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February 8, 2016

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

Dear Chairman Inhofe:

As Director of the Alabama Department of Environmental Management (ADEM), I am honored to respond on behalf of the State of Alabama to your request to submit information on the onerous burden placed upon the States by the unprecedented volume of Federal regulation promulgated by EPA under the current Administration. As expressed in your letter and contrary to the established principles of cooperative federalism, this deluge of unfunded mandates has been imposed upon the States with precious little State input and has come at a time when all States, and particularly Alabama, are struggling with reduced budgets and diminished workforces. The following detailed example is one of many that could be provided.

I draw your Committee's attention to the NPDES Electronic Reporting Rule (80 FR 64064) promulgated by EPA on October 22, 2015. This rule affects both NPDES regulated entities and their oversight by NPDES regulatory authorities (i.e. states, tribes, territories, and, in some cases, EPA). The eReporting Rule is 132 pages long and is one of an estimated 3,281 new rules proposed/implemented by EPA since 2008. EPA developed the proposed rule with little input from the states impacted by the rule.

In addition to requiring NPDES regulated entities to convert their current method of submittal for various reports and notifications from paper to electronic, this rule also requires that state NPDES program data elements in the areas of permitting, compliance, and enforcement (beyond simply the reports and notifications) must also now be electronically submitted to EPA. The rule has the noble purpose of ensuring that accurate, complete, and consistent data is submitted by NPDES regulatory authorities to EPA's national database (ICIS-NPDES). There is no dispute that this is a goal worth pursuing. However, significant resources must be expended by the states and regulated entities to comply with the mandate on a compressed schedule with no additional funding being provided by EPA.

This rule places numerous resource burdens on ADEM. To remain the primary recipient of the reports and notifications covered under this rule, ADEM must modify its existing data systems (1) to be able to receive the electronic reports and notifications from NPDES regulated entities as prescribed in the rule and (2) to be able to submit the data to EPA's database. Despite being a leader among all the states in electronic applications, this will require significant additional investment by ADEM. The alternative to making these modifications would be to instruct our regulated universe to submit their required reports directly to EPA, bypassing the state regulator entirely. EPA has, therefore, forced upon the States the dilemma of either compromising its primacy in implementing the NPDES program to comply with the rule or allocating a significant portion of its scarce resources to satisfy yet another unfunded federal mandate.



Not only must the methodology of submitting data to EPA be changed, the rule also increases the amount of data ADEM must electronically submit to EPA in the areas of permitting, compliance, and enforcement. As a result, ADEM must expend significant additional resources to modify our systems to accommodate the additional data elements. Significant personnel resources must also be expended to start up compliance with the new requirement in the rule to populate all permit-related data elements for all currently outstanding facility-specific individual permits. Since tailored facility-specific individual permit applications must continue to be submitted in paper form due to their variability, the population of these data elements from paper to electronic format will be a continuous personnel resource burden.

Finally, the rule establishes an unrealistically short timeframe for accomplishing Phase I of the rule. In Phase I, EPA only allows one year from the effective date of the rule for ADEM to have a system ready for receipt of Discharge Monitoring Reports (DMRs) and to register all NPDES regulated entities for participation in the system. Unlike many states, ADEM fortunately already has an electronic DMR system in place, but we are still working toward increasing our participation rates. In addition, Phase I's schedule only allows nine months for ADEM to modify its data system to accommodate the new permit-related data elements, to populate all permit-related data elements for all current individual permits, and to begin electronically submitting the data to EPA. Phase I's schedule also only allows one year from the effective date of the rule for ADEM to modify its data system to accommodate the new compliance and enforcement data elements and to begin electronically submitting the data to EPA. These are three independent deadlines for which EPA gave no consideration for the limited existing resources that NPDES regulatory authorities have available.

Similar accounts of unreasonable burdens placed on states by EPA could be provided in the areas of Clean Power Plan (CPP), the SIP call on Start-up, Shutdown and Malfunction, the SO<sub>2</sub> settlement, and Coal Combustion Residual (CCR) to name just a few. EPA with its 15,000 employees is asking the 50 states, each with a mere fraction of its employees (in Alabama's case 1/25<sup>th</sup>), to not only study and understand the hundreds of thousands of pages of rules but to actually implement them without any additional funding.

In the absence of direct funding from EPA, ADEM must divert scarce resources from the implementation of the core environmental programs in order to bear the burdens of these and other unfunded federal mandates. The imposition of such burdens by the clearly dominant regulatory partner belies all principles of cooperative federalism and fundamentally calls into question the viability of this process.

In closing, I thank the Committee for the opportunity to comment on these matters and stand ready to provide any additional information you may need.

Sincerely,



Lance R. LeFleur  
Director

cc: Barbara Boxer, Ranking Member