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HEARING ON COOPERATIVE FEDERALISM: STATE PERSPECTIVES ON EPA REGULATORY ACTIONS AND THE ROLE OF STATES AS CO-REGULATORS

Wednesday, March 9, 2016

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:34 a.m. in room 406, Dirksen Senate Office Building, the Honorable James Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Boxer, Capito, Boozman, Wicker, Fischer, Rounds, Sullivan, Carper, Cardin, Whitehouse, Gillibrand, and Markey.

Senator Inhofe. The meeting will come to order.

First of all, I am very happy to have the five witnesses that are here today. We always like to hear from the States, at least some of us do, and I would like to, at this point, have any of our members who want to introduce those from their State. Senator Capito, do you?

Senator Capito. Yes. Thank you, Mr. Chairman. I would like to welcome Randy Huffman, who is our Cabinet Secretary, and has been for many years, in West Virginia at the Department of Environmental Protection. Randy was three years as the deputy, but he has worked in all variety of areas, including abandoned mine lands program. He is a graduate of West Virginia Tech. We see him, or I see him, around town all the time, so welcome, Randy. Thank you for your testimony and for your service to our State and to our Nation.

Senator Inhofe. And Senator Rounds?

Senator Rounds. Thank you, Mr. Chairman. Yes, I would.

First, I would also like to thank all of our witnesses for coming here today to testify in front of this Committee on State perspectives. I would particularly like to welcome to our Committee today the Secretary of the South Dakota Department of Environment and Natural Resources, or, as we used to call them, Dirt and Water. Secretary Pirner has served as the DENR Secretary for three South Dakota governors, but he has also been

in various positions at DENR since 1979. Secretary Pirner has more than three decades of experience with EPA regulations and is truly an expert in the field.

Secretary Pirner has an impressive breadth of experience in every type of environmental regulation. He has extensive experience in EPA rules regulating water, air, and toxic substances. Secretary Pirner leads an agency with approximately 180 full-time employees, and this small group of employees is responsible for administering nearly all of the Federal environmental laws from the EPA such as Clean Water Act, Clean Air Act, and Safe Drinking Water Act. They are also responsible for administering various State environmental laws in the State with over 77,000 square miles of land.

Secretary Pirner knows all too well the demands of a small State agency with limited budgets that they face while attempting to administer the increasing multitude of EPA regulations forced upon the States. Every day he is confronted with the challenge of managing his agency's resources in a way that will allow them to fulfill all of their State and Federal duties as the environmental regulatory agency in South Dakota.

It should also be noted that over 30 percent of DENR's operating budget is relied upon Federal funds. Every day Secretary Pirner's goal is to make sure that South Dakotans enjoy the cleanest air and water possible. In South Dakota, our

environmental record is a source of pride for all of us.

I can tell you that during the time that I worked as governor in South Dakota for eight years, Steve was the secretary of this department. He comes with a wealth of knowledge and an interest in seeing that things get done and get done correctly, and I am very, very happy that he has been able to make the trek out here for this very special meeting. Thank you.

Senator Inhofe. It is very nice to have you here.

Senator Carper, did you want to introduce?

Senator Carper. Before I introduce Ali, I just want to say to Randy welcome. I was born in Beckley and spent a lot of my years growing up as a kid going back and visiting my grandparents and my aunts and uncles and my cousins all over the State. So it is great to have you here. I think you have somebody with you today who is from Beckley. Nice to see you. Welcome. Good to see you.

Ali, you have a name that is going to be most pronounced of any of our witnesses today. Just to make it easy for my folks, it would be easier to call him Ali. But his last name is Mirzakhalili. Nice sound to it. When I was governor, he has been serving for the people of Delaware for close to 30 years. He has been a key leader in the Department of Natural Resources and Environmental Control. He used to work for the guy sitting

right behind me, Christoph Tulou, who is our Secretary of the Department of Natural Resources and Environmental Control. So this is like getting the band back together, and we welcome the opportunity.

Ali is the Director of the Division of Air Quality with the Department of Natural Resources and Environmental Control. He is responsible for implementing all aspects of the Clean Air Act requirements. He has 30 years of experience in all aspects of air quality management, including program and regulatory development, planning, compliance, and enforcement and permitting. He is a professional engineer and holds a B.S. in Engineering from the University of Delaware, an M.S. in Environmental Planning and Management from Johns Hopkins University.

He has been a great servant and friend. Welcome, Ali. We are happy that you are here. Thank you.

Senator Inhofe. Thank you, Senator Carper.

Becky, we are going to hold you until Senator Boozman comes here. I had breakfast with him, a prayer breakfast this morning and I told him I would do that, so we will postpone yours.

Deborah, it is very nice to have you here. We welcome you along with the rest of the witnesses.

Barbara and I will give opening statements, then we will hear from you. Since there are five of you, I would like to

have you comply with the same time that we do up here.

STATEMENT OF THE HONORABLE JAMES M. INHOFE, A UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA

Senator Inhofe. Today's hearing is critical to our understanding of the success and the lack of success of the environmental groups across the Country. Indeed, in appreciation of our unique system of federalism, Congress and, in particular, this Committee must check in with States to ensure this system is fully functioning when it comes to actions initiated by the United States Environmental Protection Agency, the EPA. For this reason, I want to thank our State regulators for being here today to share your feedback on whether the current regulatory framework between States and the EPA is working in upholding the principles of cooperative federalism.

Cooperative federalism is a core principle of environmental statutes, including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, RCRA, and several others. Unfortunately, under the Obama Administration we have observed a flood of new regulations breaking down this system in what seems to be uncooperative federalism. The Obama EPA has embarked on an unprecedented regulatory agenda that simply runs over States by imposing an increasing number of Federal regulatory actions on States while requesting even less funds to help States carry out these actions. As some State regulators have explained, EPA is requiring them to do more with less.

Many of these actions are driven from the EPA headquarters to fulfill a political agenda that often results in years of litigation and inefficiencies that cost citizens more taxpayer dollars and reap little to no environmental benefits.

Today we have a diverse panel of witnesses from States across the Country working with different EPA regions and experiencing unique environmental issues who will expand on this breakdown. While State feedback varies, there are several troubling themes that have consistently emerged. EPA has neglected the responsibility to consult with States at the beginning stages of regulatory actions; the EPA gives States little time to digest complex regulations and provide meaningful analysis during short comment periods; EPA has allowed environmental activists to set regulatory deadlines imposed on States through sue-and-settle agreements without State input; EPA has increasingly used regulatory guidance to circumvent the regulatory process; EPA has a severe backlog of approving State implementation plans, yet has issued an unprecedented number of Federal implementation plans over State air programs; EPA budget requests have called for decreased levels of State funding while requesting increased funds for EPA bureaucrats; and EPA is deviating from its core functions and duty to uphold cooperative federalism as we have defined it.

These concerns are not limited to our witnesses today.

Last month I sent letters to all Committee members' State environmental agencies asking for feedback on EPA actions and the level of cooperative federalism. I appreciate the many responses I got to this Committee and, without objection, will make them part of the record.

[The referenced information follows:]

Senator Inhofe. I look forward to receiving additional State responses and to hear more from our witnesses today as we take a hard look at what works and what does not work.

And to hear the other side, Senator Boxer.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. How did you know?

[Laughter.]

Senator Boxer. Friends on the panel, thank you all for being here, and do count me in on people who want to hear from the States. So many of our States are leaders on the environment, my own being a prime example. We have proven that we can clean up our environment and also create very good paying jobs, and it has been proven over and over again.

I think that all wisdom certainly does not reside here. I think every one of us would say that. And that is why I have always liked the idea of minimum standards being set by the Federal Government to protect all of our people, but allowing the States to do more to protect their people from pollution; and that is really at the heart of what this debate is all about. To me it is not about States' rights, it is about protecting people at a minimum level and then allowing the States to do more if they want to.

Now, States have a very important role to play in carrying out our landmark environmental laws, which we can talk about them all day. I will make a prediction: We will never repeal the Clean Air Act. We will never repeal the Clean Water Act. We will never repeal the Safe Drinking Water Act. We will never

repeal the Superfund Act. We will never repeal the Brownfields Act. Why? Because 90 percent of the American people support that.

So what happens here in this committee, since my friend took the chair, it was tough to swallow, but nothing personal, what has happened is we are trying to see an undermining of those laws through the back door, making it impossible, lawsuits and the rest. So I just want to say this, and I will ask unanimous consent to place my full statement in the record.

Senator Inhofe. Without objection.

Senator Boxer. You have to learn, all of us, by what happens. We have to learn history; we have to look at current events. And I am speaking for myself and only for myself when I say this. When I look at what happened in Michigan, when I look at the way that State handled the situation in Flint, I think for us to be holding a hearing saying the Federal Government shouldn't do anything, the fact is EPA, in writing, warned them.

Did the EPA do enough? Not in my book. But they warned them in writing. They told them to put anti-corrosive treatment into those pipes. They ignored it. And I am not pointing the finger at any one person, but somebody there is going to be blamed for this at the end of the day when the suits finally come to the courts.

But to me it is a moral crime. It is a moral crime. So to

just say the States should do it all, there shouldn't be minimum standards, we shouldn't really triple-check these water systems, I just don't buy it. And I think that what our laws do I think are very happy compromise between the right of the people who vote for president, who vote for senators, who vote for House members, to know they will have a basic standard so that they can be protected and their children can be protected, and then say to the States, look, you are the laboratory. If you can do more, fine, but protect them to at least a minimum level. And that has been the way I have viewed this job. That is why when we preempt States on this I think it is a terrible thing to do, and I have shown that through my whole career.

But again I want to say thank you all, whether you agree with me or not. I know two do and three don't, something like that. But I am very happy to see all of you here.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Thank you, Senator Boxer.

Senator Boozman, would you like to introduce your guest from Arkansas? I already told her I was about half hog and explained the genesis of that statement.

Senator Boozman. Well, in the interest of time, I just want to thank her for being here and thank her for the tremendous job that she is doing in Arkansas. We are very grateful to have her onboard.

Like I say, we are just very pleased that you are here and all that you represent. Thank you.

Senator Inhofe. Thank you, Senator Boozman.

