> <li>• Health and general welfare</li> <li>• Physical property of the people</li> <li>• Maximum employment</li> <li>• Full industrial development of the state</li> <li>• Achieve via practical and economically feasible methods</li> <li>• Qualify for and maintain receipt of federal funds available for state air pollution control programs</li> </ul>



State	Air Agency Administrative Structure	Agency Commission/ Board/ Oversight Entity	Relevant Statute(s) and Rules	Policy Areas of Focus/ Agency Goals & Purpose
VA	<p>The <b>Virginia Department of Environmental Quality (DEQ)</b> oversees the <b>Air Division</b>.</p> <p>The Division is divided into the following sections:</p> <ol style="list-style-type: none"> <li>1. Air Compliance Coordination</li> <li>2. Data Analysis and Planning</li> <li>3. Air Quality Assessments</li> <li>4. Air Permitting</li> <li>5. Air Quality Monitoring<sup>70</sup></li> </ol>	<b>State Air Pollution Control Board</b>	§ 10.1-1313 of the Code of Virginia Air rules and regulations can be accessed <a href="#">here</a> . <sup>71</sup>	<ul style="list-style-type: none"> <li>• The character and degree of injury to, or interference with, safety, health or the reasonable use of property which is caused or threatened to be caused</li> <li>• The social and economic value of the activity involved</li> <li>• Scientific and economic practicality of reducing or eliminating the discharge resulting from such activity</li> </ul>

## Appendix C:

### Limitations and Enhancements to State Authority

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#### **Statutory Carve-Outs and Prohibitions May Limit State Authority**

In some cases, state law specifically limits or directs state agency authority relative to a state plan or program development and administration for a particular air program and/or pollutant. For example, the Alabama “Kyoto Protocol Response Act” prevents the state from creating any new regulations to reduce emissions of greenhouse gas emissions, stating the following:

- (a) Effective immediately, the Director of the Alabama Department of Environmental Management shall refrain from proposing or promulgating any new regulations intended in whole or in part to reduce emissions of greenhouse gases, as such gases are defined by the Kyoto Protocol, from the residential, commercial, industrial, electric utility or transportation sectors unless such reductions are required under existing statutes.
- (b) In the absence of a resolution or other act of the Legislature of the State of Alabama approving same, the Director of the Alabama Department of Environmental Management shall not submit to the U.S. Environmental Protection Agency or to any other agency of the federal government any legally enforceable commitments related to the reduction of greenhouse gases, as such gases are defined by the Kyoto Protocol unless such reductions are required under existing statutes.

In Kentucky, state statute explicitly directs the Kentucky Cabinet to implement a plan to reduce carbon emissions from existing sources under CAA Section 111(d), and outlines the conditions under which a state plan would become a nullity (upon court invalidation, or upon failure of the federal EPA to implement and/or withdraw final guidelines).<sup>72</sup> Essentially, this means that in the event that the CPP is struck down or does not move forward, Kentucky would not be required to implement any plan it may have already developed at the state level.

#### **Southeastern States May Have the Authority to “Go Above And Beyond”**

The Clean Air Act allows state and local air pollution control agencies to adopt programs more stringent than those of the federal government.<sup>73</sup> A number of states in the Southeast have programs and policies on the books that may allow them to “go above and beyond” CAA compliance requirements. A prime example of this is the North Carolina Clean Smokestacks Act. In June 2002, the North Carolina General Assembly enacted this legislation, officially titled the Air Quality/Electric Utilities Bill (SB 1078), which requires significant actual emissions reductions from coal-fired power plants in North Carolina. Under the act, power plants must reduce their nitrogen oxide emissions 77% by 2009 and sulfur dioxide emissions 73% by 2013 as compared to 1998 levels.

