

**APPENDIX D
SAMPLE STATE AGENCY AUTHORITY**

EXCERPTS FROM STATE ENVIRONMENTAL AGENCY'S STATUTORY AUTHORITY TO REGULATE AIR EMISSIONS ¹	LIMITS ON RULES MORE STRIDENT THAN FEDERAL LAW? ²
<p>Alabama</p> <p>"[T]he department is authorized beginning October 1, 1982 to... promulgate rules, regulations and standards in order to carry out the provisions and intent of this chapter." <i>Code of Alabama § 22-22A-5.</i></p> <p>"(a) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the social development of this state and facilitate the enjoyment of the natural attractions of this state." <i>Code of Alabama § 22-28-3.</i></p>	N
<p>Alaska</p> <p>"The department may . . . (10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for: (A) control, prevention, and abatement of air, water, or land or subsurface land pollution; ... (G) other purposes as may be required for the implementation of the policy declared in AS 46.03.010 ; ..." <i>Alaska Statutes § 46.03.020.</i></p> <p>"Emission Control Regulations. (a) After public hearing, the department may adopt regulations under this chapter establishing ambient air quality standards, emission standards, or exemptions to implement a state air quality control program required under 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and regulations adopted under those sections. The standards established under this section may be for the state as a whole or may vary in recognition of local conditions.</p> <p>(b) Unless the governor has determined that an emergency exists that requires emergency regulations under AS</p>	Y –with exceptions. Some limits in state law or regulations

[44.62.250](#), the department may adopt the following types of regulations only after the procedures established in (a), (c), and (d) of this section and compliance with AS [46.14.015](#): (1) a regulation that establishes an ambient air quality standard for an air contaminant for which there is no corresponding federal standard; (2) a regulation that establishes an ambient air quality standard or emission standard that is more stringent than a corresponding federal standard; (3) a regulation that establishes an equivalent emission limitation for a hazardous air contaminant for which the federal administrator has not adopted a corresponding maximum achievable control technology standard; or (4) a regulation that regulates emissions from a source or facility or establishes an emission standard under the authority of AS [46.14.120](#)(e), [46.14.130](#)(a)(3)(B), or [46.14.130](#)(b)(4)(B).

(c) In preparation for peer review under AS [46.14.015](#) and before adopting a regulation described under (b) of this section, the department shall (1) find in writing that exposure profiles and either meteorological conditions or source characteristics in the state or in an area of the state reasonably require the ambient air quality standard, or emission standard to protect human health and welfare or the environment; this paragraph does not apply to a regulation under (b)(3) of this section; (2) find in writing that the proposed standard or emission limitation is technologically feasible; and (3) prepare a written analysis of the economic feasibility of the proposal.

(d) Before adopting a regulation described in (b)(2) of this section, the department shall find in writing that exposure profiles and either meteorological conditions or source characteristics are significantly different in the state or in an area of the state from those upon which the corresponding federal regulation is based.

Alaska Statutes § 46.14.010.

“Special Procedure For More Stringent Regulations. (a) Before the department adopts a regulation described under AS [46.14.010](#)(b), written findings under AS [46.14.010](#) (c) and (d) shall be made available by the department to the public at locations throughout the state that the department considers appropriate.

(b) Before the department adopts a regulation described in AS [46.14.010](#)(b), the department shall submit the findings described under (a) of this section, the studies on which the findings are based, and other related data for peer review to a minimum of three separate parties who are not employees of the department and who are determined by the commissioner to be technically qualified in the subject matter under review. The commissioner shall ensure that the peer review includes an analysis of the factors considered by the commissioner to support the standards proposed to be adopted and recommendations, if any, for additional research or investigation considered appropriate. Peer review reports shall be submitted to the commissioner within 45 days after the department submits a matter for peer review unless the commissioner determines that additional time is required.

(c) The department shall make available to the public at least 30 days before the public hearing required under AS [46.14.010](#) (a), at convenient locations, copies of the department's proposed regulation, the findings of the

<p>department describing the basis for adoption of the regulation, and the peer review reports, submitted under (b) of this section. ..." <i>Alaska Statutes § 46.14.015.</i></p>	
<p>Arizona</p> <p>"A. The department shall: (1) Formulate policies, plans and programs to implement this title to protect the environment. ..., (7) Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state, ...(11) Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title." <i>Arizona Revised Statutes § 49-104.</i></p> <p>"The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law." <i>Arizona Revised Statutes § 49-106.</i></p>	<p>N</p>
<p>Arkansas</p> <p>"It is the purpose of this subchapter to safeguard the air resources of the state by controlling or abating air pollution which exists when this subchapter takes effect and preventing new air pollution under a program which shall be consistent with the declaration of policy stated in § <u>8-4-301</u> and with this subchapter." <i>Arkansas Code § 8-4-302.</i></p> <p>"(a) The Arkansas Department of Environmental Quality or its successor shall have the power to: (1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state; ... (7) Administer and enforce all laws and regulations relating to pollution of the air; ... (10) Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution and requiring the adoption of remedial measures to prevent, control, or abate air pollution; ... and (12) Exercise all of the powers in the control of air pollution granted to the department for the control of water pollution under §§ <u>8-4-101</u> - <u>8-4-106</u> and <u>8-4-201</u> - <u>8-4-229</u>.</p> <p>(b) The Arkansas Pollution Control and Ecology Commission shall have the power to: (1)(A) Promulgate rules</p>	<p>Y – with exceptions. Procedure to justify never developed</p>

<p>and regulations for implementing the substantive statutes charged to the department for administration. (B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.” <i>Arkansas Code § 8-4-311.</i></p>	
<p>California</p> <p>“ Local and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources. The control of vehicular sources, except as otherwise provided in this division, shall be the responsibility of the State Air Resources Board. Except as otherwise provided in this division, including, but not limited to, Sections 41809, 41810, and 41904, local and regional authorities may establish stricter standards than those set by law or by the state board for nonvehicular sources. However, the state board shall, after holding public hearings as required in this division, undertake control activities in any area wherein it determines that the local or regional authority has failed to meet the responsibilities given to it by this division or by any other provision of law.” <i>California Health & Safety Code § 39002.</i></p> <p>“The State Air Resources Board is the state agency charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solution to air pollution, and to systematically attack the serious problem caused by motor vehicles, which is the major source of air pollution in many areas of the state.” <i>California Health & Safety Code § 39003.</i></p> <p>“(a) The state board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law. (b) The state board, by rules and regulations, may revise the definitions of terms set forth in Chapter 2 (commencing with Section 39010) of Part 1 in order to conform those definitions to federal laws and rules and regulations. ...” <i>California Health & Safety Code § 39601.</i></p> <p>“The state board is designated the air pollution control agency for all purposes set forth in federal law. The state board is designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act (42 U.S.C., Sec. 7401, et seq.) and, to this end, shall coordinate the activities of all districts necessary to comply with that act. Notwithstanding any other provision of this division, the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act.” <i>California Health & Safety Code § 39602.</i></p>	<p>N</p>

Colorado

“... the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section [25-7-102](#) and necessary for the proper implementation and administration of this article, including but not limited to: (a) (I) A comprehensive state implementation plan which will assure attainment and maintenance of national ambient air quality standards and which will prevent significant deterioration of air quality, all in conformity with the provisions of this article. The comprehensive plan shall meet all requirements of the federal act and shall be revised whenever necessary or appropriate. ...; (b) Emission control regulations in conformity with section [25-7-109](#); (c) A prevention of significant deterioration program in conformity with part 2 of this article and federal requirements; except that definitions used in the program shall not differ from any definitions pertaining to the prevention of significant deterioration program which appear in section 169 of the federal act or in federal regulations promulgated thereunder, and an attainment program in conformity with part 3 of this article.” **Colorado Revised Statutes § 25-7-105.**

“(1) To the extent that any provision of this article or any standard or regulation promulgated pursuant thereto is not required by Part C (prevention of significant deterioration), Part D (nonattainment), or Title V (minimum elements of a permit program) of the federal act, or is not required by section 111 of the federal act, or is not required for sources to participate in the early reduction program of section 112 of the federal act, or is not required for sources to be excluded as a major source under this article, or is otherwise more stringent than other requirements of the federal act, such provision, standard, or regulation is hereby declared to be adopted under powers reserved to the state of Colorado pursuant to section 116 of the federal act. Any such provision, standard, or regulation adopted exclusively under state authority shall not constitute part of the state implementation plan.” *Colorado Revised Statute § 25-7-105.1.*

“(1)(a) Except as provided in sections [25-7-130](#) and 25-7-131, as promptly as possible, the commission shall adopt, promulgate, and from time to time modify or repeal emission control regulations which require the use of effective practical air pollution controls: (I) For each significant source or category of significant sources of air pollutants; (II) For each type of facility, process, or activity which produces or might produce significant emissions of air pollutants.

...

