

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

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My name is Deb Markowitz. I am the Secretary of the Vermont Agency of Natural Resources. Thank you for inviting me to testify today on the role of the federal and state governments as co-regulators of the environment. Delegated states such as Vermont are primarily responsible for the oversight and implementation of federal environmental programs. Presently, Vermont is delegated to manage the Resource Conservation and Recovery Act (dealing with hazardous waste), the Clean Water Act and the National Pollution Discharge Elimination System (NPDES) 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 did not require us to do so. 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, 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 our mountains. But this is not all. In our manufacturing and high tech sectors, indeed in every sector of business and industry in Vermont, it is the state's natural beauty and pristine environment that enables us to attract good jobs and high quality employees to stay or relocate here. 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 regulation engender in Washington DC.

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 that Vermonters and Americans have come to depend upon. Finally, national environmental regulations provide an even playing field among states, helping 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 has approached it 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 work with us to find a solution.

When the EPA delegates federal programs to the states, the U.S. Government provides federal funds to the states to help run those programs. One area where your committee could benefit all delegated states would be to adequately fund state implementation efforts of new rules and programs. For example, the Association of State Drinking Water Administrators (ASDWA) estimates that federal funding under the Safe Drinking Water Act is falling short to the tune of \$240 million just to administer a minimum program, and \$308 million to run a more robust program. Over time, Congress has failed to increase the funding provided to states and inflation has further exacerbated this problem. I truly hope your committee will work to ensure that states have adequate funding to administer the delegated programs.

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

Flexibility in Program Implementation

- **Performance Partnership Agreement (PPA):** Every four years, Vermont establishes a Performance Partnership Agreement with EPA. This agreement forms the work plan for a significant portion, roughly \$5 million, of the funding Vermont receives annually from EPA to implement our delegated programs. Recognizing that federal funding is flat while program implementation costs are increasing, in fiscal year 2014, EPA Region 1 began an investment/disinvestment process that provided an opportunity for states to take a fresh look at this agreement and suggest major changes.

Vermont has participated in this process over the past two years and has found it to be valuable. For example, because the Vermont Air Quality and Climate Division has a backlog of stationary source permits, we proposed to address that backlog in exchange for EPA delaying a time-consuming requirement to develop industrial regulations for specific industries, such as fiberglass boat manufacturing, which comprise only a small portion of air emissions in Vermont. EPA agreed. The result is cleaner air for Vermonters and an increased level of service to the regulated community. Finally, EPA has also reduced the administrative burden of the PPA by modifying its requirement to present an annual work plan to every second year and by moving the process online. This shift was the result of a business process improvement initiative between the State of New Hampshire and EPA, which expanded to other states in the region.

- **Permit Process Improvements.** Vermont currently has public notice processes for 85 different permits. Nearly all have unique requirements that result in inconsistent notice and comment periods for our permits – even those that apply to a single project. This can lead to confusion, inefficiencies, and increased costs. EPA is currently working in close partnership with Vermont to consolidate the public notice and comment processes for federally delegated permits in order to foster a more

accessible, consolidated, and cost-effective process for the public and the regulated community. We greatly appreciate EPA's support of Vermont's efforts to streamline permit processes while protecting public health and the environment.

- **Hazardous Waste Program:** EPA Region 1 has helped Vermont develop state hazardous waste regulations that are functionally equivalent to the federal RCRA hazardous waste regulations. The willingness of EPA to consider unique but equally protective state regulations in Vermont has resulted in regulations that provide flexibility and make sense for Vermont. EPA recently proposed revisions to its hazardous waste generator regulations ("Generator Improvement Rule") that include some of the approaches adopted in Vermont. Some examples of functionally equivalent Vermont regulations include:
 - Accumulation of hazardous waste in "short-term storage areas" in lieu of "satellite" accumulation so long as certain conditions are met.
 - A provision in the "used oil filter exemption" that allows removal of oil from spent oil filters by means of crushing instead of the "hot-draining" method specified in the federal exemption. One can't "hot drain" oil filters from a junk vehicles that won't start.
 - Expansion of the applicability of the "circuit board recycling exemption" to include intact circuit boards in addition to "shredded circuit boards."
 - Staging of hazardous waste for up to three days prior to recycling at hazardous waste recycling facilities.
 - A provision that allows Vermont's conditionally exempt generators (the smallest hazardous waste generator category) to deliver hazardous waste to another Vermont facility for subsequent management provided the second facility is owned or operated by the same corporate entity and is either a small quantity generator or large quantity generator.

Cooperating to Meet Vermont's Environmental Goals

- **Lake Champlain Total Maximum Daily Limit (TMDL).** The development of a total maximum daily limit (TMDL) for phosphorus in Lake Champlain is a perfect example of the collaborative and productive relationship Vermont has with EPA. EPA has worked closely with Vermont

over the past four years to develop the TMDL, which was issued in draft form in August 2015.

EPA Region I engaged Vermont as a full partner every step of the way as it developed the TMDL for Lake Champlain. As a consequence we are confident that this TMDL can be successfully implemented, taking a watershed approach to hold our municipalities, highways, farms and developers to a high standard of stormwater management, while reducing pollution from our wastewater treatment facilities over time. As a result of this collaboration we expect the final TMDL to (a) require wastewater treatment upgrades for phosphorus reduction only when actual phosphorus load approach 80% of a facility's limits; (b) approve compliance schedules that allow for adequate time to conduct planning, engineering and budgeting; and (c) allow reasonable timeframes to develop and implement municipal stormwater and road general permits. Through this flexible approach, Vermont will be able to achieve a clean lake using cost-effective and common-sense strategies.

