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DEPARTMENT OF NATURAL RESOURCES
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February 9, 2016

James M Inhofe, Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Bldg.
Washington, DC 20510-6175

Dear Chairman Inhofe,

Thank you for your January 12, 2016 letter offering an opportunity to share my perspective on the Environmental Protection Agency's (EPA) current regulatory framework. This letter attempts to summarize a state view of the respective roles of EPA, states and Congress and provide a better understanding of the resources and efforts we believe are necessary to comply with the actions EPA is taking to protect the environment and public health and comply with various environmental statutes such as the Clean Air Act (CAA) and the Safe Drinking Water Act (SDWA). The scope of our state responsibilities is numerous and the CAA and SDWA programs illustrate points that can be extended to many other programs, such as the National Pollution Discharge Elimination System under the Clean Water Act and the Resource Conservation and Recovery Act that are jointly implemented by the states and the EPA.

EPA's role in developing regulatory approaches that allow states to adopt equally protective but specific measures to implement these important programs is appropriate and necessary given its capacity, resources and national and regional perspectives. EPA is able to utilize the science available to it to inform these decisions and the development of associated standards, as Congress intended in its construction of the CAA. Congress has the responsibility to adequately provide funding to EPA and the states to assist in meeting these standards.

While the Clean Air Act authorizes the federal government to provide grants for up to 60 percent of the cost of state and local air programs and calls for states and localities to provide a 40-percent match, Delaware and a number of other states provide over three-fourths of their budgets (not including permit fees under the federal Title V program). Compounding matters, the purchasing power of federal grants has decreased by nearly 16 percent over the past 14 years due to inflation, during which time state and local responsibilities have expanded significantly.

Delaware's Good Nature depends on you!

Despite these challenges, Delaware has been able to manage its air quality in accordance with all EPA rules and CAA requirements. We have been successful by focusing time and resources necessary to ensure all emitting sources in the state are reasonably and appropriately controlled. Conversely, if emitting sources in a state are not controlled, these requirements can seem burdensome and difficult to meet, regardless of available resources.

Your letter references a report by the Association of Air Pollution Control Agencies that indicates states are facing nine regulatory deadlines under the Clean Air Act in 2016. I believe Delaware's practice of ensuring all emitting sources are appropriately controlled is key to our being able to manage this workload in light of insufficient funding.

- Five of the actions listed are related to important health based air quality standards. As part of Delaware's efforts to attain and maintain compliance with earlier particulate and ozone standards and the regional haze program, Delaware took measures to ensure all of its large emitting sources are controlled. Because of this prior work Delaware attained compliance with the 2012 PM2.5 standard, and is subject only to the first of these three SO2 requirements. Because of the work EPA did in removing lead from gasoline Delaware is in attainment for the lead NAAQS. By ensuring all Delaware sources were appropriately controlled, and remain so, these actions do not represent significant workload for Delaware in 2016.
- One of the actions is related to the control of CO2 emissions which are endangering public health and welfare (i.e., the September 2016 Clean Power Plan submittal). In 2008 Delaware and eight other states took action to reduce CO2 emissions from power plants through the Regional Greenhouse Gas Initiative (RGGI). Delaware will expend significant resources on the Clean Power Plan in 2016, but because of prior efforts under RGGI Delaware believes it is well positioned to complete this work in 2016. Even so, EPA has given the states consideration and has built into the process a two year extension should additional time be needed.
- Two of these listed actions are related to the ozone standard. All Delaware sources relative to ozone are well controlled, yet Delaware continues to experience poor air quality and impacts from ozone on public health and our economy. Delaware's emission control efforts to reduce ozone precursor emissions have resulted in a situation where greater than 90 percent of the ozone concentrations negatively affecting Delaware is attributable to emissions transported to Delaware from upwind areas. These emissions were required under the CAA to be mitigated by upwind states more than five years ago, yet they have not been. In some cases the problem is that upwind emitting sources have not been controlled. In others, appropriate emissions controls have been installed on units but are not being operated. Any action the committee can take to encourage upwind states to comply with the CAA, and to increase EPA resources to enable the agency to do this, would greatly help Delaware.
- Finally, the last listed action is the November 2016 SSM SIP Call. We believe EPA's action was based on third party petitions which relied on incomplete reviews and suggest that the number of third party interventions could be reduced if EPA were given sufficient resources to conduct reviews of state programs.