(8) Notwithstanding any other provision of this section, the commission shall not regulate emissions from agricultural production such as farming, seasonal crop drying, animal feeding operations that are not housed commercial swine feeding operations as defined in section [25-8-501.1](#) (2) (b), and pesticide application; except that the commission shall regulate such emissions if they are "major stationary sources", as that term is defined in 42 U.S.C. sec. 7602 (j), or are required by Part C (prevention of significant deterioration), Part D (nonattainment), or

Y – with exceptions.
Some limits in state
law or regulations

Title V (minimum elements of a permit program), or are participating in the early reduction program of section 112 of the federal act, or is not required by section 111 of the federal act, or is not required for sources to be excluded as a major source under this article.” *Colorado Revised Statute § 25-7-109.*

“Required analysis of proposed air quality rules. (5) (a) Whenever the commission proposes any rule that exceeds the requirements of the federal act or differs from the federal act or rules thereunder, the commission shall make available in writing a copy of any such proposed rule and a detailed, footnoted explanation of the differences between the rule and the federal requirements.

(b) The written explanation required pursuant to paragraph (a) of this subsection (5) shall contain an explanation of the following information: (I) Any federal requirements that are applicable to this situation with a commentary on those requirements; (II) Whether the applicable federal requirements are performance-based or technology-based and whether there is any flexibility in those requirements, and if not, why not; (III) Whether the applicable federal requirements specifically address the issues that are of concern to Colorado and whether data or information that would reasonably reflect Colorado's concern and situation was considered in the federal process that established the federal requirements; (IV) Whether the proposed requirement will improve the ability of the regulated community to comply in a more cost-effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later; (V) Whether there is a timing issue which might justify changing the time frame for implementation of federal requirements; (VI) Whether the proposed requirement will assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth; (VII) Whether the proposed requirement establishes or maintains reasonable equity in the requirements for various sources; (VIII) Whether others would face increased costs if a more stringent rule is not enacted; (IX) Whether the proposed requirement includes procedural, reporting, or monitoring requirements that are different from applicable federal requirements and, if so, why and what the "compelling reason" is for different procedural, reporting, or monitoring requirements; (X) Whether demonstrated technology is available to comply with the proposed requirement; (XI) Whether the proposed requirement will contribute to the prevention of pollution or address a potential problem and represent a more cost-effective environmental gain; and (XII) Whether an alternative rule, including a no-action alternative, would address the required standard.” *Colorado Revised Statutes § 25-7-110.5.*

“Additional requirements for commission to act under section 25-7-110.5. In issuing any final rule intended to reduce air pollution, except for any rule that adopts by reference applicable federal rules, if the commission has no discretion under state law not to adopt the rules or to adopt any alternative rule, the commission shall make a determination that: (a) Any rule promulgated under section [25-7-110.5](#) is based on reasonably available, validated, reviewed, and sound scientific methodologies and that all validated, reviewed, and sound scientific methodologies and information made available by interested parties has been considered. Such review may include internal organizational review and not peer review. (b) Evidence in the record supports the finding that the rule shall result

in a demonstrable reduction in air pollution to be addressed by the rule unless such rule is administrative in nature; (c) On and after July 1, 1997, and in conformance with guidance from the general assembly to incorporate the recommendations of the task force established in section [25-7-110.5](#) (6), evidence in the record supports the finding that the rule shall bring about reductions in risks to human health or the environment or provide other benefits that will justify the cost to government, the regulated community, and to the public to implement and comply with the rule; (d) The commission shall choose an alternative that is the most cost-effective under the analysis required by section [25-7-110.5](#) (4), provides the regulated community flexibility, and which achieves the necessary reduction in air pollution. The commission may reject the most cost-effective alternative and shall provide findings of fact detailing why the most cost-effective alternative is unacceptable. (e) The selection of the regulatory alternative by the commission will maximize the air quality benefits of regulation pursuant to this article in the most cost-effective manner. For purposes of the required analyses under this section, prior to the completion of the rule-making required pursuant to section [25-7-110.5](#), no benefit (except for air pollution reductions) can be attributed to regulating a facility already operating in compliance with a permit issued pursuant to applicable law. ...” *Colorado Revised Statutes § 25-7-110.8.*

Connecticut

“The commissioner shall carry out the environmental policies of the state and shall have all powers necessary and convenient to faithfully discharge this duty.” *Conn. Gen. Stat. § 22a-5.* (The environmental policies of the state include the following: “to conserve, improve and protect its natural resources and environment and to control air, land and water pollution in order to enhance the health, safety and welfare of the people of the state.” *Con. Gen. Stat. § 22a-1*)

“**Duties of Commissioner of Environmental Protection.** The commissioner shall ... (4) adopt, amend, repeal and enforce regulations as provided in section 22a-174 and do any other act necessary to enforce the provisions of this chapter and section 14-164c;.... *Con. Gen. Stat. § 22a-171.*

“**Powers of the commissioner. Regulations. Fees. Exemptions. General permits. Appeal of commissioner’s action re permit applications.** (a) The commissioner, in the manner provided in subdivision (1) of section 22a-6, shall have the power to formulate, adopt, amend and repeal regulations to control and prohibit air pollution throughout the state or in such areas of the state as are affected thereby, which regulations shall be consistent with the federal Air Pollution Control Act and which qualify the state and its municipalities for available federal grants. Any person heard at the public hearing on any such regulation shall be given written notice of the determination of the commissioner. *Con. Gen. Stat. § 22a-174*

Y – with exceptions.
Some limits in state law or regulations

“Commissioner to establish environmental standards, regulations and fees, to make contracts and studies and to issue permits. Complaints. Hearings. Bonds. Notice of contested cases. ... (h) The commissioner may adopt regulations pertaining to activities for which the federal government has adopted standards or procedures. All provisions of such regulations which differ from the applicable federal standards or procedures shall be clearly distinguishable from such standards or procedures either on the face of the proposed regulation or through supplemental documentation accompanying the proposed regulation at the time of the public hearing on such regulation required under chapter 54. An explanation for all such provisions shall be included in the regulation-making record required under chapter 54. This subsection shall apply to any regulation for which a notice of intent to adopt is published on and after July 1, 1999.” *Conn. Gen. Stat. § 22a-6.*

Delaware

“Findings, policy and purpose. (a) Findings. -- The General Assembly hereby makes the following findings concerning the development, utilization and control of the land, water, underwater and air resources of the State: (1) The development, utilization and control of the land, water, underwater and air resources of the State are vital to the people in order to assure adequate supplies for domestic, industrial, power, agricultural, recreational and other beneficial uses; (2) The development and utilization of the land, water, underwater and air resources must be regulated to ensure that the land, water, underwater and air resources of the State are employed for beneficial uses and not wasted; (3) The regulation of the development and utilization of the land, water, underwater and air resources of the State is essential to protect beneficial uses and to assure adequate resources for the future; (4) The land, water, underwater and air resources of the State must be protected and conserved to assure continued availability for public recreational purposes and for the conservation of wildlife and aquatic life; (5) The land, water, underwater and air resources of the State must be protected from pollution in the interest of the health and safety of the public; (6) The land, water, underwater and air resources of the State can best be utilized, conserved and protected if utilization thereof is restricted to beneficial uses and controlled by a state agency responsible for proper development and utilization of the land, water, underwater and air resources of the State; ...” *Delaware Code §6001.*

“(a) The Secretary may adopt, amend, modify or repeal rules or regulations, or plans, after public hearing, to effectuate the policy and purposes of this chapter. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof. ... (c) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.” *Delaware Code, Title 7 § 6010.*

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<p>Florida</p> <p>“The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to: ... (1) Approve and promulgate current and long-range plans developed to provide for air and water quality control and pollution abatement. ... (7) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act. (8) Issue such orders as are necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings. (9) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time review and modify such program as necessary. ... (35) Exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act, 42 U.S.C. ss. 7401 et seq. The department shall implement the programs required under that act in conjunction with its other powers and duties. Nothing in this subsection shall be construed to repeal or supersede any of the department's existing rules.” <i>Florida Statutes, Title XXIX, § 403.061.</i></p> <p>“Rulemaking authority; listing of rules exceeding authority; repeal; challenge.– (1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.” <i>Florida Statutes, Title X, § 120.536.</i></p>	<p>Y – with exceptions. Limited by government policy.</p>
<p>Georgia</p> <p>“(b) In the performance of its duties, the Board of Natural Resources shall have and may exercise the power to: (1) Adopt, promulgate, revise, modify, amend, and repeal rules and regulations necessary to abate or control air pollution, or necessary to implement any of the provisions of this article or requirements of the federal act imposed on the state as an implementing authority, consistent with the declaration of public policy. Such requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the policy of this article; ...” <i>Georgia Code § 12-9-5.</i></p> <p>“It is declared to be the public policy of the State of Georgia to preserve, protect, and improve air quality and to</p>	<p>N</p>

