

**Testimony of Matthew Rodriquez,
Secretary, California Environmental Protection Agency
Before the Senate EPW Subcommittee on Clean Air and Nuclear Safety
“Cooperative Federalism Under the Clean Air Act: State Perspectives”**

I am Matthew Rodriquez, Secretary of the California Environmental Protection Agency. Thank you Chairman Capito, Ranking Member Whitehouse, and other Subcommittee Members for inviting me to testify. I will describe how the federal-state partnership created in the Clean Air Act has provided an extraordinarily successful example of cooperative federalism. It has enhanced the protection of public health for nearly 50 years, while spurring innovations that have benefitted businesses and communities. My testimony will also discuss recent hasty and ill-considered actions that threaten to weaken or eliminate these protections, while undercutting our ability to care for our people and our economy.

Current efforts to undo clean air safeguards threaten to end years of exceptional results for people in California and across our country. Since the Clean Air Act was comprehensively amended in 1970, emissions of the nation’s most common air pollutants have fallen by an average of 70 percent, even as our economy grew by 246 percent.ⁱ By 2020, the Act’s economic benefits will total \$2 trillion, and exceed costs by 30 to 1.ⁱⁱ

The Act has spurred the use of clean technologies that drive business opportunity. New refinery equipment reduces waste and improves worker safety and the health of people in nearby neighborhoods. Idle-reduction technologies for cars, trucks, and school buses cut fuel costs, engine wear, and pollution. Gas-electric hybrids and electric vehicles curtail greenhouse gas and smog emissions. The federal EPA should not hurriedly turn its back on this record of success, and leave businesses, workers and the public behind.ⁱⁱⁱ

Joint federal and state efforts have built this record of achievement. The federal government provides minimum standards and resources to states, and states tailor solutions for their communities.^{iv} Today, that leadership is in jeopardy as U.S. EPA attempts to weaken landmark safeguards, and states are forced to spend resources to fill the gap. Here are several examples of where we must get back on track.

Working to Dismantle Shared, Rigorous, Vehicle Air Pollution Standards

Thirteen states, including California, automakers, and the federal government operate a coordinated national program to set rigorous and fair standards for greenhouse gases and fuel economy for cars and trucks.^v U.S. EPA's findings last year show the program will save roughly 1.2 billion barrels of oil, cut greenhouse gas emissions by over half a billion metric tons, and save the average consumer more than a thousand dollars over a vehicle's life.^{vi}

After years of collaborative work between U.S. EPA, the National Highway Traffic Safety Administration, and the California Air Resources Board (CARB), it has been demonstrated that the standards are achievable – maybe even conservative – and helping U.S. automakers stay competitive in the global market.^{vii} So, it is deeply disappointing that the Trump Administration recently announced its intention to weaken and potentially dismantle the program – without meaningfully consulting with California, and despite overwhelming public opposition.

As we prepare to withstand this rollback, it is important to remember that the partnership now under attack is a long-standing and successful one.^{viii} Ever since California scientists and engineers led the way to start cleaning up Los Angeles's smog in the 1960s, Congress has recognized the special role states can serve to help drive innovation in this sector. That's why from the very beginning, Congress gave California the ability not to dictate national standards, but to adopt its own emissions standards given its recognized technical expertise and its unique experience with automobile pollution. And, subject to receiving a waiver from U.S. EPA, other states are allowed to adopt California's standards.^{ix} Through the years, U.S. EPA has granted dozens of waivers to support our program,^x and many states have chosen to adopt California's standards.

Now that this collaboration has been challenged, we are prepared to take action, including legal action, to protect our program if necessary. It is time to restore our cooperative relationship in order to promote the public's interest and protect public health.

Keeping Old and Polluting Trucks on Our Roads and in Our Communities

Our relationship is also strained by the dirty and dangerous trucks called “gliders” – which are essentially old polluting truck engines placed in new truck bodies, and sold as new. Gliders can emit 50 to 450 times as much deadly particle pollution as modern

vehicles, and up to 40 times as much smog-forming NOx, as U.S. EPA's own testing shows.^{xi} Until recently, U.S. EPA was using its legal authority to ensure the glider loophole was closed and these heavily polluting trucks were out of our communities and off our roads.