In reality, most state agencies are still not able to adopt more stringent programs, due to state or local law, regulation, policy or other restrictions.<sup>74</sup> NACAA conducted a survey of state and local air agencies in

September and October 2014 and discovered that over one-half of state respondents are precluded from adopting measures more stringent than federal requirements, or may do so only under special circumstances. Southeastern state responses to that survey are provided below in Table 3.

**Table 3. Southeastern State Responses to NACAA Air Agency Survey (December 2014)**

State*	Is the agency precluded from being more stringent than the federal statute?			Why is the agency precluded?			Is the agency ever more stringent than the federal program?			Can the agency adopt in the absence of federal legislation?	
	Yes	Yes, with exceptions	No	State law/regulation	Government policy	Dept. or Agency policy	Sometimes	Infrequently	Never	Yes	No
AL			X					X		X	
AR			X					X		X	
GA			X					X		X	
KY		X		X					X	X	
MS	X			X						X	
NC		X		X				X		X	
SC			X						X	X	
TN			X				X			X	
VA			X					X		X	

Source: NACAA (2014)<sup>75</sup>

\*Louisiana and Florida did not respond to the NACAA survey.

## Appendix D: Key Differences between State Plans and Clean Air Act Sections 110 and 111

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**Table 4. Clean Air Act Sections 110 and 111 Comparison**

	<b>Section 110</b>	<b>Section 111(d)</b>
<b>Costs</b>	May <u>Not</u> Consider	<u>Must</u> Consider
<b>Required Reductions</b>	CAA determines nonattainment (no EPA discretion)	EPA determines target, and states determine how to achieve
<b>Timing</b>	CAA specifies (no EPA discretion; within 3 yrs of NAAQS designation)	EPA establishes (proposed 2020-2030 w/1-3 yrs for plan submission)
<b>Measures</b>	Some flexibility, but many mandated by CAA or regulation	Flexibility: 4 building blocks and/or alternative measures beyond them
<b>Acceptability</b>	Quantifiable, non-duplicative, permanent, verifiable, enforceable	See 110 (but EPA invited comment and may consider more flexibility)
<b>Flexibility</b>	Limited; states can substitute national for local w/justification	EPA's 4 proposed building blocks and/or alternative measures

Source: Regulatory Assistance Project (2015)<sup>76</sup>

## End Notes

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<sup>1</sup> [www.eli.org/sites/default/files/docs/eli\\_factsheet\\_delegation.pdf](http://www.eli.org/sites/default/files/docs/eli_factsheet_delegation.pdf).

<sup>2</sup> See generally Christopher James and Kenneth Colburn, Regulatory Assistance Project. “It’s Not a SIP: Opportunities and Implications for State 111(d) Compliance Planning” (Feb 2015).

<sup>3</sup> Kentucky Revised Statutes 224.20-145, available at:  
<http://www.lrc.ky.gov/statutes/statute.aspx?id=43014>.

<sup>4</sup> Kentucky Revised Statutes 224.20-145, available at:  
<http://www.lrc.ky.gov/statutes/statute.aspx?id=43014>.

<sup>5</sup> Ecos – State Environmental Agencies’ Contribution To Enforcement.  
[http://www.ecos.org/files/3895\\_file\\_ENF\\_Report\\_2006\\_Final\\_Doc.pdf](http://www.ecos.org/files/3895_file_ENF_Report_2006_Final_Doc.pdf).

<sup>6</sup> In addition to state policy and priorities, EPA establishes priority areas every three years to focus civil and criminal enforcement resources and expertise on serious pollution problems affecting communities. These are called National Enforcement Initiatives.

<sup>7</sup> 42 U.S.C. §7413(a)(2).

<sup>8</sup> US Environmental Protection Agency Website. ECHO Online Database: <http://echo.epa.gov/>

<sup>9</sup> US Environmental Protection Agency Website. “Enforcement Basic Information.” Available at:  
<http://www2.epa.gov/enforcement/enforcement-basic-information#pane-1>.

<sup>10</sup> Learn more about SEPs here: <http://www2.epa.gov/enforcement/supplemental-environmental-projects-seps>.