<p>control emissions to prevent the significant deterioration of air quality and to attain and maintain ambient air quality standards so as to safeguard the public health, safety, and welfare consistent with providing for maximum employment and full industrial development of the state.” <i>Georgia Code § 12-9-2.</i></p>	
<p>Hawaii</p> <p>“Specific powers of the director. The director may: (1) Establish ambient air quality standards for the State as a whole or for any part thereof; (2) Establish and administer any permit program; (3) Establish by rule the control of open burning, fugitive dust, and visible emissions; (4) Establish by rule the control of vehicular smoke emission and require the installation, use, and proper operation and maintenance of air pollution control equipment for motor vehicles; ... (6) Establish by rule other specific areas for control of air pollution, thereby allowing for varying conditions; (7) Establish standards of performance or rules for existing, new, or modified stationary sources or adopt standards of performance for existing, new, or modified stationary sources as promulgated by the administrator; (8) Establish maximum achievable control technology standards or rules for the control of hazardous air pollutants from existing, new, or modified sources or adopt maximum achievable control technology as promulgated by the administrator; (9) Establish rules for the prevention of significant deterioration of air quality or adopt prevention of significant deterioration regulations as promulgated by the administrator; and (10) Establish rules allowing for environmental permit shields.” <i>Hawaii Revised Statutes 342B-12.</i></p>	<p>N</p>
<p>Idaho</p> <p>“State Policy on Environmental Protection. 1. It is hereby recognized by the legislature that the protection of the environment and the promotion of personal health are vital concerns and are therefore of great importance to the future welfare of this state. It is therefore declared to be the policy of the state to provide for the protection of the environment and the promotion of personal health and to thereby protect and promote the health, safety and general welfare of the people of this state.” <i>Idaho Statutes § 39-102.</i></p> <p>“Powers and Duties of the Director. The director shall have the following powers and duties ... (2) The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules as may be necessary to deal with problems related to water pollution, air pollution, solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of the law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to, the prevention, control or abatement of environmental pollution or</p>	<p>Y – limits in state law or regulation</p>

degradation including radionuclides and risks to public health related to any of the powers and duties described in this section. Any such rule may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.” *Idaho Statutes § 39-105.*

“Board – Composition – Officers –Compensation—Powers—Subpoena—Depositions—Review—Rules. . . .

(7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state. The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment of the state. *Idaho Statutes § 39-107.*

“Rules of the Department or Board. (1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.” *Idaho Statutes § 39-107D.*

Illinois

“Regulations. (A) The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe: (a) Ambient air quality standards specifying the maximum permissible short-term and long-term concentrations of various contaminants in the atmosphere; (b) Emission standards specifying the maximum amounts or concentrations of various contaminants that may be discharged into the atmosphere; ...” *415 ILCS 5/10.*

“Rulemaking. (a) The Board may adopt substantive regulations as described in this Act. Any such regulations may make different provisions as required by circumstances for different contaminant sources and for different geographical areas; may apply to sources outside this State causing, contributing to, or threatening environmental damage in Illinois; may make special provision for alert and abatement standards and procedures respecting occurrences or emergencies of pollution or on other short-term conditions constituting an acute danger to health or to the environment; and may include regulations specific to individual persons or sites. In

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<p>promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. The generality of this grant of authority shall only be limited by the specifications of particular classes of regulations elsewhere in this Act.” 415 ILCS 5/27.</p>	
<p>Indiana</p> <p>“Adoption or amendment of rules. Sec. 4. (a) The board shall adopt rules under IC 4-22-2 that are: (1) consistent with the general intent and purposes declared in IC 13-17-1 and section 1 of this chapter; and (2) necessary to the implementation of the federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the Clean Air Act Amendments of 1990 (P.L.101-549). ...” <i>Indiana Code § 13-17-3-4.</i></p> <p>“Purpose; air resource purity. Sec. 1. It is the intent and purpose of air pollution control laws to maintain the purity of the air resource of Indiana, which shall be consistent with protection of the public health and welfare and the public enjoyment of the air resource, physical property and other resources, flora and fauna, maximum employment, and full industrial development of Indiana. The air pollution control board and the department shall safeguard the air resource through the prevention, abatement, and control of air pollution by all practical and economically feasible methods.” <i>Indiana Code § 13-17-1-1.</i></p> <p>“Rules of Department or Board. (1) The legislature directs that any rule formulated and recommended by the department to the board which is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under chapter 52, title 67, Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government. ... (6) Nothing provided herein is intended to alter the scope or effect of sections 39-105(3)(g)(v), 39-118B, 39-3601, 39-4404, 39-6205, 39-7210 and 39-7404, Idaho Code, or any other provision of state law which limits or prohibits agency action or rulemaking that is broader in scope or more stringent than federal law or regulations.” <i>Indiana Code § 39-107D.</i></p> <p>“Relationship to Federal Law. The board may promulgate rules and regulations to ensure that the state of Idaho is in compliance with the provisions of the federal clean air act. To the extent that the federal clean air act sets forth or</p>	<p>N (but see text)</p>

<p>the United States environmental protection agency adopts or has adopted a specific standard, emission limitation or control technology requirement under the clean air act, a more stringent standard, emission limitation or control technology requirement promulgated by the board shall not become effective until specifically approved by statute.” <i>Indiana Code § 39-118B.</i></p>	
<p>Iowa</p> <p>“Powers and duties of the commission. The commission shall: ... 3. Adopt, modify, or repeal rules necessary to implement this chapter and chapter 459, subchapters I, II, III, IV, and VI, and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter and chapter 459, subchapters I, II, III, IV, and VI. Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.” <i>Iowa Code, Title XI § 455B.105.</i></p>	<p>Y – with exceptions. Some limits in state law or regulations</p>
<p>Kansas</p> <p>“Responsibility of secretary; administration. The responsibility for air quality conservation and control of air pollution is hereby placed with the secretary of health and environment. The secretary shall administer this act through the division of environment.” <i>Kansas Statute § 65-3003.</i></p> <p>“Powers of the secretary. The secretary shall have the power to: (a) Adopt, amend and repeal rules and regulations implementing and consistent with this act. ... (l) Establish ambient air quality standards for the state as a whole or for any part thereof.” <i>Kansas Statute § 65-3005.</i></p> <p>“Emission control requirements. (a) The secretary shall establish emission control requirements, and requirements for open burning (including appropriate prohibition thereof). Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the</p>	<p>N</p>

<p>purposes of this act and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement in force pursuant to this subsection shall constitute a violation of this act. ...</p> <p>(d) The secretary shall establish reasonable ambient air quality standards for the state as a whole, or any part thereof, and shall require the emission control requirements of any local program to be consistent with such standards in addition to meeting any other requirements pursuant to this section. “ <i>Kansas Statute § 65-3010.</i></p>	
<p>Kentucky</p> <p>“Powers and duties of commission. The Environmental Quality Commission shall have the power, duty and authority to: ... (6) Recommend adoption or rejection after a public hearing by a majority of its membership present and voting of any proposal by the cabinet to adopt, modify, or revoke: (a) Any comprehensive environment quality plan, program or policy proposed for adoption as a state plan or policy pertaining to an environmental management activity; or (b) Any rule or regulation pertaining to the prevention, abatement, and control of existing or threatened air or water pollution, disposal of waste, control of noise, or the use of air, land, or water resources, or strip mining and reclamation.” <i>Kentucky Revised Statutes § 224.01-110.</i></p> <p>“Powers and duties of Cabinet. In addition to any other powers and duties vested in it by law, the cabinet shall have the authority, power, and duty to: ... (25) Preserve existing clean air resources while ensuring economic growth by issuing regulations, which shall be no more stringent than federal requirements, setting maximum allowable increases from stationary sources over baseline concentrations of air contaminants to prevent significant deterioration in areas meeting the state and national ambient air quality standards.” <i>Kentucky Revised Statutes § 224.10-110.</i></p>	<p>Y – with exceptions. Some limits in state law or regulations</p>
<p>Louisiana</p> <p>“Air quality control; secretary of environmental quality; powers and duties. ... B. The secretary shall have the following powers and duties: (1) To adopt and promulgate rules and regulations consistent with applicable state and federal law and the general intent and purposes of this Chapter for the maintenance of air quality within the state of Louisiana. ...” <i>Louisiana Revised Statutes 30:2054.</i></p> <p>“Policy; purpose. The legislature finds and declares that the purity of the air in the environment is a matter of vital concern to the welfare of the people of the state and to promote an environment free from pollution that jeopardizes the health and welfare of the citizens of the state, consistent with sound policies for employment and industrial</p>	<p>N</p>

