



March 3, 2016

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

Dear Chairman Inhofe:

As the Director of the Arkansas Department of Environmental Quality, I appreciated the opportunity to respond to your call from the several states for a local perspective on our relationship and level of cooperation with the United States Department of Environmental Protection Agency. As I prepared my remarks on behalf of the independent sovereign that I respect, the great state of Arkansas, I thought it only fair to begin with the constitutional and regulatory structure that defines Arkansas's relationship with the EPA, the notion of cooperative federalism. This notion is born of something uniquely American, our system of federalism whereby the nation and States function together as co-sovereigns.

In Arkansas at least, for decades, the relationship worked well. When it came to federal regulation, whether it be the Clean Air Act or the Clean Water Act, we would propose and the EPA would dispose. And, we learned the hard (and expensive) way; if you want local control, it will cost you. And it did. States to this day shoulder almost ninety percent of the cost of implementation. However, the "sticker shock" to the States was mitigated by the healthy respect and accompanying deference we received from our federal regulatory partner. And, if there was ever a question of the relative standing of our partnership, one could solve the tie by simply pointing to the findings statement contained in the Clean Air Act at 42 USC §7401 (a)(3)

The Congress finds . . . that air pollution prevention (that is the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source **is the primary responsibility of States and local governments.**

However the cooperative-federalism model that has defined Arkansas's relation with the EPA beginning in the 1970s has morphed into something that can be better described as coercive federalism. We have seen a decrease in time and tolerance for State Implementation Programs (SIPs) and a dramatic increase in EPA takeovers, or Federal Implementation Programs (FIPs). Historically FIPs were used as the weapon of last resort for our EPA partner, its nuclear option for States that were unfaithful to the partnership or denied the marriage outright. However, under the prevailing paradigm, FIPs are used as an everyday tool (often of dubious origin) in the EPA's vast arsenal. To give perspective on this shift, it is worth noting that in the past seven years the States have experienced more of these federal hostile takeovers, known as FIPs, than were delivered in the **prior three federal administrations combined, ten times over.**

The great majority of the FIPs were a result of the recent interpretation of the EPA's "Good Neighbor" provisions. As States, we try and be good neighbors; but when we are told to comply with targets that are

either undisclosed or constantly in flux; and the targets may or may not correspond with any measurable environmental impact; and the mandates come at a great cost to the tax and rate payers of Arkansas, we are ready for new neighbors or a new neighborhood.

For example, in relation to the Clean Water Act, we are left to navigate federal interpretation of Arkansas's water-quality criteria. This system of water-quality protection was designed to establish natural water-quality conditions for **extremely pure** water streams under a robust monitoring protection. However, under recent federal interpretation, these once state-developed, extraordinarily heightened criteria have now become unrealistic and often unachievable minimum water-protection standards. The EPA executed the ultimate bait and switch.

It is my conclusion that not only has the uniquely American cooperative-federalism model fallen to a more totalitarian, coercive federalism scheme, the State role is now **less partner and more pawn**. And, as we are more and more frequently asked to navigate the increasingly litigious "green" lobby fighting on the EPA's "sue and settle" battlefield, we States are left to wonder who currently occupies the seat at the table that was once reserved for us.

I look forward to addressing your committee next week and appreciate the opportunity to offer input from a state-regulator's perspective. Hopefully, we States have a new partner on the horizon. Specifically in Arkansas, we anxiously await the day where we no longer have to expend thirty percent of our agency resources for air-quality programs in a state that **achieves all** national air-quality standards.

With highest regard,



Becky W. Keogh
Director

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