Under the Safe Drinking Water Act (SDWA), 49 of the 50 states are delegated the responsibility of implementing and enforcing the drinking water regulations and all of the associated requirements. In Delaware, that responsibility falls to the Department of Health and Social Services. For a full appreciation, one needs to understand the full magnitude of the task undertaken by states -- it's more than simply a matter of the impacts of EPA's current or future regulatory actions. And, we believe the remedies include actions that both EPA and Congress need to take.

States implement drinking water rules covering over 90 chemical, biological, and radiological contaminants. Those rules are becoming increasingly complex to implement -- especially those promulgated in the past decade. Instead of simple "in or out of" compliance determinations based on a single value, recently promulgated rules contain a host of elements that need to be evaluated. While the pace of new EPA drinking water rulemaking has slowed in recent years there are a number of recently promulgated rulemakings that states (and water systems) are challenged with meeting as well as one major new rule that will become effective in the near future. The revised Total Coliform Rule -- affecting all public water systems, will become effective in April 2016.

States spend much of their time providing technical assistance and training to ensure that water systems have the technical, financial, and managerial capacity to implement drinking water rules. The vast majority of the nation's 160,000+ public water systems are small (serving less than 10,000 people) and require a good deal of state oversight and assistance in order to comply with drinking water regulations.

To its credit, EPA's Office of Ground Water and Drinking Water has generally provided opportunities for early involvement of states in regulatory development actions. EPA and states need to continue to work together in this manner to help ensure that drinking water rules continue to be relevant and reasonable. States also support the provision, under SDWA Section 1412(b)(9), for reviewing all drinking water rules every six years and making revisions, if appropriate.

The Association of State Drinking Water Administrators (ASDWA) recently estimated a yearly shortfall of at least \$240 million between the resources available in states (from all sources -- both federal and state) and those needed by states to administer minimum required programs. And, for more robust, comprehensive programs, the gap is even larger -- \$308 million; this represents a 41% shortfall. State drinking water programs have received roughly \$100 million yearly (or, on average, \$2 million per state) through the principal federal grant (called the Public Water Supply Supervision [PWSS] grant) to implement this program. In fact, in FY 16, states received less in this grant than they did over a decade ago. When one considers the eroding effects of inflation and the increasing complexity of the program, the funding shortfall is only exacerbated. The other major source of federal funding available to states are "set-asides" from the Drinking Water State Revolving Loan Fund (DWSRF). States can take up to 31% of these funds each year to undertake a variety of activities to assist public water systems. However, more funds set aside from the DWSRF to enable states to address critical public health issues means less funds available for much needed drinking water infrastructure.

February 9, 2016

Page 4 .

We would respectfully suggest that Congress needs to do more to meet its obligations under the CAA and SDWA by adequately funding state implementation efforts. First, we believe Congress needs to more adequately fund the PWSS grant for states. At least \$200 million yearly is needed. Second, we believe the DWSRF needs to be more fully funded. In FY 15, Congress appropriated \$907 million. That level was cut, in the FY 16 appropriation, by \$44 million. The President's budget request for state and local air agency grants under Sections 103 and 105 was \$268.2 million, but was cut by \$40 million in the FY 2016 appropriation.

This nation has made incredible progress in cleaning up our air and water resources. More work lies ahead and in order to continue to meet these challenges EPA and the states need adequate resources. We urge Congress to provide the necessary funding to meet our respective obligations under the law to protect the public health and the environment.

Thank you for this opportunity to provide you with my perspective.

Sincerely,



David S. Small
Secretary

cc: Barbara Boxer, Ranking Member