<p>development, it is necessary to establish an efficient method for the regulation and control of discharge of contaminants into the air resources of the state. The legislature further finds and declares the policy of the state of Louisiana to promote an environment free from noise that endangers the health or welfare of its people.” <i>Louisiana Revised Statutes § 30:2052.</i></p>	
<p>Maine</p> <p>“Establishment of Standards. The board may establish and amend regulations to implement ambient air quality standards and emission standards. These regulations shall be designed to achieve and maintain ambient air quality standards and emission standards within any region and prevent air pollution.” <i>38 Maine Revised Statutes § 585-A.</i></p> <p>“Establishment of emission standards. The board may establish and may amend standards, herein called “emission standards”, limiting and regulating in a just and equitable manner the type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designed to prevent air pollution and to achieve and maintain the ambient air quality standards within the region in which applicable.” <i>38 Maine Revised Statutes § 585.</i></p>	<p>N</p>
<p>Maryland</p> <p>“(a) The Department: (1) May adopt rules and regulations for the control of air pollution in this State, including testing, monitoring, recordkeeping, and reporting requirements; and (2) Shall adopt rules and regulations that establish standards and procedures to be followed whenever pollution of the air reaches an emergency condition.</p> <p>(b) In adopting any rule or regulation under this title, the Department shall consider, among other things: (1) The residential, commercial, or industrial nature of the area affected; (2) Zoning; (3) The nature and source of various kinds of air pollution; (4) The problems of any commercial or industrial establishment that may be affected by the rule or regulation; and (5) The environmental conditions, population density, and topography of any area that may be affected by the rule or regulation.</p> <p>(c) Any rule or regulation adopted under this title that relates to grain drying operations shall be adopted with the advice and consent of the State Department of Agriculture.” <i>Code of Maryland § 2-301.</i></p> <p>“(a) (1) Except as provided in this section, this title does not limit the power of a political subdivision to adopt ordinances, rules, or regulations that set emission standards or ambient air quality standards. (2) A political</p>	<p>N</p>

<p>subdivision may not adopt any ordinance, rule, or regulation that sets an emission standard or ambient air quality standard less stringent than the standards set by the Department under this title.</p> <p>(b) The governing body of any political subdivision may ask the Department to adopt rules and regulations that set more restrictive emission standards or ambient air quality standards in that political subdivision.” <i>Code of Maryland § 2-104.</i></p>	
<p>Massachusetts</p> <p>“Pollution or contamination of atmosphere; prevention; regulations; violation; enforcement. Section 142A. The department of environmental protection, referred to in this section and in sections one hundred and forty-two B through one hundred and forty-two M, inclusive, as the department may from time to time adopt regulations, pursuant to this section and sections one hundred and forty-two B through one hundred and forty-two M, inclusive, to prevent pollution or contamination of the atmosphere. ...” <i>Massachusetts General Laws, Chap. 111 § 142A.</i></p> <p>“Metropolitan air pollution control district; establishment; composition; powers of environmental protection department. Section 142B. There is hereby established a metropolitan air pollution control district, to consist of the territory and waters comprised within the cities and towns of Arlington, Belmont, Boston, Braintree, Brookline, Cambridge, Canton, Chelsea, Dedham, Everett, Lynn, Malden, Medford, Melrose, Milton, Needham, Newton, Peabody, Quincy, Revere, Saugus, Somerville, Stoneham, Wakefield, Waltham, Watertown, Weymouth, Winchester, Winthrop, and Woburn, and such other cities and towns as may, after application for admission to the said district, be admitted thereto by the department; provided, that said district shall at all times be composed of contiguous territory. The department shall control the pollution of the atmosphere within said district. The department may from time to time, after a public hearing, prescribe and establish, amend or repeal, rules and regulations to prevent pollution or undue contamination of the atmosphere within said district.” <i>Massachusetts General Laws, Chapter 111 § 142B.</i></p> <p>“Air pollution control districts; standards and plans for implementation; establishment; periodic review; amendment; compliance with minimum federal standards. Section 142D. The department, with the approval of the governor, may establish air pollution control districts compatible with such air quality control regions as may be designated by the secretary of the federal department of health, education and welfare under the provisions of the Air Quality Act of 1967, or any additions or amendments thereto. The department, with the approval of the governor, may add to or remove from air pollution control districts such cities and towns, and may establish or abolish such other air pollution control districts, as it may deem advisable and necessary to effect air pollution</p>	<p>N</p>

<p>control in the commonwealth. The department may adopt, and from time to time amend, after public hearings, ambient air quality standards applicable to said districts and to other portions of the commonwealth, and shall adopt a plan for the implementation, maintenance and attainment of such standards. The powers, duties and rights of the department in the exercise of air pollution control in districts established under this section and the manner in which funds shall be made available to it shall be as provided in section one hundred and forty-two B.” <i>Massachusetts General Laws, Chapter 111 § 142D.</i></p>	
<p>Michigan</p> <p>“Powers of department. The department may do 1 or more of the following: (a) Promulgate rules to establish standards for ambient air quality and for emissions. (b) Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act. (c) In accordance with this part and rules promulgated under this part, deny, terminate, modify, or revoke and reissue permits for cause. ... (f) Make, modify, or cancel orders that require, in accordance with this part, the control of air pollution. ... (l) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution. ... (u) Do such other things as the department considers necessary, proper, or desirable to enforce this part, a rule promulgated under this part, or any determination, permit, or order issued under this part, or the clean air act.” <i>Michigan Compiled Laws § 324.5503.</i></p> <p>“Rules. Sec. 5512. (1) The department shall promulgate rules for purposes of doing all of the following: (a) Controlling or prohibiting air pollution. (b) Complying with the clean air act. (c) Controlling any mode of transportation that is capable of causing or contributing to air pollution. ... (f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air standards. (g) Establishing suitable emission standards consistent with ambient air quality standards established by the federal government and factors including, but not limited to, conditions of the terrain, wind velocities and directions, land usage of the region, and the anticipated characteristics and quantities of potential air pollution sources. This part does not prohibit the department from denying or revoking a permit to operate a source, process, or process equipment that would adversely affect human health or other conditions important to the life of the community. ...” <i>Michigan Compiled Laws § 324.5512.</i></p>	<p>N</p>
<p>Minnesota</p> <p>“Powers and duties. Subd 1. Generally. In addition to any powers or duties otherwise prescribed by law and without limiting the same, the pollution control agency shall have the powers and duties hereinafter specified</p>	<p>Y – with exceptions.</p>

<p>Subd. 2. Adoption of standards. The pollution control agency shall improve air quality by promoting, in the most practicable way possible, the use of energy sources and waste disposal methods which produce or emit the least air contaminants consistent with the agency's overall goal of reducing all forms of pollution. The agency shall also adopt standards of air quality, including maximum allowable standards of emission of air contaminants from motor vehicles, recognizing that due to variable factors, no single standard of purity of air is applicable to all areas of the state. In adopting standards the pollution control agency shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, including others which it may deem proper, as existing physical conditions, zoning classifications, topography, prevailing wind directions and velocities, and the fact that a standard of air quality which may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state. Such standards of air quality shall be premised upon scientific knowledge of causes as well as effects based on technically substantiated criteria and commonly accepted practices. No local government unit shall set standards of air quality which are more stringent than those set by the pollution control agency. ...</p> <p>Subd. 4. Rules and standards. Pursuant and subject to the provisions of chapter 14, and the provisions hereof, the pollution control agency may adopt, amend and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution. Any such rule or standard may be of general application throughout the state, or may be limited as to times, places, circumstances, or conditions in order to make due allowance for variations therein. Without limitation, rules or standards may relate to sources or emissions of air contamination or air pollution, to the quality or composition of such emissions, or to the quality of or composition of the ambient air or outdoor atmosphere or to any other matter relevant to the prevention, abatement, or control of air pollution. <i>Minnesota Statutes § 116.07.</i></p>	<p>Limited by government policy</p>
<p>Mississippi</p> <p>“Commission on Environmental Quality; powers and duties. Effective July 1, 1979, the commission shall have the following powers and duties: ... (b) to adopt, modify, repeal, and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under any and all statutes within the commission’s jurisdiction, and as the commission may deem necessary to prevent, control and abate existing or potential pollution; ...” <i>Mississippi Code § 49-2-9.</i></p> <p>“Powers and duties. The commission shall have and may exercise the following powers and duties: ... (h) to</p>	<p>Y – with exceptions. Some limits in state law or regulations</p>

<p>adopt, modify or repeal and promulgate ambient air and water quality standards and emissions standards for the state under such conditions as the commission may prescribe for the prevention, control and abatement of pollution; (i) to adopt, modify, repeal, and promulgate, after due notice and hearing, and , where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the commission under Sections 49-17-1 through 49-17-47, and as the commission may deem necessary to prevent, control and abate existing or potential pollution; ...” <i>Mississippi Code § 49-17-17.</i></p>	
<p>Missouri</p> <p>“1. In addition to any other powers vested in it by law the commission shall have the following powers: (1) Adopt, promulgate, amend and repeal rules and regulations consistent with the general intent and purposes of sections 643.010 to 643.190, chapter 536, RSMo, and Titles V and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq., including but not limited to: (a) Regulation of use of equipment known to be a source of air contamination; (b) Establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source; and (c) Regulations necessary to enforce the provisions of Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671, et seq., regarding any Class I or Class II substances as defined therein; ...” <i>Missouri Revised Statutes § 643.050.</i></p> <p>“The discharge into the ambient air of air contaminants so as to cause or contribute to air pollution is contrary to the public policy of Missouri and in violation of this chapter. It is the intent and purpose of this chapter to maintain purity of the air resources of the state to protect the health, general welfare and physical property of the people, maximum employment and the full industrial development of the state. The commission shall seek the accomplishment of this objective through the prevention, abatement and control of air pollution by all practical and economically feasible methods.” <i>Missouri Revised Statutes § 643.030.</i></p> <p>“Commission may adopt rules for compliance with federal law --suspension, reinstatement--exemption, limitations. 1. Other provisions of law notwithstanding, the Missouri air conservation commission shall have the authority to promulgate rules and regulations, pursuant to chapter 536, RSMo, to establish standards and guidelines to ensure that the state of Missouri is in compliance with the provisions of the federal Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.). The standards and guidelines so established shall not be any stricter than those required under the provisions of the federal Clean Air Act, as amended; nor shall those standards and guidelines be enforced in any area of the state prior to the time required by the federal Clean Air Act, as amended. The restrictions of this section shall not apply to the parts of a state implementation plan developed by the commission to bring a nonattainment area into compliance and to maintain compliance when needed to have a</p>	<p>Y- with exceptions. Limits in state law or regulations</p>

