



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COUNCIL STATEMENT ON MARKETABLE PERMITS June 16, 2017

The Council has decided not to place the committee-proposed recommendation entitled *Marketable Permits* on the agenda for the June 2017 Plenary Session. Though the Council commends and thanks the Committee on Regulation and the project consultant for their significant and thoughtful work, it is of the view that the recommendation warrants additional consideration and possible revision by the Committee (or, if the Vice Chairman so chooses, a committee of the whole membership). The Council asks the Committee to consider its view that the recommendation should address only how a marketable permitting system, once authorized, should be structured rather than, as the proposed recommendation also does, suggest whether and when agencies should establish such a system in the first place. The latter issue may raise questions of policy and about the allocation of authority between agencies and Congress on which it would be inadvisable for the Conference to speak. The Council also asks the Committee to consider its view that the recommendation should not address either how permits should be allocated in the initial instance (lines 103–07) or how agencies might avoid judicial challenges to marketable permits (lines 12–14 & n.3). Again, the Council commends and thanks the Committee and the project consultant.