<sup>11</sup> The burden of proof is “the preponderance of the evidence” for civil actions.

<sup>12</sup> Civil penalties capped at 10k a day in Mississippi, Alabama, Tennessee Kentucky (not exclusive list).

<sup>13</sup> The burden of proof is “beyond a reasonable doubt” for criminal actions.

<sup>14</sup> U.S. Environmental Protection Agency. “Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans” (July 2012) available at:  
<http://epa.gov/airquality/eere/manual.html>.

<sup>15</sup> US Environmental Protection Agency. “Incorporating Voluntary and Emerging Measures in a State Implementation Plan (SIP)” (September 2004) available at:  
[http://www.epa.gov/ttn/oarpg/t1/memoranda/evm\\_ievm\\_g.pdf](http://www.epa.gov/ttn/oarpg/t1/memoranda/evm_ievm_g.pdf).

<sup>16</sup> James and Colburn, “Not a SIP.”

<sup>17</sup> Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Proposed Rule, 40 Fed. Reg. 34830-34958 (July 18, 2015).



<sup>18</sup> In many instances throughout this paper, the term “states” is used to generally refer to state, tribal and local air agencies.

<sup>19</sup> These standards can be, and often are, incorporated by reference within state statute.

<sup>20</sup> Environmental Council of the States. ENF Report (2006), available at:  
[http://www.ecos.org/files/3895\\_file\\_ENF\\_Report\\_2006\\_Final\\_Doc.pdf](http://www.ecos.org/files/3895_file_ENF_Report_2006_Final_Doc.pdf).

<sup>21</sup> The delegation action is subsequently announced in the Federal Register and codified into 40 CFR 60.4(b), 61.04(b) or 63.99, as appropriate. Most programs are delegated in a piecemeal fashion, allowing the State to advance incrementally as greater resources are available.

<sup>22</sup> US Environmental Protection Agency Website. Specific Authorities Retained by the EPA, available at:  
<http://yosemite.epa.gov/r9/r9nsps.nsf/findpage/retained>.

<sup>23</sup> Environmental Law Institute, “Factsheet: Delegation of Environmental Programs to States and Tribes”, available at: [http://www.eli.org/sites/default/files/docs/eli\\_factsheet\\_delegation.pdf](http://www.eli.org/sites/default/files/docs/eli_factsheet_delegation.pdf).

<sup>24</sup> CPP proposal preamble.

<sup>25</sup> Section 111 of the federal Clean Air Act directs EPA to establish pollution control requirements for certain industrial activities which emit significant "criteria air pollutants." These requirements are known as new source performance standards (NSPS) and regulate pollutants such as particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, volatile organic compounds, acid mist, total reduced sulfur and fluorides. NSPS are detailed in Chapter 40 of the Code of Federal Regulations, Part 60 (40 CFR Part 60), and are intended primarily to establish minimum nationwide requirements for new facilities.

<sup>26</sup> NESHAPS are National Emission Standards for Hazardous Air Pollutants. Section 112 of the pre-1990 federal Clean Air Act directed EPA to establish standards to reduce emissions of hazardous air pollutants (HAPs). These pollutants include asbestos, benzene, beryllium, inorganic arsenic, mercury, radionuclides and vinyl chloride.

<sup>27</sup> PSD is Prevention of Significant Deterioration. The goal of this program is to prevent significant deterioration of air quality in areas that meet the NAAQS (National Ambient Air Quality Standards). The US areas have been classified in two categories for the purpose of this program. The areas in the first category, that includes national wilderness areas, parks and memorial parks of a certain size, and international parks, cannot be re-designated; in these areas, the maximum allowable increase of any criteria pollutant (Ozone, NOx, CO, lead, PM - particulate matter - and SO<sub>2</sub>) is significantly lower.

<sup>28</sup> Title V governs operating permits. A single permit may be issued for a facility with multiple sources. No person can violate any requirement of a permit issued under the CAA, by the EPA or the state with permitting authority.