<p>United States Environmental Protection Agency approved state implementation plan. The determination of which parts of a state implementation plan are not subject to the restrictions of this section shall be based upon specific findings of fact by the air conservation commission as to the rules, regulations and criteria that are needed to have a United States Environmental Protection Agency approved plan.” <i>Missouri Revised Statutes § 643.055.</i></p>	
<p>Montana</p> <p>“Powers of board. The board shall, subject to the provisions of 75-2-207: (1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant thereto; ...” <i>Montana Code § 75-2-111.</i></p> <p>“State regulations no more stringent than federal regulations or guidelines -- exceptions -- procedure. (1) After April 14, 1995, except as provided in subsections (2) and (3) or unless required by state law, the board or department may not adopt a rule to implement this chapter that is more stringent than the comparable federal regulations or guidelines that address the same circumstances. The board or department may incorporate by reference comparable federal regulations or guidelines.</p> <p>(2) (a) The board or department may adopt a rule to implement this chapter that is more stringent than comparable federal regulations or guidelines only if: (i) a public hearing is held; (ii) public comment is allowed; and (iii) the board or the department makes a written finding after the public hearing and comment period that is based on evidence in the record that the proposed standard or requirement: (A) protects public health or the environment; (B) can mitigate harm to the public health or the environment; and (C) is achievable with current technology.</p> <p>(b) The written finding required under subsection (2)(a)(iii) must reference information and peer-reviewed scientific studies contained in the record that form the basis for the board's or the department's conclusion. The written finding must also include information from the hearing record regarding costs to the regulated community that are directly attributable to the proposed standard or requirement.</p> <p>(c) (i) A person or entity affected by a rule of the board or department adopted after January 1, 1990, and before April 14, 1995, that the person or entity believes is more stringent than comparable federal regulations or guidelines may petition the board or department to review the rule.</p> <p>(ii) If the board or department determines that the rule is more stringent than comparable federal regulations or guidelines, the board or department shall either revise the rule to conform to the federal regulations or guidelines or follow the process provided in subsections (2)(a) and (2)(b) within a reasonable period of time, not to exceed 6 months after receiving the petition.</p> <p>(iii) A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The board or department may charge a petition filing fee in an amount not to exceed \$250.</p> <p>(iv) A person may also petition the board or department for a rule review under subsection (2)(a) if the board or</p>	<p>Y – with exceptions. Limits in state law or regulations</p>

department adopts a rule after January 1, 1990, in an area in which no federal regulations or guidelines existed and the federal government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted board or department rule.

(3) This section does not apply to a rule adopted under the emergency rulemaking provisions of [2-4-303\(1\)](#).”
Montana Code 75-2-207.

Nebraska

“Department; declaration of legislative purpose. Whereas the water, land, and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be: (1) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses; (2) To achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and enforce uniformly the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water, and land; (3) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act; and (4) To protect human health through environmental enforcement.” *Nebraska Statutes § 81-1501.*

“Department; powers; duties. The department shall have and may exercise the following powers and duties: (1) To exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts;... (4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided; ... (28) To enforce, when it is not feasible to prescribe or enforce any emission standard for control of air pollutants, the use of a design, equipment, a work practice, an operational standard, or a combination thereof, adequate to protect the public health from such

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pollutant or pollutants with an ample margin of safety; ..." *Nebraska Statutes § 81-1504.*

Council; rules and regulations; standards of air, land, and water quality.

(1) In order to carry out the purposes of the Environmental Protection Act and the Integrated Solid Waste Management Act, the council shall adopt and promulgate rules and regulations which shall set standards of air, water, and land quality to be applicable to the air, waters, and land of this state or portions thereof. Such standards of quality shall be such as to protect the public health and welfare. The council shall classify air, water, and land contaminant sources according to levels and types of discharges, emissions, and other characteristics which relate to air, water, and land pollution and may require reporting for any such class or classes. Such classifications and standards made pursuant to this section may be made for application to the state as a whole or to any designated area of the state and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Such standards and classifications may be amended as determined necessary by the council. . . . (12) The council shall adopt and promulgate rules and regulations for air pollution control which shall include: . . . (g) Standards for air quality that may be established based upon protection of public health and welfare, emission limitations established by the United States Environmental Protection Agency, and maximum achievable control technology standards for sources of toxic air pollutants. . . . (m) Limitations on emissions from process operations, fuel-burning equipment, and incinerator emissions and such other restrictions on emissions as are necessary to protect the public health and welfare; (n) Time schedules for compliance; (o) Requirements for owner or operator testing and monitoring of emissions; (p) Control technology requirements when it is not feasible to prescribe or enforce an emission standard; and (q) Procedures and definitions necessary to carry out payment of the annual emission fee set in section 81-1505.04. *Nebraska Statutes § 81-1505.*

Nevada

"Powers of commission. The commission may: 1. Subject to the provisions of [NRS 445B.215](#), adopt regulations consistent with the general intent and purposes of [NRS 445B.100](#) to [445B.640](#), inclusive, to prevent, abate and control air pollution. . . . " *Nevada Revised Statutes § 445B.210.*

"Declaration of public policy. 1. It is the public policy of the State of Nevada and the purpose of NRS 445B.100 to 445B.640, inclusive, to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the state." *Nevada Revised Statutes § 445B-100.*

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<p>New Hampshire</p> <p>“Rulemaking Authority; Subpoena Power. – I. The commissioner shall adopt rules under RSA 541-A, relative to:</p> <ul style="list-style-type: none"> (a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution. (b) Primary and secondary ambient air quality standards. (c) Procedures to meet air pollution emergencies, as authorized by RSA 125-C:9. (d) The establishment and operation of a statewide permit system, as authorized by RSA 125-C:6, XIV, RSA 125-C:11, I and RSA 125-C:11, I-a. (e) Devices, in addition to those devices defined under RSA 125-C:2, subject to the permit requirements of RSA 125-C:11, as authorized by RSA 125-C:11, II. (f) The exemption of certain devices and non-Title V sources from the permit requirements of RSA 125-C:11, I and the conformance of exempted devices to established standards, as authorized by RSA 125-C:11, I. (g) The forms and information required on applications for temporary and permanent permits required under RSA 125-C:11, as authorized by RSA 125-C:12, I. (h) Notification of and public hearing on permit applications, including exemptions from those requirements, as authorized by RSA 125-C:12, II. (i) Fees for permit application and review, as authorized by RSA 125-C:12, IV. (j) Procedures for permit application review, as authorized by RSA 125-C:11, IV, and criteria for permit denial, suspension or revocation, as authorized by RSA 125-C:13. (k) Procedures for air testing and monitoring and recordkeeping, as authorized by RSA 125-C:6, XI. (l) Procedures for receiving violation complaints and for rules enforcement, as authorized by RSA 125-C:15, I. (m) Procedures for granting variances, as authorized by RSA 125-C:16. (n) The manufacture, use, or sale of consumer products for purposes of implementing RSA 485:16-c. ...” <i>New Hampshire Revised Statutes § 125-C:4.</i> 	<p>N</p>
<p>New Jersey</p> <p>“Promulgation of codes, rules or regulations. a. The department shall have power to formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution throughout the State or in such territories of the State as shall be affected thereby, except as provided in subsection b. of this section;</p> <p>b. Unless otherwise required by federal law, rule or regulation, no code, regulation, rule or standard may be</p>	<p>Y – with exceptions. Limits in state law or regulations</p>

adopted by the department that diminishes the efficacy of a hospital or medical disinfectant in killing or inactivating agents of infectious diseases, including, but not limited to, restrictions on the volatile organic compound content or emissions caused by the use of such products. No federal requirement to reduce volatile organic compound content or emissions in general may be construed to permit the department to regulate the volatile organic compounds found in, or released in the use of, a hospital or medical disinfectant, unless the federal law, rule or regulation establishing the federal requirement specifically requires the reduction of volatile organic compounds found in, or released in the use of, hospital or medical disinfectants.” *New Jersey Permanent Statutes § 26:2C-8.*

“Rules and Regulations; consistent with federal standards. The department shall adopt, pursuant to the “Administrative Procedure Act,” rules and regulations implementing the following mandated air pollution control measures identified in the federal Clean Air Act and consistent with any rules, regulations, or guidelines that may be promulgated therefor by the United States Environmental Protection Agency: a. Enhanced vehicle inspection and maintenance program; b. Correction of reasonably available control technology rules for volatile organic compounds; c. Reasonably available control technology rules for volatile organic compounds; d. Reasonably available control technology requirements for oxides of nitrogen; e. New source review regulations for volatile organic compounds, oxides of nitrogen, and carbon monoxide; f. Criteria and procedures for determining conformity between the State implementation plan and transportation plans; and g. Use in ozone nonattainment areas of federal reformulated gasoline that meets the requirements of subsection (k) of 42 U.S.C. § 7545 for the sale and use in states other than the State of California.” *New Jersey Permanent Statutes § 26:2C-8.11.*

New Mexico

“Duties and powers; environmental improvement board; local board. A. The environmental improvement board or the local board shall prevent or abate air pollution.

