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TESTIMONY OF SEAN ALTERI

ON

“HEARING ON S. 2662, THE GROWING AMERICAN INNOVATION NOW (GAIN) ACT”

BEFORE THE

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

November 6, 2019

Good morning, Chair Barrasso, Ranking Member Carper, and members of the Environment and Public Works Committee. My name is Sean Alteri and I currently serve as the Deputy Commissioner of the Kentucky Department for Environmental Protection. I am honored to testify today before this committee and appreciate the opportunity to provide comments relative to the New Source Review permit program.

Thank you for considering potential statutory clarifications to the New Source Review program. Establishing clear statutory authority will allow the United States Environmental Protection Agency to properly implement the New Source Review program and provide consistent direction to State, Local, and Tribal air pollution control agencies. Effective administration of the New Source Review program provides regulatory certainty for air pollution control agencies, as well as the regulated industries and the general public.

It is also important to note that the New Source Review program is utilized by EPA, State, Local, and Tribal air pollution control agencies to attain and maintain compliance with

National Ambient Air Quality Standards. The New Source Review program is necessary to protect the health of our citizens and prevents the significant deterioration of air quality.

Proposed Legislation

Regarding this legislation, the proposed amendments are narrow in their scope of the New Source Review permit program. This bill proposes to amend the definition of “modification” to exclude projects that implement efficiency measures, which reduce the amount of any air pollutant emitted by the source per unit of production. The proposed amendment also limits the emissions increases to the maximum achievable hourly emission rate demonstrated in the last ten years.

Additionally, the proposed legislative text clarifies the term “construction” under the New Source Review program and when a modification should be subject to New Source Review as a “major modification.” The proposed statutory text clarification provides regulatory certainty and eliminates confusion as to when New Source Review applies.

To be certain, this bill does not apply to new major stationary sources or new units at existing major stationary sources. This bill does not allow the debottlenecking of downstream emission units and does not exempt those emissions from New Source Review. And this bill does not allow sources of emissions to violate the National Ambient Air Quality Standards.

Kentucky’s New Source Review program

In Kentucky, the New Source Review Program is codified into Kentucky law and approved in the State Implementation Plan by EPA. As such, the Energy and Environment Cabinet is the New Source Review permitting authority for all counties in the Commonwealth, except for Jefferson County. Since 2008, the Cabinet issued more than twenty-five (25) New Source Review permits. These actions allow for economic growth and development, while

requiring major sources of emissions to install and operate the Best Available Control Technologies.

During this same time period, air quality in Kentucky improved dramatically. In the last 10 years, emissions of sulfur dioxides from Kentucky electric generating units decreased by more than 83 percent and emissions of nitrogen oxides decreased by more than 70 percent. These tremendous emissions reductions from Kentucky electric generating units occurred due to regulatory requirements established under Section 111 and 112 of the Clean Air Act, not the New Source Review program.

Relationship to the Affordable Clean Energy Rule

Due to potential applicability of New Source Review requirements, facilities have unfortunately forgone efficiency improvements that can provide substantial environmental benefits. During last year's hearing in the House related to this proposed legislation, the discussion centered on existing coal-fired electric generating units. This bill will not allow coal-fired electric generating units to violate the applicable emissions standards established by the Cross-State Air Pollution Rule and the Mercury and Air Toxics Standards. However, this bill will allow an existing coal-fired electric generating unit to implement energy efficiency measures and reduce their emissions of carbon dioxide per megawatt hour generated.

Important to air quality regulators, the proposed legislation will provide for the timely issuance of permits related to energy efficiency measures. Energy efficiency projects at existing coal-fired electric generating units will be necessary to reduce their carbon dioxide (CO₂) emissions and will be critical for air pollution control agencies to meet the requirements of the Affordable Clean Energy rule, also known as the ACE rule. To satisfy the ACE rule, state plans

will establish carbon dioxide emission limitations from existing coal-fired generating units for the first time.

Tension in the Clean Air Act

Balancing environmental protection and economic growth and development often creates tension between regulated industries and environmental activists. This tension is most noticeable and evident in the Clean Air Act's New Source Review program. When setting forth the statutory authority, Congress declared the New Source Review program is "to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources."¹ Striking the proper balance between economic growth and protection of our air resources is essential to fulfill our statutory obligations as regulators.

To resolve the tension between industries and third party interest groups, final determinations of our New Source Review permits are often administratively challenged and decided through litigation. In recent years, the New Source Review program has served as the vehicle to delay the permit process and construction of major economic development opportunities.

In Kentucky, third party interest groups challenged or petitioned EPA to object to eight air quality permits related to New Source Review in the last ten years. All of the challenged air quality permits utilized coal as an energy resource and the focus of the challenges centered on coal-fired electric generation. Ultimately, EPA and the courts found that the air quality permits issued by the Division for Air Quality contained all applicable requirements and sufficient monitoring to demonstrate compliance.

¹ Clean Air Act, CAA § 160(3)

Legislative Compromise

In an effort to resolve the differences of this proposed legislation, one option would be to further restrict the scope of the New Source Review amendments to apply only to energy efficiency projects at existing coal-fired electric generating units. By establishing clear statutory authority, state air quality regulators will be provided with the regulatory certainty to establish carbon dioxide emission limitations from existing coal-fired generating units for the first time under the Affordable Clean Energy rule.

In closing, air quality control agencies must be provided with regulatory certainty when developing state plans to comply with the Affordable Clean Energy rule. This proposed legislation will ensure statutory authority is established for the ACE rule and will provide for the timely issuance of New Source Review permits related to energy efficiency measures at existing coal-fired electric generating units. Again, thank you for the opportunity to participate in today's hearing and I look forward to any questions you may have regarding my testimony.