<sup>29</sup> NSR is New Source Review. In order to receive a PSD permit, a new or modified major source must show that it will not contribute to a violation of the increments or of the NAAQS, and that it will use BACT (Best Available Control Technology), which must be at least as stringent as the applicable NSPN or NESHAPS.

<sup>30</sup> [http://www.dep.state.fl.us/air/rules/regulatory/Greenhouse\\_Gas\\_NSR.htm](http://www.dep.state.fl.us/air/rules/regulatory/Greenhouse_Gas_NSR.htm).

<sup>31</sup> [04-14-10 FR Notice Delegation of Authority](#) (effective June 14, 2010).

<sup>32</sup> Id.

<sup>33</sup> Section 111 of the federal Clean Air Act directs EPA to establish pollution control requirements for certain industrial activities which emit significant "criteria air pollutants." These requirements are known as new source performance standards (NSPS) and regulate pollutants such as particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, volatile organic compounds, acid mist, total reduced sulfur and fluorides. NSPS are detailed in Chapter 40 of the Code of Federal Regulations, Part 60 (40 CFR Part 60), and are intended primarily to establish minimum nationwide requirements for new facilities.

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<sup>38</sup> Alabama Department of Environmental Management Website, "Air Division", available at: <http://www.adem.state.al.us/programs/air/default.cnt>.

<sup>39</sup> Ala. Code §§22-22A-1 to 22-22A-16.

<sup>40</sup> Ala. Code §§22-28-1 to 22-28-23.

<sup>41</sup> Available at: <http://www.adem.state.al.us/alEnviroRegLaws/files/Division3.pdf>.

<sup>42</sup> Ala. Code §22-28-3.

<sup>43</sup> Arkansas Department of Environmental Quality Website, "Air Division", available at: <http://www.adeq.state.ar.us/air/>.

- <sup>44</sup> Arkansas Pollution Control and Ecology Commission Website, available at: <http://www.adeq.state.ar.us/commission/>. Regulations for formatting and drafting of guidelines available at: [http://www.adeq.state.ar.us/regs/pdfs/reg\\_formatting\\_and\\_drafting\\_guidelines\\_tagged.pdf](http://www.adeq.state.ar.us/regs/pdfs/reg_formatting_and_drafting_guidelines_tagged.pdf).
- <sup>45</sup> Ark. Code Ann. 8-3-101 et seq., 8-4-101 et seq., 8-4-201 et seq., 8-4-301 et seq., 8-10-302 et seq., 20-27-1001 et seq.
- <sup>46</sup> Ark. Code Ann. §§ 8-4-301 – 302.
- <sup>47</sup> Florida Department of Environmental Protection Website. “Overview: Florida Environmental Regulations Commission” available at: <http://www.dep.state.fl.us/legal/ERC/>.
- <sup>48</sup> Chapter 403.021 of the Florida Statutes.
- <sup>49</sup> OGCA § 12-9-5.
- <sup>50</sup> OGCA §12-9-1
- <sup>51</sup> OGCA § 12-9-2.
- <sup>52</sup> Kentucky Energy and Environment Cabinet Website, “Division of Air Quality”, available at: <http://air.ky.gov/Pages/default.aspx>; also see: <http://www.lrc.ky.gov/statutes/statute.aspx?id=10297>.
- <sup>53</sup> Kentucky Environmental Quality Commission website. “State of Kentucky’s Environment” available at: [http://eqc.ky.gov/State%20of%20the%20Environment%200001/state\\_of\\_ky\\_envir\\_2001.pdf](http://eqc.ky.gov/State%20of%20the%20Environment%200001/state_of_ky_envir_2001.pdf).
- <sup>54</sup> Kentucky Revised Statutes 224.20-120, available at: <http://www.lrc.ky.gov/statutes/statute.aspx?id=10352>.
- <sup>55</sup> Louisiana Department of Environmental Quality Website. “Rules and Regulations” available at: <http://www.deq.louisiana.gov/portal/DIVISIONS/LegalAffairs/RulesandRegulations.aspx>.
- <sup>56</sup> Louisiana Department of Environmental Quality Website. “Rules and Regulations” available at: <http://www.deq.louisiana.gov/portal/DIVISIONS/LegalAffairs/RulesandRegulations/Title33.aspx>.
- <sup>57</sup> Mississippi Department of Environmental Quality website. “Homepage” available at: [http://www.deq.state.ms.us/mdeq.nsf/page/air\\_homepage](http://www.deq.state.ms.us/mdeq.nsf/page/air_homepage).
- <sup>58</sup> Mississippi Department of Environmental Quality website. “Commission on Environmental Quality” available at: [http://deq.state.ms.us/mdeq.nsf/page/About\\_Commission](http://deq.state.ms.us/mdeq.nsf/page/About_Commission).
- <sup>59</sup> North Carolina Department of Air Quality. “Strategic Plan 2011-2013” available at: [http://daq.state.nc.us/about/DAQ\\_Strategic\\_Plan\\_2011-2013.pdf](http://daq.state.nc.us/about/DAQ_Strategic_Plan_2011-2013.pdf) (last accessed 3/2/15).
- <sup>60</sup> North Carolina General Statutes Section 113a: <http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl>.
- <sup>61</sup> § 113A-3. Declaration of State environmental policy.