B. The environmental improvement board or the local board shall: (1) adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act to attain and maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within the geographic area of the environmental improvement board’s jurisdiction or the local board’s jurisdiction, or any part thereof; and (2) adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the geographic area of the environmental improvement board’s jurisdiction or the local board’s jurisdiction, or any part thereof.

C. Regulations adopted by the environmental improvement board or the local board may: **(1)** Include regulations to protect visibility in mandatory class I areas to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas; provided that such regulations: (a) shall be no more stringent

Y – with exceptions.
Limits in state law or regulations

than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and (b) shall be applicable only to sources subject to such regulation pursuant to the federal act; **(2)** prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in Paragraph (3) of this subsection: (a) shall be no more stringent than but at least as stringent as required by federal standards of performance; and (b) shall be applicable only to sources subject to such federal standards of performance; **(3)** include regulations governing emissions from solid waste incinerators that shall be at least as stringent as, and may be more stringent than, any applicable federal emission limitations; ... *New Mexico Statutes § 74-2-5.*

New York

“Powers and duties. 1. Consistent with the policy of the state as it is declared in section 19-0103, the department shall have power to: a. Formulate, adopt and promulgate, amend and repeal codes and rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the state as shall or may be affected by air pollution and to include in any such codes, rules or regulations a general provision for controlling air contamination including but not limited to a requirement that permits to construct and certificates to operate be obtained from the department, provided, however, that in exercising the provisions of this subdivision the department shall conform with the provisions of section 19-0303. b. Include in any such codes and rules and regulations provisions establishing areas of the state and prescribing for such areas (1) the degree of air pollution or air contamination that may be permitted therein, (2) the extent to which air contaminants may be emitted to the air by any air contamination source, (3) standards for the composition of fuels offered for sale or use of fuels or energy sources in any type or class of air contamination source where the department finds that air contaminants from such type or class or source will probably otherwise be discharged in contravention of applicable emission standards or air quality standards, and (4) requirements and standards for the approval of plans or specifications for air cleaning installations.” *New York Consolidated Laws § 19-0301.*

“Codes, rules and regulations.... 3. In exercising the power conferred upon it by section 19-0301 to formulate, adopt and promulgate, and to amend and repeal, codes and rules and regulations for preventing, controlling or prohibiting air pollution, the department shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less air pollution or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, among others found by it to be proper and just, as existing physical conditions, zoning classifications, topography and prevailing wind directions and velocities and also the fact that a code, rule or

Y – with exceptions.
Limits in state law or regulations

<p>regulation and the degree of conformance therewith which may be proper as to an essentially residential area of the state may not be proper as to a highly developed industrial area of the state.</p> <p>4. In adopting any code, rule or regulation which contains a requirement that is more stringent than the Act or regulations issued pursuant to the Act by the United States environmental protection agency, the commissioner shall, in addition to the provisions of section two hundred two-a of the state administrative procedure act, include in the regulatory impact statement: (a) a detailed explanation of the reason or reasons that justify exceeding federal minimum requirements, including: (i) satisfying any requirement of the Act as it relates to New York state, including any requirement for demonstrating attainment or maintenance of ambient air quality standards or meeting reasonable further progress pursuant to Title I of the Act; (ii) preventing an assessment or imposition of sanctions, or the imposition of a federal implementation plan, pursuant to the Act; (iii) complying with a final decree of a court; or (iv) protecting public health or the environment; (b) an evaluation of the cost-effectiveness of the proposed code, rule or regulation, in comparison with the cost-effectiveness of reasonably available alternatives; and (c) a review of the reasonably available alternative measures considered by the commissioner and an explanation of the reasons for rejecting such alternatives. Any code, rule or regulation to which this subdivision is applicable shall be subject to the approval of the environmental board pursuant to subdivision 2 of section 5-0107 of this chapter.” <i>New York Consolidated Laws § 19-0303.</i></p>	
<p>North Carolina</p> <p>“General powers of Commission and Department; auxiliary powers. (a)Additional Powers. - In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power: (1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter....” <i>North Carolina General Statutes § 143-215.3.</i></p> <p>“Air quality standards and classifications. (a)Duty to Adopt Plans, Standards, etc. - The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21: (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State. (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State. (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively. ... (5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. This</p>	<p>N</p>

<p>subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition). ...” <i>North Carolina General Statutes § 143-215.107.</i></p>	
<p>North Dakota</p> <p>“Power and duties of the department. The department shall: ... 8. Formulate and promulgate emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards. ... 12. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the Federal Clean Air Act, as amended, and the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. Such rules may include any and all enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives such as fees, marketable permits, and auctions of emissions rights as provided by the Act. The department shall develop and implement such federal programs if the department determines there is a benefit to the state. ... After consultation with the advisory council, the department is empowered to adopt, amend, and repeal rules and regulations implementing and consistent with this chapter.” <i>North Dakota Code 23-25-03.</i></p> <p>“Sulfur dioxide ambient air quality standards more strict than federal standards prohibited. The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. ...” <i>North Dakota Code § 23-25-03.2.</i></p> <p>“Requirements for adoption of air quality rules more strict than federal standards. 1. Notwithstanding any other provision of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section. ...” <i>North Dakota Code § 23-25-03.3.</i></p>	<p>Y – with exceptions. Limits in state law or regulations</p>

<p>Ohio</p> <p>“Powers of director of environmental protection. The director of environmental protection may do any of the following: ... (D) Adopt, modify, and rescind rules prescribing ambient air quality standards for the state as a whole or for various areas of the state that are consistent with and no more stringent than the national ambient air quality standards in effect under the federal Clean Air Act; (E) Adopt, modify, and rescind rules for the prevention, control, and abatement of air pollution, including rules prescribing for the state as a whole or for various areas of the state emission standards for air contaminants and other necessary rules for the purpose of achieving and maintaining compliance with ambient air quality standards in all areas within the state as expeditiously as practicable, but not later than any deadlines applicable under the federal Clean Air Act; rules for the prevention or control of the emission of hazardous or toxic air contaminants; rules prescribing fugitive dust limitations and standards that are related, on an areawide basis, to attainment and maintenance of ambient air quality standards; rules prescribing shade, density, or opacity limitations and standards for emissions, provided that with regard to air contaminant sources for which there are particulate matter emission standards in addition to a shade, density, or opacity rule, upon demonstration by such a source of compliance with those other standards, the shade, density, or opacity rule shall provide for establishment of a shade, density, or opacity limitation for that source that does not require the source to reduce emissions below the level specified by those other standards; rules for the prevent or control of odors and air pollution nuisances; rules that prevent significant deterioration of air quality to the extent required by the federal Clean Air Act; rules for the protection of visibility as required by the federal Clean Air Act; and rules prescribing open burning limitations and standards.” <i>Ohio Revised Code §3704.03.</i></p>	<p>Y – with exceptions. Limits in state law or regulations</p>
<p>Oklahoma</p> <p>“The Board is hereby authorized, after public rulemaking hearing and approval by the Council, to: 1. Promulgate, amend or repeal rules for the prevention, control and abatement of air pollution and for establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere; and 2. Promulgate such additional rules including but not limited to permit fees, as it deems necessary to protect the health, safety and welfare of the public and fulfill the intent and purpose of these provisions.” <i>Oklahoma Statutes § 2-5-106.</i></p> <p>“It is the purpose of the Oklahoma Clean Air Act to provide the means to achieve and maintain atmospheric purity necessary for the protection and enjoyment of human, plant or animal life and property in this state consistent with and limited by generally accepted social standards and requirements, desired employment and industrial development, area conditions, and the availability of economic and feasible controls.” <i>Oklahoma Statutes § 2-5-102.</i></p>	<p>Y – with exceptions. Limits in state law or regulations</p>