We are going to start with you, Ali. I am going to follow the direction of Senator Carper and take your short name, all right? You are recognized.

STATEMENT OF ALI MIRZAKHALILI, DIRECTOR, DIVISION OF AIR QUALITY, DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Mr. Mirzakhalili. Chairman Inhofe, Ranking Member Boxer, and members of the Committee, my name is Ali Mirzakhalili, and I am Delaware's Director of Air Quality. I thank you for the opportunity to testify today.

I would like to share with you Delaware's view of the respective roles and responsibilities of the EPA, State, and the U.S. Congress with respect to complying with various environmental statutes and associated regulatory actions to protect public health and the environment.

The Clean Air Act has been a huge success, preventing literally hundreds of thousands of premature deaths, as well as averting millions of incidents of morbidity. The health benefits associated with the Clean Air Act far outweigh the cost of reducing pollution by more than 30 to 1. Moreover, we have accrued these health benefits over the same period as our Nation's gross domestic product has grown. It is fair to say that the Clean Air Act has not only been one of our Nation's most effective environmental statutes; it is likely to go down in history as one of the most effective domestic laws ever passed.

The public generally does not differentiate between levels

of government; it simply expects the entire system to work. Therefore, it is imperative that each part of Government, EPA, Congress, and the States, fulfill its respective roles and perform as effectively as possible.

As I state in my written statement, I believe EPA can best fulfill its role by focusing on six important tenets: one, using sound science to set national standards; two, providing States flexibility to meet those national standards; three, issuing guidelines and rules in a timely manner; four, ensuring that States are held accountable for their actions; five, providing a level playing field; six, setting standards for sources of pollution that are of national significance and where States may be preempted from doing so.

Congress also has a major responsibility in environmental protection, including, most importantly, ensuring that it provides adequate funding to EPA and the States to assist in meeting our Nation's clean air goals. Unfortunately, in recent years Congress has fallen short in this respect. The Clean Air Act authorizes the Federal Government to provide grants for up to 60 percent of the cost of State and local air pollution control programs, and calls for States and localities to provide a 40 percent match. Unfortunately, this has not been the case. State and local responsibilities have expanded significantly since 1990, while the grants have not, resulting in Delaware and

most other States self-funding over 75 percent of their air programs' operating budget.

Despite all these challenges, States are trying to do their best to comply with all EPA rules and regulations under the Clean Air Act. In Delaware, I am proud to say we are meeting all of our Clean Air Act obligations. We succeed by being proactive, collaborative, and focusing our limited resources so as to ensure all emitting sources in the State are reasonably and appropriately controlled.

This year States face a number of important regulatory deadlines under the Clean Air Act. These deadlines do not differentiate between large States with ample resources and small States like ours with fewer resources. I believe Delaware's practice of ensuring all emitting sources are appropriately controlled is key to our ability to manage this workload in light of insufficient funding. If we can do it, so can others.

Because of Delaware's effort to attain and maintain compliance with earlier particulate and ozone standards, those efforts are not wasted, and the Regional Haze program, Delaware is complying with the 2012 PM2.5 standards and is subject only to the first of the three sulfur dioxide requirements. These deadlines do not represent an unmanageable workload for Delaware in 2016.

We are continuing to work this year to reduce greenhouse gas emissions, which are endangering public health and welfare. This year Delaware will continue its work under the Regional Greenhouse Gas Initiative and prepare our State's strategy under the Clean Power Plan. I believe the CPP is an excellent example of how EPA is thoughtfully and successfully working with States and stakeholders to craft achievable and flexible rules.

Delaware continues to experience poor air quality, however, and impacts from ozone on public health and our economy. Delaware's emissions control efforts to reduce ozone precursor emissions have resulted in a situation where over 90 percent of the ozone concentration adversely affecting Delawareans are attributable to emissions transported into Delaware from upwind States. Under the Clean Air Act, upwind States were required to mitigate these emissions more than five years ago, yet they have not done so.

In some cases the problem is that upwind emitting sources have not controlled the emissions; in others appropriate emission controls have been installed on units but, incredibly, are not being operated. Any action this Committee can take to require upwind States to comply with the Clean Air Act and to increase EPA's resources to enable the Agency to ensure equity would greatly help Delaware and others in similar situations.

Thank you for this opportunity to testify. I look forward

to answering questions.

[The prepared statement of Mr. Mirzakhalili follows:]

Senator Inhofe. Thank you, Ali.

Ms. Markowitz?

STATEMENT OF DEBORAH MARKOWITZ, SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

Ms. Markowitz. Good morning, all. My name is Deb Markowitz. I am the Secretary of Vermont's agency of Natural Resources, and I know if Senator Sanders was not in Florida, he would be introducing me today.

Thank you for inviting me to testify on cooperative federalism and environmental regulation.

Vermont is a delegated State. This means we take responsibility for the oversight and implementation of Federal environmental programs. We implement the Resource Conservation and Recovery Act, the Clean Water Act, and the National Pollution Discharge Elimination System Permit Program, the Clean Air Act, and the Safe Drinking Water Act.

Vermont chose to take on these federally delegated programs; EPA did not force us to do so. The Federal Government didn't require it. Vermont chose to take responsibility to implement these important regulatory programs in our State because we know how important they are to Vermonters' health, safety, and prosperity.

Not only do we rely on clean air and clean water and clean land to protect the health of our people, but Vermont has a land-based economy. Our top industries include tourism, agriculture, and forestry. Each relies on a clean and healthy

natural environment. People come from all over the world to swim in our lakes, fish in our rivers, hike in our forests, and ski in our mountains. But this isn't all. In our manufacturing and high-tech sectors, indeed, in every sector of business and industry in Vermont, it is the natural beauty of our State and our pristine environment that enables us to attract good jobs and high quality employees to stay or relocate in Vermont.

By managing these delegated programs, Vermont can ensure that our State is protected through regulation, assistance, and enforcement. This local control is even more important in light of the highly charged political dialogue that our environmental laws and regulations engender here in Washington.

While new rules promulgated by EPA take time and effort for us to implement in our States, there are many good reasons to support a strong Federal approach. First, we look to EPA for the expertise to study and develop the science and technology that underlies our environmental regulations. We could not meet our mission to protect human health and to safeguard our natural environment without this important Federal contribution.

Second, we see value in having national standards for environmental protection. As the children in Rutland, Vermont who suffer from asthma and the anglers who can't eat the fish they catch because of mercury pollution know well, pollution does not honor State lines. EPA has given us many important

protections and Vermonters, as well as all Americans, have come to depend upon them.

Finally, national environmental regulations provide an even playing field among States, helping to prevent a regulatory race to the bottom in a misguided attempt to attract economic development.

It is important to acknowledge that the System of co-regulation between EPA and the States is not always simple or without a natural tension. There are times when we want to address a problem differently than EPA's approach did in the past, or when the Federal approach may have unintended consequences for us in Vermont because of our small size and rural character. In situations like these, we have found EPA willing to listen to our concerns and to work with us to find a solution.

On numerous occasions and across sectors the EPA has supported Vermont in our efforts to implement programs to protect the environment. EPA has allowed flexibility in Vermont's program implementation, cooperated with us to achieve our shared environmental goals, included Vermont's voice in efforts to develop new rules and standards, and has shared resources and expertise to help us more efficiently and effectively implement our programs.

In my written testimony I have included a number of

specific examples, if that would be helpful.

In closing, I want to reiterate the value of our relationship with EPA and that, for Vermont, this partner is essential to protect our environment and the health of our citizens, and exemplifies the doctrine of cooperative federalism, and I am very happy to take questions. Thank you.

[The prepared statement of Ms. Markowitz follows:]

Senator Inhofe. Thank you.

Now, Mr. Huffman.

STATEMENT OF RANDY C. HUFFMAN, CABINET SECRETARY, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. Huffman. Good morning, Mr. Chairman and members of the Committee. Thank you for the opportunity to address this Committee concerning federalism and environmental regulations.

As West Virginia's chief environmental regulator, I view the cooperative relationship with our Federal partners envisioned by Congress in all of our environmental statutes as critical. According to the environmental council or the States, over 95 percent of the environmental regulatory duties in this Country are actually carried out by the States. Congress placed the most important core responsibilities with the States because it knew States are far more responsive to local concerns and much more aware of the local environment than distant bureaucracies.

In addition, States must be cost-effective, have balanced budgets, and perform in the face of flat or declining revenues. It is within these constraints that States have repeatedly demonstrated not only that we are up to the challenge, but that we actually continue to deliver the results Congress envisioned when it created our environmental framework within the model of cooperative federalism.

Unfortunately, federalism under the current Administration has been less than cooperative with both EPA and Interior's

Office of Surface Mining. There is a constant flow of new regulations, guidance and initiatives from these Federal agencies, and much of it encroaches on the authority Congress gave to the States, and nearly all of it adds new regulatory burdens to State resources that are already stretched thin. At best, EPA and OSM are indifferent to the mounting consequences of their actions. At worst, we see these Federal agencies continue to basically rewrite our Nation's congressional environmental acts with no accountability.

I have many examples, but time will only permit me to cover a few.

My first example is one with which we are all familiar. Regardless of the position individual States take on climate change, Section 111(d) of the Clean Air Act actually puts the States, not EPA, in charge of developing standards of performance. With little regard to the role Congress gave it, EPA has seized the States' authority. Its carbon rule establishes the minute details of one of the most complex new regulatory initiatives in the history of the Clean Air Act.

EPA is increasingly establishing what amounts to binding rules through guidance. States are expected to conform to the results of this process as if EPA had promulgated a valid rule. There are at least two problems with this: EPA guidance further eliminates State discretion and it allows them to avoid the

accountability and transparency of rulemaking.

My final examples relate to similar actions by Interior's Office of Surface Mining. The proposed Stream Protection Rule, which I testified about before the Senate Energy and Natural Resources Committee in October, is another example of a Federal agency attempting to rewrite part of an act of Congress with no mandate to do so. They further fail to involve the States, which have primacy under the Surface Mining Act to carry out these duties. The result is a proposal that has multiple unlawful conflicts with Federal and State clean water laws.