- **The Ozone Transport Commission (OTC).** Much of Vermont's air pollution originates elsewhere. For this reason, the OTC, created under the Clean Air Act, is important to us. The OTC brings together Northeast and Mid-Atlantic states with EPA to work together to identify and implement strategies that reduce harmful ground-level ozone concentrations and to control the formation and long-range transport of this damaging pollutant.
- **Brownfield Redevelopment.** The State of Vermont recently started the Brownfields Economic Revitalization Alliance (BERA), which prioritizes selected brownfield sites throughout the State. Through the EPA Brownfields Program, EPA Region I consistently ensures that EPA's staff time, resources and funding are directed to Vermont's redevelopment priorities. This winter, the EPA Region I lab assisted in a statewide background study of PAHs, arsenic and lead in soil, in fulfillment of a state requirement to find more cost-effective ways to dispose of lightly contaminated soils.

Including States' Voices in Developing Rules & Standards

- **EPA Clean Power Plan (CPP).** The Clean Power plan is an example of a rule that was made better as a result of the unprecedented outreach and public engagement undertaken by the EPA. As a result of EPA's

engagement with the states, the final Clean Power Plan is fair, flexible and will help the transition to cleaner power. Although Vermont is the only state that has no compliance target under the CPP, we offered comments during the rulemaking that strongly urged the EPA to ensure that market-based solutions like the Regional Greenhouse Gas Initiative (RGGI) could be a compliance mechanism for states. We were pleased that EPA made sure that there were strong but achievable standards for power plants and customized goals for states to cut the carbon pollution that is driving climate change, and that market-based approaches can be used to help states meet their goals.

- **Safe Drinking Water.** Over the past year, EPA Region 1 staff have assisted Vermont in implementing the Revised Total Coliform Rule (RTRC). EPA staff have facilitated quarterly teleconferences in which representatives of all New England states and EPA rule managers come together to discuss implementation status and efforts and to answer questions. The rule managers have made themselves available to answer any and all questions and strive to be a hub of documents and information for sharing. EPA has also provided and forwarded scores of guidance documents, implementation assistance, and pre-made fact sheets for distribution to water systems and users specifically related to the RTRC. The safety of Vermont drinking water, through implementation of this and other regulations, is one of my agency's highest priorities.

Sharing Resources to Increase Efficiency and Effectiveness of our Programs

- **Emergency Response.** Vermont's close relationship with EPA Region 1 was especially evident after **Tropical Storm Irene** in 2011. Tropical Storm Irene caused significant damage across Vermont, including extensive damage to state offices in Waterbury, Vermont. Over 1,000 state employees were displaced, and many paper and electronic records were destroyed by flooding. EPA deployed the EPA Region 1 Water Team to contact more than 200 public water supply systems across the state. EPA relayed information back to the Vermont Department of Environmental Conservation and Vermont Rural Water Association. Because of EPA's oversight role, the EPA could quickly gain access to electronic resources that Vermont could not access due to the destruction of records caused by the storm.
- **Superfund.** Vermont could not manage the scope of complicated hazardous waste sites without the EPA Removals Program. At the JARD site in

Bennington Vermont, the EPA Removals Program conducted a very thorough evaluation of the site and the impacted media (soil, groundwater, surface water, indoor air) and implemented effective mitigation all in collaboration with the Vermont Department of Environmental Conservation (VTDEC). At the point that the removals program could no longer implement work, the project was transitioned to the pre-remedial program and eventually the Superfund program.

The State of Vermont has thirteen Superfund Sites, some led by the Responsible Party and some by the EPA. EPA provides funding for all staff oversight and includes VTDEC staff in all decisions related to site investigation and remedial action. These sites are managed in the best sense of cooperative federalism.

- **National Emissions Inventory.** The triennial National Emissions Inventory (NEI) is the result of significant ongoing collaboration between the U.S. EPA, Vermont, and other State / Local / Tribal Environmental Agencies. This comprehensive inventory integrates many different types of data available from individual State programs and from EPA, and uses best-available methods and advanced computer modeling to characterize emissions sources and the quantities of air pollutants they emit. This inventory is instrumental in identifying important emissions sources, tracking emissions trends over time, and informing good air quality management decisions.
- **Public outreach and education.** Vermonters and citizens across the nation are able to stay informed about the quality of the air they breathe through a partnership between state environmental agencies and the U.S. EPA known as **EnviroFlash**. Measurements from air quality monitoring stations are used to calculate Air Quality Index (AQI) values. These AQIs combined with local weather data are used to issue daily air quality forecasts via local radio, television, and EnviroFlash e-mails that alert the public when unhealthy levels of air pollution are likely to occur nearby.

In closing, I want to reiterate the important work that EPA is doing to protect human health and the environment. The delegated states simply could not do this work without the leadership of the EPA. In Vermont, our partnership with EPA is crucial to our efforts to protect our environment and the health of our citizens, and exemplifies the doctrine of cooperative federalism.