<sup>62</sup> South Carolina Department of Health and Environmental Control website. “Organizational Chart” available at: [http://www.scdhec.gov/Agency/docs/orgchart\\_BAQ.pdf](http://www.scdhec.gov/Agency/docs/orgchart_BAQ.pdf).

<sup>63</sup> South Carolina Department of Health and Environmental Control. “Approval Process for Statutes and Regulations available at: <http://www.scdhec.gov/Agency/BoardofDirectors/ApprovalProcessforStatutesRegulations/>.

<sup>64</sup> <http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations/Air/>.

<sup>65</sup> South Carolina Code §48-52-210.

<sup>66</sup> South Carolina Code §48-1-20. Declaration of public policy.

<sup>67</sup> Tennessee Department of Environment and Conservation website. “Division of Air Pollution Control” available at: <http://www.tn.gov/environment/air/>.

<sup>68</sup> Tennessee Department of Environment and Conservation Website. “Air Pollution Control Board” available at: [http://www.tn.gov/environment/board\\_air-pollution-control.shtml](http://www.tn.gov/environment/board_air-pollution-control.shtml).

<sup>69</sup> Tennessee Secretary of State website. “TDEC Rules” available at: <http://www.tn.gov/sos/rules/1200/1200-03/1200-03.htm>.

<sup>70</sup> Virginia Department of Environmental Quality website. “Contacts” available at: <http://www.deq.virginia.gov/Programs/Air/Contacts.aspx>.

<sup>71</sup> Virginia Department of Environmental Quality website. “Contacts” available at: <http://www.deq.virginia.gov/Programs/Air/Laws,Regulations,Guidance.aspx>.

<sup>72</sup> Kentucky Revised Statutes 224.20-145, available at: <http://www.lrc.ky.gov/statutes/statute.aspx?id=43014>.

<sup>73</sup> The only exceptions are with Title II of the CAA, which precludes certain regulations related to mobile sources and fuels.

<sup>74</sup> NACAA Survey on Restrictions on the Stringency of State and Local Air Quality Programs (December 8, 2014) available at: [http://www.4cleanair.org/sites/default/files/Documents/Stringency\\_Report\\_12\\_04\\_2014.pdf](http://www.4cleanair.org/sites/default/files/Documents/Stringency_Report_12_04_2014.pdf).

<sup>75</sup> Louisiana did not respond to the survey.

<sup>76</sup> James and Colburn, “Not a SIP.”