OSM also routinely fails to approve State program amendments upon which it is obligated to act. In fact, since 2009, West Virginia has submitted nine amendments to the Office of Surface Mining for consideration, and only those that propose to increase fees or taxes on the mining industry have been approved, and only then on an interim basis.

My last example is OSM's misuse of 10-day notices to correct permit defects. Ten-day notices are an OSM obligation under the Surface Mining Act to notify the States when a mining violation is suspected and has not been properly addressed. It is clearly an enforcement measure to be applied to active operations. In 2009, OSM was directed to use this regulatory tool to correct deficiencies in State-issued permits, which is clearly contrary to the Surface Mining Act.

Most States, including West Virginia, embrace the idea and practice of cooperative federalism in regulating industrial activity and protecting the environment. The practice is sound, has great validity, and has been successful in the past. Since 2009, I have watched EPA and OSM go about executing an agenda that does not concern itself with the rule of law for making changes to our Nation's environmental statutes.

I don't want to create the impression that all of West Virginia's interactions with EPA and OSM are negative. Across many of our programs we have built very good working relationships with our Federal counterparts at the regional level. Most of the issues I have discussed appear to emanate from EPA and OSM headquarters, which have little or no understanding of what it takes to run a State environmental regulatory program.

[The prepared statement of Mr. Huffman follows:]

Senator Inhofe. Thank you, Mr. Huffman.

Ms. Keogh?

STATEMENT OF BECKY KEOGH, DIRECTOR, ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

Ms. Keogh. Chairman Inhofe, Ranking Member Boxer, and Senator Boozman, as well as members of the Committee, good morning. I bring you greetings from Governor Hutchinson of Arkansas, and I appreciated the opportunity to respond to your call this morning.

We in Arkansas are seeking to drive regulatory policy that balance effective environmental results, assure long-term resource management, affordable energy, and economic growth goals. We want a State that can seek to attract the newest generation of professionals searching out healthy living lifestyles and Arkansas's world-class recreational opportunities.

Arkansas has invested heavily in assuring that we are wise stewards of the abundant and clean air, healthy breathing air, the amazing vistas with which we have been blessed. We do not take our status as The Natural State lightly. In fact, we strive to fairly and consistently the corresponding and complimentary roles of environmental stewardship and economic development.

Likewise, for decades we have successfully worked with EPA under a symbiotic governing model that is the topic of today's hearing. This notion is born of something uniquely American,

our system of federalism whereby the Nation and States function together as co-sovereigns. Both the EPA and States had a relatively balanced seat at the table, and we are known to do in the south, we would all sit around the table and have a good old-fashioned meal. There would be lively debate, ample servings, and we would cooperate and prepare a meal together.

However, this once treasured family-style dining with our Federal partners has become a thing of the past. Now we have an increasingly diminished role in the menu selection and meal preparation. We are often forced to eat what is served.

The cooperative federalism model that has defined Arkansas's relationship with EPA beginning in the 1970s has morphed into something that is better described today as coercive federalism. We have seen a decrease in time and tolerance for State implementation plans and a dramatic increase in EPA takeovers, or Federal Implementation Plans. Historically, these FIPs were used as weapons of last resort for our EPA partner, its nuclear option for States that were unfaithful to the partnership or denied marriage outright.

Now FIPs are often used as an everyday tool, often of dubious origin, in the EPA's vast arsenal. In the past seven years, States have been forced to digest more of these Federal takeovers, known as FIPs, than were ever served in the prior three Federal Administrations combined ten times over.

States will not waste the time to draft their own proposals if they expect the Federal Government to do what it wants to in the end. State sovereignty is diminished, and the opportunity for local innovation is destroyed. Cooperation should be fostered, not discouraged. We call on you, our Congress, to help remedy this broken marriage through amendment or ancillary legislation.

States are placed in the unfair position of having purchased a very expensive seat at the table, but then finding out meals are served exclusively from the EPA table. We are to be served a fixed menu without a fixed price. States' willingness to split the check, and occasionally buy dessert, was mitigated by a healthy respect and accompanying deference we received. Now we ask your assistance in resetting that needle to its point of origin.

For air pollution, we seek air pollution prevention and control is the primary responsibility of the States and local governments. In our estimation, Congress should ring the dinner bell calling for the meal to be served. States should host that occasion and EPA should be a frequent and faithful guest at each State's table. However, where we are now we can best describe as a progressive dinner party gone bad.

States have recognized an unprecedented level of Federal actions. To borrow a saying in the South, we have more on our

plate than we can say grace over. The sheer number of mandates and deadlines further complicated by the complexity of the rules leaves us in a position where being served appetizer, soup, salad, main course, and dessert all at the same time. And if we do not clean our crumbs, we are banished from the table.

States rarely have sufficient notice and implementation of the rules to establish meaningful outcomes before moving to the next one, and we are left unable to get a taste of one course before the next one arrives. The EPA is afforded the luxury of being the ultimate picky eater while they select what they prefer on the menu, while we States are struggling to digest the meals plus leftovers.

The reality that States are often now more pawn than partner is nowhere more evidenced in the EPA's transformation from a two-sentence legislative passage to the Clean Power Plan, which had profound consequences and extraordinary costs. Arkansas is seeking ways to work with how we can work with EPA on consolidating efforts and superseding FIPs and SIPs without facing legal conflicts.

In addition to the Clean Water Act, the State-developed robust eco region natural condition water criteria in Arkansas have now become unrealistic and often unachievable minimum water protection standards. In this case, EPA has executed an ultimate bait and switch.

Serving up cooperative federalism in a coercive manner is distasteful, but the Executive Branch to ignore at our metaphorical table that are stabilized by three legs and not just one makes for a difficult and messy meal. We do want a seat at this table. We should not be fed the regulation of the day. In fact, the great majority of the FIPs we have result from reinterpretation of the good neighbor provisions.

In conclusion, not only has the uniquely American cooperative federalism model fallen, and the State role is now less partner and more pawn, we do see sue and settle appearing on the menu. We are left to wonder if special interest groups currently occupy our seat at the table that once was reserved for us. When States are disenfranchised, so is the truth of our Federal democracy and the people we represent.

Thank you.

[The prepared statement of Ms. Keogh follows:]

Senator Inhofe. Thank you, Ms. Keogh.

Mr. Pirner?

STATEMENT OF STEVEN M. PIRNER, SECRETARY, SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Mr. Pirner. Chairman Inhofe, Ranking Member Boxer, members of the Committee, my name is Steve Pirner, Secretary of the South Dakota Department of Environment and Natural Resources. I appreciate the opportunity to share with you our perspectives on why we do not believe the current regulatory framework between EPA and the States upholds the principle of cooperative federalism.

Let me provide you a few examples.

To help fund the administration of Federal regulatory programs, EPA awards us a Performance Partnership Grant. In 2012, the Grant peaked in funding, but has declined during the last three years. This decrease is certainly inverse to the huge increase in Federal requirements for delegated programs and, in our view, is an erosion of cooperative federalism.

An increase of Federal preemption on what we hold as State rights is also detrimental to cooperative federalism. For example, EPA and the Corps of Engineers developed a rule intending to clarify which water bodies are subject to jurisdiction under the Clean Water Act. The rule has faced substantial opposition in South Dakota and we joined a lawsuit with 12 other States to block the rule. Upon joining the challenge, South Dakota Attorney General Marty Jackley was

quoted as saying, “The EPA is overstepping its congressional authority and seizing rights specifically reserved to the States.’’

Also under the Clean Water Act, EPA has proposed or finalized new national water quality and effluent standards for ammonia, nutrients, selenium, and dental offices. The bottom line is that these new, more stringent standards are going to cause additional wastewater treatment, which is going to drive wastewater treatment costs up, perhaps to the point of being cost-prohibitive.

Under the Resource Conservation Recovery Act, EPA finalized regulations to regulate coal ash. This was prompted by the liquid coal ash spill in Tennessee. Our single coal-fired power plant, the Big Stone Power Plant, disposes of only dry ash, but is still subject to the new rules which preempt DENR’s existing solid waste permit.

In a settlement agreement under the Clean Air Act between EPA and the Sierra Club, the Big Stone Power Plant was listed as a large source and needing to demonstrate compliance with EPA’s one-hour sulfur dioxide standard. EPA never took into account the new air pollution controls installed at a cost of $384 million to meet the Regional Haze Rule. There is no doubt these new controls will reduce sulfur dioxide emissions below the thresholds established in the consent decree.

Another Clean Air dispute involves ozone. South Dakota is one of only 10 States in the Nation that is in full attainment with the national ambient air quality standards but, against our recommendations, EPA adopted a new, lower standard for ozone. We are now at risk of having a non-attainment status; not because our air has gotten dirtier, but because EPA lowered the standards potentially below our background levels.

In response to another petition from the Sierra Club, EPA determined that certain startup, shutdown, and malfunction exemptions in 36 States, to include South Dakota, are inadequate under the Clean Air Act and need to be eliminated. Our exemption allows for brief periods of visible emissions because certain pieces of equipment are not fully functional when these events take place. DENR's rule was first established in 1975, was approved by EPA, and has not caused or interfered with South Dakota staying in compliance with the national standards. South Dakota has joined Florida's lawsuit against the rule, along with 15 other States.

The final rule that highlights the lack of cooperative federalism is the carbon dioxide standard for existing power plants. In 2012, which is the base year that EPA used, 74 percent of the power generated in South Dakota came from renewable sources. In spite of this remarkable record, EPA's rule threatens the economic viability of the two fossil fuel-

fired power plants that we do have in the State and could strand the Regional Haze controls previously mentioned at the Big Stone Plant. Here again our attorney general has joined lawsuits against the rule, most notably with West Virginia.

The bottom line is these new Federal requirements will have a huge impact on our citizens and on our economy, but will produce little or no known noticeable benefits in South Dakota. For this reason, we believe that each State should have the right and the freedom to address these issues individually, using the principles of cooperative federalism and Executive Order 13132 on federalism. As stated in the Executive Order, "The Framers recognized that the states possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.'' That is not the case now.

I hope this information is useful to the Committee. Thank you again.

[The prepared statement of Mr. Pirner follows:]

Senator Inhofe. Thank you, Mr. Pirner.

All right, would you hold the poster up that we have there?