But last year, in a surprise move, U.S. EPA reversed its legal position and proposed to let these trucks onto highways across the country.^{xii} This is unfair to law-abiding truck manufacturers, and will put highly polluting vehicles in our cities, towns and transportation corridors. There is no good reason for this move. The federal Clean Air Act supports glider truck controls, and the public, the states, and the truck industry oppose the reversal.^{xiii} California is stepping up and spending state resources to create our own safeguards, but enforcement is far more difficult than it would be with the federal standards in place.^{xiv} Moreover, other states may not be able to put rules in place. The result – unless U.S. EPA reverses course – will be to create a huge polluting loophole in our nation's trucking programs that can harm neighborhoods throughout the country.

Failing to Fight Climate Change

As the U.S. Supreme Court has reinforced three times now, the federal Clean Air Act gives U.S. EPA the authority and the responsibility to fight global warming and control greenhouse gases.^{xv} Although many states are taking action, we need the federal government to demonstrate leadership and provide strong policies and investments to combat the existential threat of climate change. Instead, the Trump Administration is proposing to abandon its legal responsibilities under federal law and its obligations to current and future generations.

The Administration's proposal to repeal the Clean Power Plan – which reinforces the power sector's move away from high-emitting sources – is the best example.^{xvi} The Clean Power Plan was built on cooperative federalism: through a well-publicized and transparent process, it set highly attainable targets to reduce greenhouse gas emissions by 2030, and offered a wide array of state planning possibilities and flexibilities to meet these targets.^{xvii} With the Plan in place, states across the country were working together and exploring their options. In fact, California was able to determine it could comply ten years early, and submitted a compliance plan.^{xviii} Other states have continued to make progress, too, because moving away from dirty and expensive fossil power just makes economic and

environmental policy sense.^{xix} But without federal leadership, we lack a national vision or plan to modernize our power sector.

There are many other examples. For instance, U.S. EPA was reprimanded by the federal courts for illegally delaying its commonsense methane standards for the oil and gas sector,^{xx} but U.S. EPA continues to attempt to weaken these protections. It has flatly refused to enforce methane standards for landfills, even though it is required to do so. A multi-state coalition has put it on notice that we will go to court if necessary to protect the standards.^{xxi}

The list goes on: We had to go to court to insist that the Trump Administration comply with Congress's direction to ensure fuel economy penalties keep up with inflation,^{xxii} and to maintain greenhouse gas planning targets for highway investments.^{xxiii} We had to go to court to maintain federal rules limiting wasted, polluting, gas from federal oil and gas leases from spewing into the air.^{xxiv} And when U.S. EPA refused to continue to defend critical limits on global warming super-pollutants, we wrote state rules to control these pollutants in place of the federal program.^{xxv}

The bottom line is that, in the face of the most pressing environmental crisis of our time, the federal partners we need are instead proposing to rescind, withdraw and ignore the programs and plans we need to protect our people, economy and environment. This forces states to spend their limited resources trying to hold onto progress, and to step into the gaps rollbacks create. We should be aligning our efforts to confront these threats, rather than being left to fill in the void.

Slow Walking the Clean Up of Smog

Federal-state cooperation is also at the core of our national program to make sure our air meets basic standards to protect public health. Ordinarily, U.S. EPA sets science-based maximum levels for air pollution; the states then develop plans to meet and maintain these thresholds.^{xxvi} The nation's standards for smog, a potent health threat, are critical. It can trigger asthma attacks, worsens heart conditions, keeps kids and the elderly indoors, and can even damage our agricultural crops.

U.S. EPA has not done its job on helping to reduce smog pollution. It refused to designate areas in compliance or not in attainment with federal standards, instead

announcing an extended delay before even starting the process.^{xxvii} When 15 states and the District of Columbia filed suit over this illegal step,^{xxviii} U.S. EPA withdrew the formal delay – but still did nothing. Months passed. We had to go to court again to get a court order to force U.S. EPA to do its job.^{xxix} There is no reasonable explanation for why our federal partners have delayed the implementation of these critical public health safeguards.

