

Testimony of Steven Pirner, PE
Secretary, South Dakota Department of Environment and Natural Resources
to the
U.S. Senate Committee on Environment and Public Works

“Cooperative Federalism: State Perspectives on EPA Regulatory Actions and the Role of States as Co-Regulators.”

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Chairman Inhofe, Ranking Member Boxer, and Members of the Committee, my name is Steve Pirner, Secretary of the South Dakota Department of Environment and Natural Resources (DENR). 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.

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 next 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 states' rights is also detrimental to cooperative federalism. For example, EPA and the Corps of Engineers developed a rule intending to clarify which waterbodies 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 plant, the Big Stone Power Plant, disposes of only dry ash, but it 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 Plant was listed as a large source and needing to demonstrate compliance with EPA's 1-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 ten 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 full compliance with the National Air Quality 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, 74 percent of the power generated in South

Dakota already 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 and could strand the Regional Haze controls previously mentioned at the Big Stone Power 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 economy, but will produce little or no noticeable benefits in South Dakota. For this reason, 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.