Ms. Keogh, according to this December 2015 timeline by the Association of Air Pollution Control Agencies, there are nine Clean Air Act deadlines for States this year alone. Your testimony describes a number of these EPA actions as, and I am quoting now from your statement, "we have, at best, overlapping and, at worst, conflicting directives.'' Can you explain how competing deadlines impact your department?

Ms. Keogh. Thank you, Chairman. It is a bit frustrating as we seek implementation of these numbers of regulations in a very short timeframe. What we see as our program staff evaluate these rules and seek implementation, we are modeling different and often conflicting results for the exact same source or the facility, and it often ignores the progress that the States are already making, or continuing to make, on different timeframes.

Senator Inhofe. Thank you very much.

Mr. Huffman, on February the 23rd of 2016, I led some 200 House and Senate members, 34 of those were Senate members, in filing an amicus brief with the D.C. Circuit in opposition to EPA's Clean Power Plan.

I did observe, Ms. Markowitz, you were the only one talking favorably about the Power Plan, but I have to point out that is because you are one of four States that is exempt from it. So I

think the others would probably agree with you if that were the case.

Anyway, the brief argues, among other things, that the Clean Power Plan violates the Clean Air Act's principle of cooperative federalism, explaining, quoting from the brief, "The EPA takes a coercive approach that commandeers the States to implement and enforce the Agency's power choices.''

So I would ask Mr. Huffman, do you agree that the Clean Power Plan coerces States to implement EPA's policy choices, not the choices of States?

Mr. Huffman. Yes, Senator. I believe EPA's biggest challenge in implementing the Clean Power Plan is it had to go about it in a way that is unconventional. Typically, EPA will regulate pollutants at the end of the stack, if you will, or at the end of the pipe. And with regard to the Clean Power Plan, the only way to do that would be to put a regulatory number, a limit on carbon dioxide. And the only way to do that in a way that gave the effect that they would want would essentially shut down all fossil fuel production in this Country.

So the way they went about managing every minute detail of how this Clean Power Plan should be implemented we think ran in conflict with Section 111(d) of the Clean Air Act, which gives the States the authority to establish those performance standards; and EPA has done that instead of setting the

threshold and allowing the States to figure out how to do it.

Senator Inhofe. All right, thank you.

Mr. Pirner, there is a little bit of confusion, lack of clarity following the Supreme Court stay of the Clean Power Plan. Has your State continued to work on the rule? And if the stay is ultimately lifted, do you expect compliance deadlines to be extended? In other words, are you continuing to work as if the stay were not a reality? How are you preparing for it?

I might ask the others the same thing.

Go ahead.

Mr. Pirner. Mr. Chairman, our plan before the stay was issued was to proceed along a path such that we could do enough to get the two-year extension. EPA had said that that was not going to be a high bar to reach, so we read through what they were going to require and we had started to work on those items. One of those items was a public participation process. In response to that, we established a Web site where people could view some information and give us comments. We had also scheduled some public input meetings.

The day after the stay was issued we cancelled those public meetings. The word that we are getting back from the legal team that is leading that lawsuit is that they expect those deadlines will be adjusted by the courts once the decision is made.

Senator Inhofe. But expecting that and knowing that are

two different things.

Mr. Pirner. Yes, sir.

Senator Inhofe. Anyone else want to comment on that?

All right, Senator Boxer.

Senator Boxer. Thank you, Mr. Chair.

Mr. Mirzakhalili, as you described in your testimony, Delaware is a downwind State, such as Rhode Island, I am sure we will hear more about that, and much of the air pollution in your State comes from upwind States. You say that "it is EPA's role to ensure equity between where pollution is produced and where it is received.''

It seems to me that is right spot on. So if EPA did not set minimum standards and all this went to your neighboring State who is sending smog and everything else over your way, and we left it all to each State, what would it be like for the people of Delaware in terms of asthma, in terms of COPD, and the other problems that come from filthy air?

Mr. Mirzakhalili. Thank you for the question, Senator Boxer. I can answer that by saying they will be having a feast while we get the smoke in our eyes. We suffer from the consequence of those emissions if they are unabated. As I mentioned in my testimony, some of those are simple to remedy. The equipment has been installed, and they are just not operating because the current scheme is a cap control.

Senator Boxer. Thank you. You answered that very well.

Ms. Keogh, I would love to be invited to your house for dinner, because you obviously are focused on that, and it would be fun. So you just heard our witness from Delaware talk about the fact that if we didn't have these basic minimum standards his State, they are wonderful people there, but they are located in a place where they get those winds and they get that pollution.

So if your State was in that circumstance, I know you do get some pollution from surrounding States, but not to the extent that some of these other States get it, wouldn't you think it would be fair to limit that pollution? Because wouldn't you be concerned? The science tells us there is a direct link between dirty air and asthma and COPD and worse.

Can you understand their point, is what I am asking.

Ms. Keogh. Yes, Chairman.

Senator Boxer. Ranking Member.

Ms. Keogh. Ranking Member. I apologize.

Senator Boxer. It doesn't matter. He would be unhappy if you called me chairman.

Ms. Keogh. I understand that.

With due respect, Chairman.

Arkansas does have very clear air and healthy air, and it is difficult for a State like Arkansas to reflect on the model

assumptions that are made to implicate States which measure and monitor such clean air against other States or impacting those States.

Senator Boxer. But that wasn't my question. My question was if you were one of those States that got a huge amount of pollution from a next door State which did nothing to prevent it, would you put yourself in the shoes of Delaware or Rhode Island or these other States? It is just a simple yes or no.

Ms. Keogh. Our States work together when we have a situation like that. We have worked with our neighboring States.

Senator Boxer. Okay, so your position is that your State can tell another State what to do, and you are criticizing the EPA. Now you are going to say one State is going to tell the other State what to do. It is not realistic at all, and that is the reason we passed Federal legislation, under Nixon, I might say.

Ms. Markowitz, can you explain why it is essential that we have national minimum standards, while also allowing States to be more stringent in protecting their citizens?

Ms. Markowitz. We are also an upwind State, so we are also suffering. Vermont is a clean green State. We have some of the worst air pollution in the Country in the little town of Rutland, and that is because of the way the winds come from

coal-burning States into Vermont, and that is a problem for us. And we have tried to work cooperatively with these States to put in place those pollution controls that in many cases they already have.

But in Vermont we want to do more. We recognize that we have this culture of environmentalism, but, at a baseline, when other States want to do less, it impacts our quality of life.

Senator Boxer. Okay, let me interrupt you only to say you are making my point. Minimum Federal standards let the States do more.

Ms. Markowitz. That is right.

Senator Boxer. And I think that is what the beauty is of the Clean Air Act which is under such fierce attack.

Now, Mr. Huffman, the January 2014 spill from the Freedom Industry's chemical storage facility contaminated the drinking water supply of more than 300,000 residents of Charleston. You know that. We are now facing another drinking water crisis in Flint, Michigan, where children were poisoned by the city's toxic drinking water. Given these events, do you think EPA and the States should be doing more, not less, to protect the public's drinking water?

Mr. Huffman. Yes, Senator. I think that your point about minimum Federal standards and then let the States figure it out, that is absolutely the model that we should be following.

Senator Boxer. Good. Good.

Mr. Huffman. That is absolutely what we should be doing. My point today, and I think the frustration with West Virginia, with some it has been about what those standards are, but the real problem for me as a regulator is the way they go about implementing these standards. They are bypassing the guidelines under the Federal environmental statutes for how to implement one of these changes in minimum standards.

Senator Boxer. Well, Mr. Huffman, since my time has run out and my chairman is coughing, which means he wants me to stop, let me just say that I really respect what you just said. I don't think that any agency, the Federal Government or any State agency, should overstep its bounds. So we will talk more about, because I think what you said is very fair. Minimum standards, yes, but implemented in the right way.

Mr. Huffman. Correct.

Senator Boxer. Thank you.

Senator Inhofe. Thank you, Senator Boxer.

Senator Rounds?

Senator Rounds. Thank you, Mr. Chairman. We pride ourselves in South Dakota with the clean air. We do have challenges at times. If there is a forest fire in California, we suffer from the smoke from that. So we understand, when you talk about you want clean air. We want it too. We think we do

a good job in our State.

Secretary Pirner, you have spent decades administering and implementing environmental regulations on both the State and the Federal level. Can you discuss, in your experiences, the differences you have seen in terms of the quality and benefits of regulations that have resulted from a process that incorporates more State input compared to the regulations that have recently been promulgated by the EPA?

Mr. Pirner. Senator Rounds, based on my experience, if you go back and EPA rolled out an issue, and if everybody came to the table and agree this is a problem and agree this is some options that are viable, things get done, it works. If you don't have that process in place and the Federal Government, EPA in this case, is identifying the problem along with the option, or a couple options, none of which work for you, then we are left with the rash of lawsuits that I just mentioned in my testimony.

Senator Rounds. Talk about ozone a little bit. In South Dakota we are in compliance. We are one of the few States that is in compliance. You have seen the new numbers coming out. Can you talk a little bit about what that does in terms of a State like South Dakota, where we are one of the 10 that actually complies with the guidelines right now? You mentioned they want to make a change in this, down to perhaps below our

basic numbers. Can you talk about that a little bit, about how frustrating that is?

Mr. Pirner. Yes, Senator. To form ozone you have to have certain emissions, and it has to react with sunlight and then you get ozone. So ozone may actually form in a downwind State. In South Dakota, we are a population of, what, about 800,000 people. We don't have the sources of the chemicals that react with the sunlight to form the ozone.

So the ozone that we do have in South Dakota is either from upwind States or is basically our background levels. And I think based upon what we have seen, the new limit that EPA has come out with is very, very close, if not above, our background levels.

Senator Rounds. So what is a State like South Dakota supposed to do when we are not in compliance?

Mr. Pirner. We haven't been there yet, thank goodness, but I would assume we would go into a non-attainment status. We would have to try to work with the EPA on figuring out what to do, but, since we don't have the sources, I don't know what we would do.

Senator Rounds. In your experience, how would you recommend EPA change its practices of making regulations to better incorporate States' perspectives in the regulatory process? In other words, what are the implications of the EPA

enacting broad, overreaching national mandates rather than regulations that take into account the differing characteristics of individual States?