Failing to Protect Communities From Dirty Smokestacks

States rely on our federal partners to ensure that factories and power plants have strong pollution controls. However, just a few months ago, U.S. EPA revoked the “Once-In, Always-In” policy that ensures these major sources of toxic air pollution are always subject to strict controls.^{xxx} These toxic air pollutants include lead, mercury and arsenic, which can cause cancer and damage the nervous system, including to the most vulnerable in society, children and developing fetuses.

Under the new policy, these pollution sources can drop out of the program and increase their emissions again – a move that independent experts predict could steeply increase toxic emissions at many sites.^{xxxi}

This is not the only rollback on smokestack pollution. The Administration has repeatedly issued new policies weakening the rigor of the federal pollution control programs – including policies that make it easier for huge sources of air pollution to avoid using feasible controls to reduce emissions.^{xxxii}

People live next door to smokestacks all across this country, and it is often the communities with the fewest resources that bear the greatest pollution impacts. They deserve protection. States will do their best to provide it, but that means diverting resources needed to address other public health threats. States should not have to spend limited resources to protect their people because U.S. EPA is weakening existing protections.

Proposing Inadequate Resources

We need a strong and vigorous U.S. EPA. That is why we so appreciate that this Congress resisted the damaging proposed budget cuts to the agency, and is maintaining core federal programs, including grant programs. Protecting public health is our greatest responsibility and an investment in our future. We need to keep supporting the states, and federal workers, who protect us all.

Conclusion

Achieving the goal of clean air is about protecting our communities. We achieve that goal most effectively when we work together in partnership – with the public, with industry, and with the federal administration. That is the structure Congress wisely established many years ago, and it has proven successful. U.S. EPA should not walk away from this decades-old success story. If it does, states will do what they must to protect the health of our people and use all of our available tools to ensure that U.S. EPA is there to work with us, not against us.

ⁱ See U.S. EPA, *Progress Cleaning the Air and Improving People's Health*, available at:

<https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>.

ⁱⁱ See U.S. EPA, *The Benefits and Costs of the Clean Air Act from 1990 to 2020* (March 2011), available at: <https://www.epa.gov/sites/production/files/2015-07/documents/summaryreport.pdf>.

ⁱⁱⁱ California Air Resources Board, *California's Advanced Clean Cars Midterm Review* (January 2017), available at: https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf.

^{iv} See, e.g., 42 U.S.C. § 7416 (protecting state authority to develop rules more stringent than federal baseline standards); 42 U.S.C. § 7410 (state planning process to meet federal standards); 42 U.S.C. §§ 7411 & 7412 (federal criteria and toxic pollution programs, developed to be implemented with the states); 42 U.S.C. §§ 7507 & 7543 (recognition of state vehicle pollution standards)

^v See California Air Resources Board, *Advanced Clean Cars Program*, available at: <https://www.arb.ca.gov/msprog/acc/acc.htm>.

^{vi} U.S. EPA, *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation* (January 2017), available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf>. See also California Air Resources Board, *California's Advanced Clean Cars Midterm Review* (Jan, 2017)

^{vii} See *id.*; see also California Air Resources Board, *California's Advanced Clean Cars Midterm Review* (Mar. 2017), available at: https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf

^{viii} See Ann Carlson, *Iterative Federalism and Climate Change*, *Journal of the UCLA School of Law* (2008), available at: <https://escholarship.org/content/qt7pc2n5qc/qt7pc2n5qc.pdf>.

^{ix} 42 U.S.C. §§ 7543 & 7505.

^x See U.S. EPA, *Vehicle Emissions: California Waivers and Authorizations*, available at: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

^{xi} Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles, November 20, 2017, Docket No.: EPA-HQ-OAR-2014-0827-2417

^{xii} See 82 Fed. Reg. 53,442 (Nov. 16, 2017).

^{xiii} See, e.g., Testimony of Dr. Steve Cliff, Deputy Executive Officer, California Air Resources Board (Dec. 4, 2017), available at: <https://ww2.arb.ca.gov/testimony-opposing-epas-proposed-repeal-emission-requirements-glider-vehicles-glider-engines-and>.