<p>“Implementation and enforcement of federal emission standards – Oil and gas well and equipment emissions. A. The Department shall have the authority to establish a program for the implementation and enforcement of the federal emission standards and other requirements under Section 112 of the federal Clean Air Act for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under Section 112(r) of the Federal Clean Air Act. 1. Except as otherwise provided by paragraph 2 of this subsection, to assure that such program shall be consistent with, and not more stringent than, federal requirements: a. any rule recommended by the Council and promulgated by the Board regarding hazardous air pollutants and regulated substances shall only be by adoption by reference of final federal rules, and b. shall include the federal early reduction program under Section 112(l)(5) of the Federal Clean Air Act. 2. The Board may promulgate, pursuant to recommendation by the Council, rules which establish emission limitations for hazardous air pollutants which are more stringent than the applicable federal standards, upon a determination by the Council that more stringent standards are necessary to protect the public health or the environment.</p> <p>B. The Department shall also have the authority to establish a separate and distinct program only for the control of the emission of those toxic air contaminants not otherwise regulated by a final emission standard under Section 112(d) of the Federal Clean Air Act. ...” <i>Oklahoma Statutes § 27A-2-5-114.</i></p>	
<p>Oregon</p> <p>“Functions of commission. It is the function of the Environmental Quality Commission to establish the policies for the operation of the Department of Environmental Quality in a manner consistent with the policies and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. In addition, the commission shall perform any other duty vested in it by law.” <i>Oregon Revised Statutes § 468.015.</i></p> <p>“Rules and standards. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.” <i>Oregon Revised Statutes § 468.020.</i></p> <p>“Policy. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon: (a) To restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state. (b) To provide for a coordinated statewide program of air quality control and to allocate between the state and the units of local government responsibility for such control. (c) To facilitate cooperation among units of local government in establishing and supporting air quality control programs. (2) The program for the control of air pollution in this state shall be</p>	<p>Y – with exceptions. Limits in state law or regulations</p>

undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned.” *Oregon Revised Statutes § 468A.010*.

“Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless: (1) There is specific statutory direction to the agency that authorizes the adoption of the rule; (2) A federal waiver has been granted that authorizes the adoption of the rule; (3) Local or special conditions exist in this state that warrant a different rule; (4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements; (5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or (6) There is no corresponding federal regulation.” *Oregon Revised Statutes § 183.332*.

Pennsylvania

“Environmental Quality Board. (a) The board shall have the power and its duty shall be to – (1) Adopt rules and regulations, for the prevention, control, reduction and abatement of air pollution, applicable throughout the Commonwealth or to such parts or regions or subregions thereof specifically designated in such regulation which shall be applicable to all air contamination sources regardless of whether such source is required to be under permit by this act. Such rules and regulations may establish maximum allowable emission rates of air contaminants from such sources, prohibit or regulate the combustion of certain fuels, prohibit or regulate open burning, prohibit or regulate any process or source or class of processes or sources, require the installation of specified control devices or equipment, or designate the control efficiency of air pollution control devices or equipment require in specified processes or sources or classes of processes or sources. ... (5) Adopt rule and regulations for the protection of public health and safety for periods when the accumulation of air contaminants in any area is attainment or has attained levels which, if sustained or exceeded, could lead to an acute threat to the health of the public. ... (8) Adopt rules and regulations to implement the provisions of the Clean Air Act. The rules and regulations adopted to implement the provisions of the Clean Air Act shall be consistent with the requirements of the Clean Air Act and the regulations adopted thereunder.” *Pennsylvania Statutes § 4005*.

Agricultural regulations prohibited. (a) Except as may be required by the Clean Air Act or the regulations promulgated under the Clean Air Act, this act shall not apply to the production of agricultural commodities and the Environmental Quality Board shall not have the power nor the authority to adopt rules and regulations relating to air contaminants and air pollution arising from the production of agricultural commodities. *Pennsylvania Statutes §*

Y – with exceptions.
Limits in state law or
regulations

4004.1.	
<p>Rhode Island</p> <p>“Powers and duties of the director. – In addition to the other powers and duties granted in this chapter, the director shall have and may exercise the following powers and duties: ... (12) To make, issue, and amend rules and regulations consistent with this chapter for the prevention, control, abatement, and limitation of air pollution, and the enforcement of orders issued under this chapter. Those rules and regulations for the control of pollution need not be uniform throughout the state. The director may prohibit emissions, discharges and/or releases and may require specific control technology. In addition, the director may regulate the emission characteristics of all fuels used by stationary and mobile sources of air contaminants, provided, the specific control technology and emission characteristics of fuels shall not be more stringent than the mandatory standards established by federal law or regulation, unless it can be shown that the control technology and emission characteristics of fuels are needed for the attainment or maintenance of air quality standards. Variations of the standards may be based on considerations of population density, meteorological conditions, contaminant emissions, air quality, land development plans, and any other factors that may be relevant to the protection of the air resources of the state; ...” <i>Rhode Island General Laws § 23-23-5.</i></p>	<p>Y – with exceptions. Limits in state law or regulations</p>
<p>South Carolina</p> <p>“Promulgation of regulations; approval of alternatives. The Department shall promulgate regulations to implement this chapter to govern the procedure of the Department with respect to meetings, hearings, filing of reports, the issuance of permits and all other matters relating to procedure. The regulations for preventing contamination of the air may not specify any particular method to be used to reduce undesirable levels, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment. Except where the Department determines that it is not feasible to prescribe or enforce an emission standard or standard of performance, it may, by regulation, specify equipment, operational practice, or emission control method, or combination thereof. The Department may grant approval for alternate equipment, operational practice, or emission control method, or combination thereof, where the owner or operator of a source can demonstrate to the Department that such alternative is substantially equivalent to that specified. ... 24) In addition to the powers and duties enumerated in this section, the director shall have all appropriate power to adopt rules, regulations, procedures, programs, and standards as mandated by the authorization of the federal Clean Air Act, 42 U.S.C. § 7401 et seq.” <i>South Carolina Code of Laws § 48-1-30.</i></p> <p>“Local air pollution control programs. The governing body of any county is hereby authorized to establish,</p>	<p>Y (reason not given)</p>

<p>administer and enforce a local air pollution control program, subject to the approval of the Department. Such programs shall be formulated in accordance with standards and procedures adopted by the Department, and shall be subject to periodic review by the Department, which shall have the power to invalidate such programs if found to be unsatisfactory. County pollution control authorities, when constituted under this section, are hereby authorized to exercise in the geographic area involved all of the powers specified in this chapter, including the authority to adopt rules, regulations and procedures for the control of air pollution.” <i>South Carolina Code of Laws § 48-1-310.</i></p>	
<p>South Dakota</p> <p>“It is hereby declared to be the public policy of the state to achieve and maintain reasonable levels of air quality which will protect human health and safety, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state and, to the greatest degree practicable, facilitate the enjoyment of the natural attractions of the state. It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality. To these ends it is the purpose of this chapter to provide for a coordinated state-wide program of air pollution prevention, abatement and control, for an appropriate distribution of responsibilities among the state and local units of government, and to 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.” <i>South Dakota Codified Laws § 34A-1-1.</i></p> <p>“Promulgation of rules -- Purpose -- Violation. The Board of Minerals and Environment may promulgate rules pursuant to chapter 1-26: (1) To establish ambient air quality standards; (2) To specify kind and composition of fuel sold, stored, or used; (3) To establish requirements for open burning; (4) To require records and maintenance of records, reports, install, use, and maintain monitoring equipment; (5) To establish methods including sampling of emissions for air pollution sources; (6) To establish requirements for methods and installation of machines or devices to prevent or significantly reduce air emissions; (7) To establish procedures for attainment and maintenance of ambient air quality standards; (8) To monitor ambient air quality; (9) To establish procedures for variances and renewal of variances; and (10) To establish air quality standards, requirements and procedures related to incinerators for municipal solid waste. A violation of the rules promulgated pursuant to this section is subject to § 34A-1-39.” <i>South Dakota Codified Laws § 34A-1-6.</i></p> <p>“Municipal and county programs approved by board -- Application to state facilities. Each municipality and each county may with the approval of the Board of Minerals and Environment establish and thereafter administer programs within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and regulations issued</p>	<p>Y – Limited by state law or regulation</p>

thereunder, or, upon prior review and approval by the board, less restrictive requirements. The air pollution control jurisdiction authorized pursuant to this section shall apply to state facilities located within the boundaries of the municipality or county in the event the municipality or county has been found to be in violation of National Ambient Air Quality Standards.” *South Dakota Codified Laws § 34A-1-36.*

Tennessee

“Powers and duties of Board – Notification of vacancy - Termination due to vacancy. (a)(1) The board has the power and duty to: (A) Promulgate rules and regulations to effect the intent and purpose of this part, pursuant to the provision of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Such rules and regulations may include, but are not necessarily limited to, those defining: ambient air quality standards; emission standards; general policies or plans; a system of permits; and a schedule of fees for review of plans and specifications; issuance or renewal of permits or inspection of air contaminant sources. Emission standards for stationary sources adopted by the board shall include regulations based on the weight if materials entering the process causing the emission as an optional alternative to regulations previously adopted: ...” *Tennessee Code § 68-201-105.*