Mr. Pirner. Senator, your hearing today is on cooperative federalism, and if you read that Executive Order that I quoted in my testimony, it says in there that one of the principles of federalism is that those decisions that affect people that are made by the unit of government closest to the people are usually the best decisions, and we would say that is still true.

Senator Rounds. I would suggest that during your tenure, from 1979 on, you have gone through multiple administrations. Can you share with us a little bit about what you are seeing right now with regards to either the consultations that are either not there or the directives that are being laid out right now versus the way it used to work? Whether it was in a Democrat administration or a Republican administration, what is different about what is going on right now?

Mr. Pirner. Senator Boxer said we are not going to repeal the Clean Air Act and we are not going to repeal the Safe Drinking Water Act, and we are not going to repeal these environmental Federal acts; and I don’t think anybody wants to repeal those Federal acts. When those acts were put in place, there were real problems in this Country; the environment was really, really suffering, and that was the reason those acts

were put in place.

But in the intervening time period now tremendous progress has been made; our water is cleaner, our drinking water is safer, our air is cleaner. So I guess what bothers me some about this is now we are trying to ratchet down to the next environmental problem and we are getting to such low levels that we are going to spend a lot of time, we are going to spend a lot of money, we are going to spend a lot of resources, and in the end what is going to be the benefit?

Senator Rounds. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Rounds.

I mentioned in my opening statement that all these acts, the Clean Air Act, we on the Republican side were very supportive of that. In fact, I was one of the initial co-sponsors of those. So I wouldn't want people to think that these things are not working. They are working. We understand that.

Senator Carper?

Senator Carper. Thanks so much.

Again, thanks to all of you.

I am going to put my old hat on as a recovering governor just to follow up on what Ali said. During the time that Ali was serving in the Department of Natural Resources, Christof Tulou, sitting behind me, was the secretary and I was governor

for eight years, also chairman of the National Governors Association for a while. I get the idea that States are laboratories of democracy. I like the idea that the Federal Government would set some standards and say to the States, you figure out how to do it, figure out the most cost-effective way to meet those standards. I thought the six points that you outlined in your testimony, Ali, I am almost tempted to go over them again and ask everybody on this panel if you agree with those.

Before I do that, just be thinking about that. I am telegraphing a pitch. That is what I am going to ask next. So just be thinking what he said and how you feel about that.

The Chairman and I go to a Bible study that meets most Thursdays. He has been to a prayer breakfast this morning. We are people of different faiths here, but we actually do try to figure what our faith is and abide by it. We are all people with different faiths. But one of the things I think all of us agree on, I don’t care what religion we are, is treat other people the way we want to be treated. I think that is a standard that we can all embrace. I don’t care what religion you are; it is there in your religion. I think it applies here.

I could have shut down the State of Delaware’s economy when I was governor, literally shut it down, and we would still have been out of compliance in any number of air quality metrics.

That is just not fair. That is not right. That is why we need others to be a good neighbor and to look out for their neighbor.

There are some places in the Midwest where they create cheap energy, burn coal, 500-foot tall smokestacks. Put the stuff up in the air, it blows all the way over to the East Coast, we get it. We end up with dirtier air. We have to spend more money to clean up our air because other people are getting cheap electricity, and it is just not right. So I would just ask for all of us to keep in mind the Golden Rule: treat other people the way we want to be treated.

The other thing I want us to keep in mind is I think it was something, Mr. Pirner, that you said. We have made great progress. When I was at Ohio State University, a Navy midshipman there, there was a river up in Cleveland that caught on fire, the Cuyahoga River. We all remember that.

I got on the train this morning in Wilmington, Delaware, there was a river that goes right by the train station there in Wilmington, the Christina River. We can’t eat the fish there. In fact, we can’t eat the fish in most of the rivers in my State. Frankly, there are a whole lot of other rivers in a whole lot of other States where they can’t eat their fish either. And while we are making progress, the Cuyahoga River doesn’t catch on fire anymore, but we still can’t eat our fish, and we can do better.

We all agree that we ought to be guided by sound science. Part of sound science says that some of the real problems for air pollution is the size of the particulates that get into our lungs that are most dangerous are the smallest. We have only been concerned about the larger ones, but we find out, as we learn more through science, the really dangerous stuff is the really teeny weeny ones, micro jobs. So I would just ask us to keep that in mind.

I want to go back to what Ali said. He made six points that I just want everybody to say whether or not you think he is on target.

He said, I believe EPA can best fulfill its role by fulfilling the following: one, sound science. EPA must set national standards as Congress mandated which rely on sound science as a cornerstone of its work. That is number one.

Number two, flexibility. Once EPA establishes its standards, this agency should provide States with appropriate flexibility to meet their obligations under the Clean Air Act and protect public health and the environment. That is number two.

Number three, timely rules and guidance. It is important that EPA issue timely implementation rules and guidance for use by the States.

Number four, accountability. EPA should be consistent in

the outcomes it expects from States across the States and hold itself and the States and local air pollution control agencies accountable for meeting their commitments.

Number five, equity. EPA must provide for a level playing field among the States, kind of the Golden Rule deal that I just was laying out.

And, finally, nationwide sources. EPA must address sources that States are either preempted from regulating or lack the necessary expertise to regulate, or that are most effectively regulated on a national level.

Let me just start with you, Ms. Markowitz. Do you agree with those? Has he laid it out pretty well or not?

Ms. Markowitz. Yes, I agree with that. It makes tremendous sense. I think that is how we have been operating. We personally, in Vermont, have experienced tremendous flexibility in our relationship with Region 1.

Senator Carper. Thank you.

Mr. Huffman?

Mr. Huffman. Yes, Senator, those are great principles. We agree with them and we long for those days when the execution follows that ideal.

Senator Carper. All right.

Ms. Keogh? Think of this as a menu.

Ms. Keogh. I agree with Cabinet Secretary Huffman as well,

and the other members. These are good principles. It comes down to the implementation and how we can work cooperatively, and find solutions rather than create new challenges.

Senator Carper. Thank you.

Mr. Pirner?

Mr. Pirner. Yes, Senator, I would agree with those six points as well and, as the other witnesses have said, basically, it is how you carry it out.

Senator Carper. All right, good.

Mr. Chairman, I would say the ayes have it. Thank you all very much.

Senator Inhofe. Well, thank you.

Senator Capito?

Senator Capito. Thank you, Mr. Chairman.

I want to thank all of you. And I neglected to mention, when I talked about Secretary Huffman, that he also is a colonel and serves as the Vice Wing Commander of the 130th Airlift. So thank you for your service there, Colonel Huffman.

I am glad that Senator Carper went to the principles that you laid out because I was going to use that in terms of my questioning.

Secretary Huffman, you highlighted Section 303 of the Clean Water Act in your testimony, and basically it says that the EPA is asked to determine whether a change in the State’s water

quality standard meets the requirements of the Clean Water Act. And if the EPA determines that a water quality standard isn't consistent, by law, the EPA has to notify within 90 days.

My understanding is that the West Virginia legislature approved a change in the State's water quality standard just last year, but the EPA failed to either approve or deny the change within 90 days. I think the substance of the talk we are talking about today is not so much the standards; as you mentioned, it is the implementation, it is the lawfulness with which the Federal agency is moving forward.

So, in my view, with them not notifying in the timely fashion or giving you good direction, it violates the timely rules and guidance that the director in Delaware was talking about, and also the accountability portion of that.

How vital is that feedback for EPA, that it come in a timely fashion to you so that you can fully implement?

Mr. Huffman. Well, thank you, Senator. Good to see you again. It is critical because there are a lot of moving parts in the environmental regulatory business. There is a lot going on. We need to make these requests and we need to get answers, and we need to move on. What is really frustrating is I can submit a change for a water quality standard, and not get it, and wrangle for months and sometimes years, but, yet, whenever I get an opportunity to comment on proposed rules, I might have

three days, I might have four days. And that is very frustrating and it makes me wonder, if I were a conspiracy theorist, I might wonder what their agenda is, what is going on here. So it is frustrating.

Senator Capito. Let me ask you, too, the difference between guidance and rules and regulations. You brought that up in your testimony. We find that, really, throughout the Administration in terms of offering guidance instead of rulemaking because it does evade the legal aspects of creating a regulation. Are you getting more guidance than you have in the past? Is it more difficult? Is there enforcement mechanisms to guidance?

Mr. Huffman. Well, when you govern by guidance, instead of going through the protocols that the Congress has set up in our environmental statute, it allows you to get by with more; it allows you to avoid the transparency and how you get to your point; and we are seeing a lot of that not only with EPA, but, as I mentioned, with the Office of Surface Mining.

Senator Capito. I think most of you have mentioned that what you need is the Federal minimum standard nobody has a problem with; it is the implementation aspect of it. But, also, most of you have mentioned the flexibility that the States need to have. Obviously, in West Virginia, we have a much different situation than you have in Vermont. We are blessed with a lot

of coal and we use it and have used it, and we are cleaning it up every day, but it is a bigger challenge for us in certain. So we need that flexibility in West Virginia to meet those standards because, as every member would say, clean air, clean water is just as valuable to us. And I think we can eat a lot of the fish that we catch in West Virginia, so we are very happy about that.

Is the flexibility aspect probably the most difficult hurdle for you all to overcome? I will start with you, Secretary Huffman.

Mr. Huffman. I don’t know if it is the flexibility or the frustration. I know we are running out of time here. The frustration really seems to be it is an inconvenience to involve the public, to involve the States. It takes time. If you want to make a rule, it takes time. And, as you all know, that is a very cumbersome process.

The convenient way to do that would be, by fiat, to impose it upon the States. That is what we are seeing. There is little to no flexibility because it is already written. By the time we get it, it is already written and the minds are made up, and it is very difficult to overcome that.

Senator Capito. And I would just finally note that you participated or agreed to participate with OSM to develop the new stream buffer rule. Many States were involved with this.

And because of the numerous frustrations and really the lack of listening that OSM was doing, most of the States pulled out of that, I think. Is that correct?

Mr. Huffman. That is correct. There was a draft of that rule that OSM mistakenly made public before, within days of us signing on as a cooperating agency, it was already written.