^{xiv} See Sacramento Bee, "California's pollution cops might crack down on big rigs" (Feb. 27, 2018), available at: <http://www.sacbee.com/news/local/environment/article201578939.html>.

^{xv} See *Massachusetts v. EPA*, 549 U.S. 497 (2007); *American Electric Power Co. v. Connecticut*, 131 S.Ct. 2527 (2011); *Utility Air Regulatory Group v. U.S. EPA*, 134 S.Ct. 2427 (2014).

^{xvi} 82 Fed. Reg. 48,035 (Oct. 16, 2017).

^{xvii} See 80 Fed. Reg. 64,662 (Oct. 23, 2015).

^{xviii} See California Air Resource Board, *California's Compliance Plan for the Federal Clean Power Plan* (July 27, 2017), available at: <https://www.arb.ca.gov/cc/powerplants/meetings/07272017/final-proposed-plan.pdf>.

^{xix} See, EDF, “Climate and clean energy progress continues in spite of Clean Power Plan repeal rumors” (Oct. 6, 2017), available at: <http://blogs.edf.org/energyexchange/2017/10/06/climate-and-clean-energy-progress-continues-in-spite-of-clean-power-plan-repeal-rumors/>.

^{xx} See *Clean Air Council v. Pruitt*, 862 F.3d 1 (2017).

^{xxi} See The Hill, “States threaten to sue Trump EPA for delay in enforcing landfill pollution rule”, available at: <http://thehill.com/policy/energy-environment/380008-states-threaten-to-sue-trump-epa-for-delay-in-enforcing-landfill>.

^{xxii} See *States of New York, California, Vermont, and Maryland, and the Commonwealth of Pennsylvania v. National Highway Traffic Safety Administration*, United States Court of Appeals for the Second Circuit (Case Nos. 17-2780 & 17-2806).

^{xxiii} See *California et al. v. U.S. Department of Transportation et al.*, United States District Court for the Northern District of California (Case No. 4:17-cv-05439); see also Streetsblog, “FHWA Reinstates Clean Air Rule for Transportation” (Sept. 25, 2017), available at: <https://cal.streetsblog.org/2017/09/25/fhwa-reinstates-clean-air-rule-for-transportation/>.

^{xxiv} See *State of California et al. v. U.S. Bureau of Land Management*, United States District Court for the Northern District of California (Case No. 3:17-cv-07186-WHO).

^{xxv} See *Mexichem Fluor, Inc. v. U.S. EPA*, United States Court of Appeals for the District of Columbia Circuit (Case Nos. 15-1328 and 15-1329); see also InsideClimateNews, “California Bans Climate-Warming HFCs in New Air Conditioning and Refrigeration” (Mar. 30, 2018), available at: <https://insideclimatenews.org/news/30032018/california-hfc-ban-short-lived-climate-pollutants-global-warming-refrigerators-air-conditioners>.

^{xxvi} See generally 42 U.S.C. §§ 7408-7410.

^{xxvii} See 82 Fed. Reg. 29,246 (June 28, 2017).

^{xxviii} See *State of New York et al. v. U.S. EPA*, United States Court of Appeals for the District of Columbia Circuit, Case No. 17-1185 (filed Aug. 1, 2017).

^{xxix} *In re Ozone Litigation*, - F. Supp. 3d -, 2018 WL 1258209 (Mar. 12, 2018).

^{xxx} See U.S. EPA, *Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*, available at: https://www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf.

^{xxxi} See, e.g., Environmental Integrity Project, *Toxic Shell Game: EPA Reversal Opens Door to More Hazardous Air Pollution* (March 26, 2018), available at: <http://www.environmentalintegrity.org/wp-content/uploads/2017/02/Toxic-Shell-Game.pdf>.

^{xxxii} See, e.g., E&E Daily, “Pruitt backs off enforcement of power plant program” (Dec. 8, 2017), available at: <https://www.eenews.net/stories/1060068533>; Bloomberg News, “EPA Clears the Air for Polluters With U.S. Factor Emissions Rules” (Mar. 13, 2018), available at: <https://www.bloomberg.com/news/articles/2018-03-13/epa-clears-the-air-for-polluters-on-u-s-factory-emissions-rules>.