“Matters to be considered in exercising powers. Nothing in this part shall be deemed to grant the board or department any jurisdiction or authority with respect to air pollution existing solely within commercial or industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any condition of air pollution. In exercising powers to prevent, abate and control air pollution, the board or department shall give due consideration to all pertinent facts including, but not necessarily limited to: (1) The character and degree of injury to, or interference with, the protection of health, general welfare and physical property of the people; (2) The social and economic value of the contaminant source; (3) The suitability or unsuitability of the air pollution source to the area in which it is located. In this respect it is expressly anticipated that the board may establish zones and categories of air contaminant sources in which the standards, rules and regulations may differ according to zone and category of air contaminant source; (4) The technical practicability and economic reasonableness of reducing or eliminating the emission of such air contaminants; (5) The economic benefit gained by the air contaminant source through any failure to comply with provision of this part and regulations promulgated thereunder; and (6) The amount or degree of effort put forth by the air contaminant source to attain compliance. *Tennessee Code § 68-201-106.*

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Texas

“General Powers and Duties. (a) The commission shall: (1) administer this chapter; (2) establish the level of quality to be maintained in the state's air; and (3) control the quality of the state's air. **(b)** The commission shall seek to accomplish the purposes of this chapter through the control of air contaminants by all practical and economically feasible methods. **(c)** The commission has the powers necessary or convenient to carry out its responsibilities.”
Tex. Health & Safety Code § 382.011.

“Rules. (a) The commission may adopt rules. The commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter. ...

(e) The terms and provisions of a rule adopted by the commission may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the commission shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the commission shall consider: (1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and (2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the commission by rule may not specify: (1) a particular method to be used to control or abate air pollution; (2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or (3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.” *Tex. Health & Safety Code § 382.017.*

Y – with exceptions.
Limited by agency
policy

Utah

“Powers of board. (1) The board may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

- (a) regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source;
- (b) establishing air quality standards;
- (c) requiring persons engaged in operations which result in air pollution to:
 - (i) install, maintain, and use emission monitoring devices, as the board finds necessary;
 - (ii) file periodic reports containing information relating to the rate, period of emission, and composition of the air contaminant; and
 - (iii) provide access to records relating to emissions which cause or contribute to air pollution; ...

(4) Any rules adopted under this chapter shall be consistent with provisions of federal laws, if any, relating to control of motor vehicles or motor vehicle emissions.

(5) Nothing in this chapter authorizes the board to require installation of or payment for any monitoring equipment by the owner or operator of a source if the owner or operator has installed or is operating monitoring equipment that is equivalent to equipment which the board would require under this section.” *Utah Code § 19-2-104.*

“Rulemaking authority and procedure. (1) Except as provided in Subsection (2), no rule which the board makes for the purpose of administering a program under the federal Clean Air Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making rules, the board may incorporate by reference corresponding federal regulations.

(2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing and based on evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.”
Utah Code § 19-2-106.

Y – with exceptions.
Limits in state law or regulations

<p>Vermont</p> <p>“Declaration of policy and purpose. (a) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.</p> <p>(b) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.</p> <p>(c) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of air pollution prevention, abatement and control, for an appropriate distribution of responsibilities among the state and local units of government, and to 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.” <i>10 V.S.A. §551.</i></p> <p>“Powers. In addition to any other powers conferred on him by law the secretary shall have power to: (1) Appoint and employ personnel and consultants as may be necessary for the administration of this chapter; (2) Adopt, amend and repeal rules, implementing the provisions of this chapter. ...” <i>10 V.S.A. §554.</i></p> <p>“Emission control requirements. The secretary may establish such emission control requirements, by rule, as in his judgment may be necessary to prevent, abate, or control air pollution. The requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and in order to take necessary or desirable account of varying local conditions.” <i>10 V.S.A. §558.</i></p>	<p>N</p>
<p>Virginia</p> <p>“Regulations. A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation, shall prohibit the burning of leaves from trees by persons on property where they</p>	<p>N</p>

reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation requiring the use of stage 1 vapor recovery equipment shall require the use of such equipment only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment areas for the pollutant ozone.” *Code of Virginia § 10.1-1308.*

Washington

“Air pollution control authority -- Powers and duties of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to: (1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter [42.30](#) RCW. ...” *RCW § 70.94.141.*

“Powers and duties of department. (1) The department shall have all the powers as provided in RCW 70.94.141. (2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall: (a) Adopt rules establishing air quality objectives and air quality standards; (b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties; ...

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables. ... (9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under

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this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies." RCW 70.94.331.

“Air contaminant sources -- Regulation by department; authorities may be more stringent -- Hearing --

Standards. If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a statewide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a statewide basis of a particular type or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source.”

RCW 70.94.395

“Air pollution control authority -- Assumption of control by department.

(1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. ...” RCW 70.94.410.

West Virginia

“Rule making generally; relationship to federal programs. (a) The director has the power and authority to propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out and implement the provisions of this chapter and to carry out and implement any other provision of law relating to offices or functions of the division.

(b) The requirements and limitations set forth in this section apply to any rule-making authority granted pursuant to this chapter or chapters twenty-two-b and twenty-two-c of this code.

(c) Prior to the proposal of any new rule, the director shall consult with the division of environmental protection advisory council and after such consultation, the director may determine that such a rule should be the same in substance as a counterpart federal regulation. If the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practicable, such proposed rule shall incorporate by reference the counterpart federal regulation. The director shall file, contemporaneously with the proposed rule, a statement setting forth whether the rule is the same in substance as a counterpart federal regulation. If the director determines that the rule should not be the same in substance as a counterpart federal regulation, then the director shall file contemporaneously with the proposed rule, a statement setting forth the differences between the proposed rule and the counterpart federal regulation. In addition, the director shall file a statement setting forth the results of the consultation with the advisory council.

(d) Whenever any existing rule is modified, amended or replaced, the provisions of subsection (c) of this section apply to the proposal of any such modification, amendment or replacement rule....” *West Virginia Code §22-1-3.*

“Rules -- New or amended environmental provisions. Except for legislative rules promulgated for the purpose of implementing the provisions of section four, article twelve, section six, article seventeen, and section six, article eighteen, all of this chapter, and notwithstanding the provisions of section four, article five of this chapter, legislative rules promulgated by the director which become effective on or after the first day of July, one thousand nine hundred ninety-four, may include new or amended environmental provisions which are more stringent than the counterpart federal rule or program to the extent that the director first provides specific written reasons which demonstrate that such provisions are reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the event that legislative rules promulgated by the director which become effective on or after the first day of July, one thousand nine hundred ninety-four, include new or amended environmental provisions which are less stringent than a counterpart federal rule which recommends, but does not require, a particular standard or any

Y – with exceptions.
Limits in state law or regulations

<p>federally recommended environmental standard whether or not there be a counterpart federal rule, the division shall first provide specific written reasons which demonstrate that such provisions are not reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristic of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.</p> <p>In the absence of a federal rule, the adoption of a state rule shall not be construed to be more stringent than a federal rule, unless the absence of a federal rule is the result of a specific federal exemption.” <i>West Virginia Code §22-1-3a.</i></p>	
<p>Wisconsin</p> <p>“Air pollution control; department duties. The department shall: (1) Promulgate rules implementing and consistent with this chapter and s. 299.15. ...” <i>Wisconsin Statutes § 285.11.</i></p> <p>“Ambient air quality standards and increments. (1) Ambient air quality standards. (a) <i>Similar to federal standard.</i> If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (4). (b) <i>Standard to protect health or welfare.</i> If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.... (4) Impact of change in federal standards. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare.” <i>Wisconsin Statutes § 285.21.</i></p>	<p>Y – with exceptions. Limits in state law or regulations</p>
<p>Wyoming</p> <p>“Powers and duties of director. (a) In addition to any other powers and duties imposed by law, the director of the department shall: (i) Perform any and all acts necessary to promulgate, administer and enforce the provisions of this act and any rules, regulations, orders, limitations, standards, requirements or permits adopted, established or issued thereunder, and to exercise all incidental powers as necessary to carry out the purposes of this act; ...” <i>Wyoming Statutes § 35-11-109.</i></p>	<p>N</p>

“(a) Without limiting the authority of the administrator as set out in W.S. 35-11-110, he shall, after consultation with the advisory board, recommend to the director such ambient air standards or emission control requirements by rule or regulation, as may be necessary to prevent, abate, or control pollution. Such standards or requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act, and in order to take account of varying local conditions.” *Wyoming Statutes § 35-11-202.*

¹ This listing is intended as a sampling of the air pollution control authority granted by state legislatures to environmental agencies. It is not a comprehensive listing of all such authority. Where possible, state statutes that expressly limit agency authority to adopt regulations more stringent than federal standards have been included. The statutes listed were in effect as of mid- 2003.

² This column reflects data from a STAPPA/ALAPCO report entitled “Restrictions on the Stringency of State and Local Air Quality Programs.” It includes the states’ responses to a questionnaire regarding whether or not state environmental agency authority to adopt regulations more stringent than federal law is limited.