Senator Capito. It was already written. Thank you.

Senator Inhofe. Thank you, Senator Capito.

Senator Whitehouse?

Senator Whitehouse. Thank you very much, Chairman. Let me associate myself with the remarks of governor and now Senator Carper. As the attorney general of my State, Rhode Island, I saw exactly the circumstance that he very well described. Not only did the upwind States not make any effort to treat us fairly, we often had to try to sue the upwind States with EPA, or sometimes even sue EPA to enforce compliance with the Clean Air Act.

On a perfect Rhode Island summer morning, you could drive to work and hear on the radio a warning that today was a bad air day, and the children and the elderly and people with breathing difficulties should stay indoors. Stay indoors.

And, like Delaware, we could have shut down every outlet of emissions in the State of Rhode Island and not gotten ourselves into compliance, because it came from other States; other States

that fought compliance; other States that often had not even put scrubbers on their smokestacks yet; other States that specifically built high smokestacks so it would project the emissions out of their State. They were very often States in compliance with these air regulations, even though they were the source of the emissions that were taking Rhode Island out of compliance.

So I know there are going to be States that are going to unhappy with EPA regulation. They would love to have the regulation be as close to the people as possible because those people have wangled it so that they can export their pollution to my State, and not have to pay for it and not have to clean it up.

And that is a real problem that I think EPA has to address. It is very important to our downwind States. It is just not fair for kids in Rhode Island not to play on a summer day because they are having a bad air day. And what we have seen is that EPA has cracked down more and more, sometimes because States have sued, sometimes because they have acted on their own, actually, our bad air days are diminishing.

But it took EPA to get after the States that were happy to go along with the gag, because they had made their pollution somebody else's problem. That somebody else was my Rhode Island children, elderly, and people with breathing difficulties.

So, for the record, our engagement with Region 1 of EPA is terrific in Rhode Island. We don't have complaints. We talk back and forth; it is very open; there is no problem. So I don't know if there is a significance to the fact that the States that seem to be more in the export business are the ones that have of the problem with EPA, and the ones that are more in the we are getting clobbered business are the ones that appreciate EPA, but certainly from Rhode island's perspective, we appreciate very much what EPA is doing.

Let me ask a quick question just to kind of see where folks stand, and let me start with Mr. Pirner.

Mr. Pirner, do carbon emissions from fossil fuel burning cause changes in our atmosphere and oceans that portend harm to people and to ecosystems?

Mr. Pirner. Senator, I am not going to enter into that particular debate. What I would argue is that if we are going to control carbon emissions, it has to be done in a way that can work and that is feasible, and the first proposal that EPA laid out in our State simply was not feasible at all.

Senator Whitehouse. Why are you unwilling to answer a question at a hearing that is as simple as, do carbon emissions from fossil fuel burning cause changes in our atmosphere and oceans that portend harm to human beings? Why are you not willing to enter into what you call a debate?

Mr. Pirner. Senator, because I am not an expert in that particular topic.

Senator Whitehouse. Ms. Keogh, do carbon emissions from fossil fuel burning cause changes to our atmosphere and oceans that portend harm to humans and to ecosystems?

Ms. Keogh. I think you can find scientists that say both, yes and no.

Senator Whitehouse. And what do you say?

Ms. Keogh. Well, I am not an expert, either, as the other witness indicated.

Senator Whitehouse. Mr. Huffman, do carbon emissions from fossil fuel burning cause changes to our atmosphere and oceans that portend harm to humans and to ecosystems?

Mr. Huffman. I am sorry, I didn’t mean to interrupt you, Senator. I do believe that the science would indicate that our climate is changing. I think that there is a lot of, unfortunately, we are having the debate in the wrong place in this Country over climate change. We are name-calling. It is reduced to name-calling over whether you believe or don’t believe in climate change. Sure, the climate is changing. What we need to be debating is what we should be doing about it. And I don’t know that we have come together as a Nation on that.

Senator Whitehouse. Well, clear enough for me.

Let me just say for the record, as I close out, that I

think every national lab, our U.S. military, NOAA and NASA, and every single one of our lead home State universities would have found that an easy question to answer with a plain and simple yes. Thanks.

Senator Inhofe. Senator Boozman?

Senator Boozman. Thank you, Mr. Chairman.

Ms. Keogh, in your testimony you cite a dramatic decrease in time and tolerance or State implementation plans and dramatic increase in EPA Federal implementation plans under the Administration. As depicted in this chart, the Obama EPA has taken over State programs 54 times, more than the three previous administrations combined times 10.

Director Keogh, are you concerned about this trend? Isn't it true that State plans are integral to the Clean Air Act's cooperative federalism structure and Federal plans were intended as only as a last resort?

Ms. Keogh. Thank you, Senator. We are concerned about this trend, and we understand as a State that Federal plans may be necessary sometimes, in circumstances where States do not act or choose not to act. But the frequency and process of the FIPs have become so alarming, mainly because they take a Federal solution that may be developed in a very short period of time with limited information and replace a very thoughtful and extensive process at a State level, where we have dealt with

what could be a reasonable solution, we vett it through transparent processes and also search out whether we have unintended consequences. So that is our biggest concern, is that we replace our well thought out judgment with somebody else's solution that may not have seen that same thoughtful process.

Senator Boozman. Very good. As you know, under the Regional Haze program, States develop implementation plans. EPA has limited authority to reject the State plan and issue a Federal plan instead. Still yet, in Arkansas, EPA rejected our State plan and proposed an extremely expensive Federal takeover. Director Keogh, is it true our State plan was on track to achieve natural visibility conditions?

Ms. Keogh. Yes, sir.

Senator Boozman. And its proposed Federal Regional Haze Plan for Arkansas, did EPA go beyond its limited procedural role prescribed by the Clean Air Act?

Ms. Keogh. In Arkansas, we do believe so. In fact, when I asked EPA, when they offered up the Federal proposal, why they expanded the scope of the Regional Haze Plan to include sources that were not legally authorized under the rule, EPA answered, because we can.

Senator Boozman. How will the requirements of the Federal Regional Haze Plan interact with possible actions under the

Clean Power Plan? Are those timelines intertwined in a complicated way?

Ms. Keogh. They are for Arkansas, at least. Our State air experts that evaluated both rules and have been working diligently to assess impacts and solutions looked at models, and I think it is important to show that the model under the Regional Haze Plan, where they take into account cost-effectiveness, assumes a source could install multi-million dollar control equipment and do it cost-effectively.

However, when you look at the models and the timelines of the Clean Power Plan, that same source no longer operates just a few years later, after those controls are installed, and that would be a very extremely costly mistake for Arkansans to pay for, to install multi-million dollar controls, only to have the source shut down to comply with the subsequent rule compliance date.

Senator Boozman. Thank you.

Mr. Ali mentioned about the unfunded mandates. I think that is something that I think we can all agree on is a real problem. Some of these things we are having trouble on agreement, but the unfunded mandates really is a problem.

Randy, can you address that a little bit?

Mr. Huffman. Well, it has really always been an issue. The funding for the vast majority, and I don’t know the number,

of our environmental regulatory programs in the States is provided by the States, either through the General Fund budgets or, in our case there is a lot of special revenue type accounts, through assessments and fees on the industries that we regulate. I don't know that I have ever seen any kind of an analysis by EPA when a new rule is imposed or a new guidance. There is never an analysis done, that I have seen, that would indicate what the costs are that are associated with.

Senator Boozman. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Boozman.

Senator Markey?

Senator Markey. Thank you, Mr. Chairman, very much.

Ali, thank you for being here. Some of your fellow regulators have expressed concern about not being able to comment on EPA rules. The Clean Power Plan changed significantly from its draft to final form based on input from the States, industry, and other stakeholders. Do you find that the EPA is listening to you in terms of the flexibility, the concerns which you have been expressing?

Mr. Mirzakhalili. I absolutely do, especially in terms of the Clean Power Plan. I think that the level of outreach and dialogue with stakeholder involvement was unprecedented in that effort. We see marked difference between what they proposed and what was finalized, and we see our comments reflected in those

changes.

Senator Markey. Earlier in the hearing there was a discussion of the number of deadlines approaching for the Clean Air Act. The Massachusetts Department of Environmental Protection has corresponded with Chairman Inhofe for this hearing and he noted that Massachusetts will meet these deadlines. Will Delaware be able to meet those deadlines as well?

Mr. Mirzakhalili. We absolutely will be.

Senator Markey. Will Vermont be able to meet these deadlines?

Ms. Markowitz. We absolutely will be. I want to acknowledge that under the Clean Power Plan we don’t have regulated entities, so we don’t have an obligation there.

In answer to your earlier question, though, there was an unprecedented involvement even of Vermont in the development of those rules because we are deeply concerned that whatever the implementation is, that it could include the Regional Greenhouse Gas Initiative that we are part of.

Senator Markey. So let me follow up with you, Secretary Markowitz. The Safe Drinking Water Act allows States to manage public water systems within their jurisdiction if they meet national standards set by the EPA. Given the ongoing situation in Flint, Michigan, it is clear that we still have a long way to

go to ensure safe drinking water for every American. What are the ways that we can enhance Federal-State cooperation to ensure safe drinking water for all in our Country?

Ms. Markowitz. Well, this is an area where we are having direct experience right now. We have an issue with a chemical, PFOA, which was not a regulated chemical which is nevertheless a carcinogen and an endocrine disrupter that has been found in wells in Bennington; it is a chemical that is used in the making of Teflon. And we really rely on EPA and their scientific expertise to help us manage that.

In addition, they have come out with some new rules and standards for the limits in copper and some other things that we can find in our drinking water. This is an area of partnership that is really important. The standards that they set help us ensure that our Vermonters are healthy when they are taking water from their taps.

Senator Markey. Okay.

Ali, let me come back to you. As we are all aware, climate change is a global problem, but it requires local solutions in order to solve the problem, and Pope Francis, who taught high school chemistry, came to Congress to preach his sermon on the Hill to us to tell us that the planet was warming and the science proved that, and that human beings were contributing to it and the science proved that, and that we had a moral

responsibility to be the leaders for the planet.

So my question is since both Delaware and Vermont are part of the Regional Greenhouse Gas Initiative, which has been partnering now coming up to eight or ten years to reduce greenhouse gases, can you talk about how the EPA has been coordinating with you to ensure that this problem, this global warming problem can be solved by cooperation amongst the States and working with the States?

Mr. Mirzakhalili. Thank you for the question, Senator. And they have been. One of the key comments we made after the proposal was for EPA's final rule to accommodate and use the framework that we already set on the RGGI, and it is certainly being accommodated. We think our RGGI solution is a very good solution that can be actually expandable nationwide, and the rule accommodates, actually.

Senator Markey. Thank you. And I appreciate the interstate aspect of this as well, much less the international aspect of it, there is no question about it, but there has to be cooperation. Silvio Conte, Congressman from Western Massachusetts, and I introduced the first acid rain bill in 1981. It took until 1990 to pass the bill, but 1981. And that was just because people in Ohio were putting these smokestacks football field high into the air and blowing the smoke right towards us, so we were the ones principally affected, Vermont

and all the New England States.

So it is clear that unless we work together we can't solve problems of that magnitude, so we thank all of you for your work in trying to accomplish that.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you.

Senator Fischer.

Senator Fischer. Thank you, Mr. Chairman and thank you, Senator Boxer, for holding this hearing today, and thanks to all the witnesses for coming.

The Nebraska Department of Environmental Quality shares in the concerns that have been expressed by many of the witnesses today. In the letter addressed to the Committee, our State has written that "While Nebraska has a good working relationship with EPA Region 7, recent EPA headquarters regulatory actions have snowballed. EPA's compulsive tinkering with standards and limits, often before States have had a reasonable chance to comply, make it difficult to reconcile those often competing priorities.''

Secretary Pirner, in your response letter that was sent to the Committee, you state that nearly all new Federal requirements will have an impact on your State, its citizens, and its economy, but will "produce little or no benefits in protecting public health and the environment.'' Like my home

State of Nebraska, South Dakota is a rural State that hosts many unique and critical natural resources that benefit citizens and communities.

Can you please elaborate on the challenges many rural communities will face as a result of expansive EPA regulations? And what are the economic impacts in terms of job growth and industry investment from the EPA rules?

Mr. Pirner. Senator, part of my concern is that on the water quality and effluent standards that I talked about in my testimony, it is not that we are against having minimum standards; but now we are ratcheting those standards down to such a degree as to be almost infeasible in some cases.

I will just talk about the ammonia standard. We were one of the first States to include ammonia as a water quality standard. Ammonia can be toxic to fish. So we agreed with that and we agreed that all of our large cities pretty much have what is called tertiary treatment that treat for ammonia, and have for many years now. But if we ratchet that level down, now we are going to have install even more treatment.

Basically, the new standard is based not on fish anymore, it is based on mussels. So I am going, well, then how did the mussels do it when we didn’t treat for any ammonia? And, again, I am not a biologist and I don’t understand all that, but all I do understand is that the levels are getting down to such a

point as to be cost-prohibitive, and that concerns me because if we do try to comply with those new standards, we are going to be spending a lot of time and a lot of money that could be spent in other areas.

Senator Fischer. Right. The Nebraska Department of Environmental Quality, they discussed the need for streamlining those Federal requirements. We are always worried about that unnecessary duplication. So, Mr. Pirner, do you agree with that statement? In your experience, do you see duplication as a reoccurring theme among State regulators as they try to interpret and then try to implement all these Federal mandates?

Mr. Pirner. Senator, I am not exactly sure I understand the question. You mean duplication between the State and EPA?

Senator Fischer. In many cases, yes, but also between Federal agencies. So it is not just EPA that comes down with standards, but you have other agencies as well.

Mr. Pirner. Well, we certainly have other Federal issues with the Corps of Engineers, with Bureau of Land Management, with Forest Service. So there are many other Federal agencies that we believe are infringing on States' rights besides EPA, if that is the answer.

Senator Fischer. How much time does that add when you are trying to meet regulations, when you have different agencies out there that I would say they are piling on a number of the

regulations that we look at?

Mr. Pirner. Senator, it is certainly of concern. I will give you an example. In our Department, we are a relatively small Department. Our clean air program I think has 14 FTE in it for the whole State. When the Clean Power Plan came out, we took two of those people and they worked when it first came out and we were trying to do comments and trying to figure out what was going on.

Then, when the final rule came out, we had to go through that process all over again. Basically, we process, I am going to say, somewhere around 80 air quality permits per month that are renewals and new and so on. I had to take 2 out of the 14 FTE out of that process to devote to just the clean air plan.

Senator Fischer. Right. In your testimony you talk about the EPA's rule to regulate coal ash, and you note that the new rule will preempt the existing solid waste permit that is currently administered in your State. It is my understanding the EPA is encouraging States to amend their State solid waste management plans. Are you concerned about the timing for that?

Mr. Pirner. Yes, Senator, very much so. Again, we believe our existing solid waste permit was adequately protecting the environment. Now there is a host of new requirements that somehow we have to merge in with that existing permit, and we have to try to figure out how to do that in the least disruptive

manner to both the agency and the industry.

Senator Fischer. Are you limited in your flexibility?

Mr. Pirner. All I can say at this point is our negotiations with Region 8 are ongoing.

Senator Fischer. Thank you.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Fischer.

Senator Gillibrand?

Senator Gillibrand. Thank you, Mr. Chairman.

Ms. Markowitz, as you know, New York and Vermont share Lake Champlain, and both are part of the Lake Champlain basin program. Working with EPA to improve the water quality of Lake Champlain is very important to both our States. It is my understanding that the EPA and the State of Vermont have been working together to establish a new total maximum daily load for Lake Champlain. Could you elaborate on how the EPA has worked collaboratively with your agency to negotiate this agreement?

Ms. Markowitz. Thank you. This is actually a perfect example of an issue that could have been seen as an overreach but, instead, really has ended up with a path forward that offers us flexibility and an innovative approach to cleaning up our waters. Lake Champlain suffers from terrible algae blooms from phosphorus pollution. Unlike in the 1970s and 1980s, it is not because of what is coming out of the wastewater treatment

facilities as it is coming off the landscape. So rather than being point-source, it is non-point-source pollution, precipitation-driven pollution.

So as we were working on a new TMDL for Lake Champlain, we have been working on it actually for four years, they could have just done it on their own, but they engaged us because they understood that if we were going to clean up the Lake, we really had to be involved because we understood what it would take to engage municipalities and farmers and business owners and developers and our transportation department in managing stormwater-driven pollution.

It has been tremendously successful. We are waiting for the final TMDL to come out. We already have a plan, though, to implement that has been passed by our legislature, including some funding, and I am happy to share it in more detail to any of you because I think it is really the gold standard for this cooperative federalist approach.

Senator Gillibrand. Thank you. In your written testimony you wrote that "pollution does not honor State lines,'' which is why you see the value of having national standards.

Mr. Mirzakhalili, you describe that our most important responsibility under the Clean Air Act is to protect the health and welfare of citizens throughout the Country from the harmful effects of air pollution. Could you discuss some examples how

pollution in one State affects the health and citizens in another?

And from your perspectives as State environmental regulators, is the health of the citizens in Vermont, Delaware, New York, or any State better protected by having national standards that limit the amount of pollution that can be emitted into the air we breathe? And, last, do you agree that the EPA has not overstepped its authority in setting national standards using the Clean Air Act, the Clean Water Act, and other Federal environmental laws that States then implement and which are based on what the science shows to be necessary to protect public health and the environment?

Mr. Mirzakhalili. Certainly. Thank you for the question, Senator. Delaware, Vermont, the Northeast is perfect examples of States that are suffering from air pollution transport, and that is EPA has come up with a transport rule recently to allocate responsibility and establish how much State contributes to the other. We happen to think that they haven't gone far enough. We think EPA needs to do more. Some of the transport good neighbor steps were due to us about five years ago, so I think that some of the deadlines that you see here are the result of things not getting done when they were supposed to get done.

So I absolutely think EPA should do more in this area, and

I think we stand to benefit from that. We can't meet air quality standards; right now, in practice, 90 percent of our air quality, air resources have been allocated to upwind States. I can't come into compliance without help.

Senator Gillibrand. Do you want to add to that?

Ms. Markowitz. Well, that is our experience as well. We are barely in compliance in a number of parts of Vermont and, of course, we have no contributing industries, so, again, it is all upwind States. We have tried to negotiate; we have tried to sue. EPA has had rules on the books, and we are very pleased that they have come out with compliance deadlines, because that will make a difference to the health of the people of the State of Vermont.

Senator Gillibrand. Thank you.

Thank you.

Senator Inhofe. Thank you, Senator Gillibrand.

Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman.

I want to thank the panelists for their testimony on a very important topic.

I think it is very clear on this Committee we are all very committed to clean water, clean air. There has been a lot of focus on the Flint issue. Certainly nobody wants to have our drinking water have poison in it, so the issue of clean water is

certainly going to come up because of that. I am really interested in having to work with my committee members.

In my State, we have entire communities, entire communities in Alaska that don't have running water, that don't have flush toilets. Thousands of Alaskans, Americans, which I think is outrageous, and I certainly want to work with this Committee on not only addressing Flint, but other places that don't have any of the benefits that most Americans just assume they have. We don't have that in my State in a lot of communities, and it is something we need to fix, not just in other places in the Country.

But, Ms. Keogh, I want to follow up. Your statement I think really sums up a lot of the frustrations that so many of us have, where you just stated where the EPA stated because we can. Can you elaborate on that a little bit more, what you just mentioned? I find that remarkably arrogant. I find that an Agency that certainly dismisses the rule of law. I think there is example after example after example, and it is not just members from this Committee.

I am always surprised why this Committee, on a bipartisan basis, isn't more focused on making sure Federal agencies follow the law. Right now the EPA, in the last two Supreme Court terms, lost, the EPA v. Utility Air Regulators case in the Supreme Court lost; the EPA v. Michigan case has a stay on the

WOTUS case where over 30 States have sued; and in an unprecedented, unprecedented action, the U.S. Supreme Court put a stay on the Clean Power Plan.

So the EPA is losing every single major rule that they are undertaking in the courts, with Obama Administration officials, other officials who are Federal judges, saying the EPA is overstepping its legal bounds.

And you may have seen what Gina McCarthy said on TV on the eve of the EPA v. Michigan case. When asked if she thought they were going to win the case, she said yes. They didn't. But then she said, "Even if we don't win the case, it was three years ago. Most of the States; companies are already in compliance. Investments have been made. We will catch up.'' So it was kind of like, hey, even if we lose, we win because everybody had to abide by the law. I think that is outrageous, and it is the source of frustration that so many Americans feel.

Can you just elaborate on this "because we can'' quote? I just find it the height of arrogance. Just for everybody's information, the EPA is supposed to abide by the law, and the Federal courts are showing in the last three years they don't. Because we can is not an appropriate answer on people who work for you.

Ms. Keogh. Yes, Senator. Thank you. It is disheartening. We, as State regulators, find ourselves in that position every

day as we effect regulation to make sure that we follow the law that is set forth.

Senator Sullivan. Of course. That is what we are supposed to do, right?

Ms. Keogh. We do not create the law; we implement law. So it is frustrating. Admittedly, I had very short notice that this Federal plan was coming at the time, so I felt like it was a genuinely honest question to understand so I could communicate effectively why requirements were re-adding to the State plan, and it was very disheartening, at a minimum, and very frustrating or perhaps a violation of trust to answer it with "we can.''

Senator Sullivan. So they didn't attempt to cite a law or a reg; they just said "because we can.'' Sounds like a king to me.

Ms. Keogh. The discussion went from a statement where Arkansas made that we are on a glide path with the Regional Haze Rule to actually advance and comply early, and that we were doing everything in our State plan that was required under the law. They went in and then, beyond that statement, discussed a provision about rate of progress and how they could require additional requirements under this phrase of rate of progress, and we questioned that, when we have a rate of progress that already exceeds or shortens the timeline and we actually achieve

compliance early.

So it became a bit of a circular conversation, to be honest with you that it was around there is a phrase in the law that says we can go beyond BART sources to seek a better rate of progress. And that was where they left it. And we did not end with a positive outcome at that, and obviously we continue to discuss that with EPA today.

Senator Sullivan. Mr. Chairman, do I have time for one more question? I see that there is no other remaining members.

Senator Inhofe. You don't have time, but go ahead.

Senator Sullivan. I just want to follow up just on the issue of consultation, where one of my frustrations, and I had been the attorney general of the State of Alaska and the commissioner of natural resources, but we often found that the consultation either didn't exist or was very cursory. And yet in every statute that we are talking about, the Clean Air Act, the Clean Water Act, every EPA-focused statute, the consultation requirement is not optional; it is mandatory.

So I would just like any of the witnesses here to, if you have a sense on the consultation more as just a box check when you indeed get it, or do they try to actually listen and implement your concerns? Because one of the things that we have seen is a one-size-fits-all rule form Washington rarely works, whether it is Alaska or Vermont or Arkansas or South Dakota. So

I am wondering about your experience with mandatory consultation, that is what it is in all the laws, it is mandatory. Do you feel that you are getting that enough?

Maybe I will start with Mr. Pirner.

Mr. Pirner. Senator, I think it is more of they check the box, in my opinion. A lot of these proposals that come out, there is a public comment period. We comment along with everybody else, but just in the example of the Clean Power Plan they received, what, 1.6 million comments or something. So if you are talking a State to Federal agency consultation process, I wouldn't consider submitting one set of comments, which we submitted under the governor's signature, go as being a State to Federal agency consultation.

Senator Sullivan. Anyone else on the consultation issue?

Mr. Mirzakhalili. Senator, if I may. I co-chair a committee, National Association of Clean Air Agencies, and I can tell you that EPA is present on every call they attended. And that is not just with my committee; with other committees where the organization has a presence of EPA staff. They bring their thinkings to us, they share early drafts, they explain. So that may be a good place to plug in a conversation with EPA.

Could they do better? In some instances, yes. We hear there is friction and tension between guidance and flexibility. You said you wanted the rules. I understand. You said you want

to go to rulemaking. Rulemakings are rigid. The guidance gives you a little more flexibility. So we have to be careful what we ask for of EPA and make sure they can produce what it is that we want. So the rules set the minimum standards; guidance provides some technical assistance; and the rest of it is our responsibility to collaborate and cooperate and get done.

Senator Sullivan. Thank you.

Ms. Markowitz. I would add to that I am on the executive committee of the Environmental Council of the States, and EPA is at every meeting and comes on to monthly calls if we ask them to.

So as described by Ali, they have made themselves remarkably available to us. In our region, as we are developing our performance partnership agreement, they also, in Region 1 at least, are offering tremendous flexibility in terms of how we are going to be managing our obligation under our delegated programs.

And, of course, they could always do better. One of the places, there is a difference between listening and agreeing, so I think they do a great job listening. They don't always agree. And that is, really, in part, some of the frustrations that you sometimes hear from my colleagues. They tend, in this Administration, we tend to agree with them more, so we are not dissatisfied with the level of attention that we are getting

from them in this dialogue.

Senator Sullivan. Mr. Huffman, do you have any thoughts on that?

Senator Inhofe. Senator Sullivan, we will have to chop it off here. You are five minutes over.

Senator Sullivan. Okay, Mr. Chairman. Thanks. There is no one else here, so I was just wondering.

Senator Inhofe. Okay. I mean, Senator Boxer wants to have the extra time that you have used, and that is fine.

Senator Sullivan. I mean usually, most committees, if there is no one else here and we still have questions, it doesn’t seem to be a big ask to continue to ask questions.

I will submit questions for the record.

Senator Inhofe. All right, that is fine. Thank you.

Senator Boxer, take whatever time.

Senator Boxer. That is very sweet of you.

Senator Inhofe. Thank you.

Senator Boxer. I just want to talk about the courts, because my colleague, Senator Sullivan raised the issue, so we looked it up. EPA has won 70 percent of the cases before the Supreme Court. As a matter of fact, on the 30 percent that they lost, sometimes they lost because they were not doing enough. And we can send you the memo on that, because I think that is important.

I also think it is important to reiterate a fact clearly that should be in evidence. This is one Nation under God, indivisible, with liberty and justice for all. We know that. So to think that the Federal Government would not be an important partner to the States is wrong.

Now, I know some of you say it is fine for them to be a partner, but I want to pick up on what Mr. Pirner said, because it is very clear. This has been a great panel, by the way. All of you have been so articulate and it has been very interesting here.

But, Mr. Pirner, you said, look, in the 1970s we had terrible air pollution and it is understandable, it made sense to cut the pollution. And now you said things are so much better EPA is going too far. I mean, that is essentially what you said. And I have to give you some facts that I am going to put in the record, with the Chairman's agreement. And this is important.

Eleven million Americans have COPD, chronic obstructive pulmonary disease. Eleven million. 22.6 million Americans have asthma, including 6.1 million children. And there are 1.68 million estimated new cases of cancer in 2016. So to sit there and say that there is not work to do it seems to me strange. And you are in such an important position to help those people.

Now, maybe some of them live in your State, some of them

live in a neighboring State, and to say that you have a great relationship with a State and they will be fine is just not a fact in evidence.

Ms. Keogh, you are here, you are giving testimony to this Committee, and it has to be truthful, and I know you were. So over the next week can you please send me the name of who told you, the name of the person who said we are ordering you to do this because we can? I want the name of that person because whoever said that was absolutely wrong, and I don't want people to just throw it out. Who did it? If you can put that in writing confidentially, I would greatly appreciate it, because I want to find out why they would say such a thing.

I just think overall this panel has really proved the point.

There is another fact on coal ash which you complained about, Mr. Pirner. Right now there are 331 hazardous coal ash ponds that could, if not improved, lead to a loss of life. So, you know, maybe you can sit there and say what you say, but when I swear to protect the people, I am going to do it; and this is the Environment Committee, this isn't the pollution committee.

And Senator Inhofe and I have a different view of the role of the Federal Government. I think it is all very fair, but at the end of the day this is one Nation, so setting minimum standards, making sure our people are protected, whether they

are in my State or a State adjacent where the pollution from my State may actually go to another State, I have an obligation, even if it is in my State.

And, by the way, we have 40 million people and a lot of pollution, a lot of industry. We try our best. We do have forest fires; we have natural disasters. So we have an obligation, and my State doesn't complain about it, they just clean up their act. And it is just a function of what is right, what is morally right. And you can measure the progress as you look at the health of the people.

This is not some conversation about the meaning of the Twelfth Amendment, the Tenth Amendment, the First Amendment; it is really about the health of our people. We should do everything we can to protect their health, and as long as I am vertical that is what I am going to be working on.

Thank you.

Senator Inhofe. Well, thank you, Senator Boxer. Anything else?

Senator Boxer. No.

Senator Inhofe. All right.

Let me just make a final comment here that it seems like every time we have a hearing it ends up to be a global warming hearing, or at least that is injected into it. Let me just share my personal thought that climate is always changing. I

have said this on the Senate Floor. I can't remember, I wasn't alive in 1895, but in 1895 we went through a period where they first started using another ice age. In 1918 was the first time they used global warming. And then, of course, that changed again in 1945 when that was another ice age they were talking about. And then, of course, that changed in 1975. So about every 30 years this happens, it has always been changing.

The interesting thing is in 1945 that was the year they had the highest CO2 emissions in the history of this Country, recorded history, and that precipitated not a warming period, but a cooling period that sustained for another 30 years. So I just think that has to be said. I know that the public understands that now. I can remember back when I was the bad guy and we were talking about this back in 2000. At that time it was considered to be the number one concern; not it is 15 out of 15 according to Gallup's March poll. So people have caught on and they are going to enjoy continuing to bring that up.

Last thing is we all want a clean environment, and when you mention the Clean Air Act and all these other acts, we were all for them, and I was back then. In fact, I was an initial sponsor of the Clean Air Act.

So, with that, we will go ahead and adjourn. I would like to have one short quick word with Mr. Huffman and Ms. Markowitz, if I could. Thank you.

[Whereupon, at 11:27 a.m. the committee was adjourned.]