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TESTIMONY OF SEAN ALTERI

ON

“COOPERATIVE FEDERALISM UNDER THE CLEAN AIR ACT: STATE PERSPECTIVES”

BEFORE THE

UNITED STATES SENATE ENVIRONMENT AND PUBLIC WORKS

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

APRIL 10, 2018

Good morning, Chair Capito, Ranking Member Whitehouse, and members of the Subcommittee. My name is Sean Alteri and I currently serve as the Director of the Kentucky Division for Air Quality. I am honored to testify today and thank you for this opportunity to share a state's perspective related to "cooperative federalism" under the Clean Air Act.

In addition to my work with the Kentucky Division for Air Quality, I also serve as the Past-President for the Association of Air Pollution Control Agencies. Our association is a national, non-partisan, consensus-driven organization focused on improving air quality. The Association represents more than 45 state and local air agencies.

As Senator Inhofe remarked during a 2016 hearing, "Cooperative federalism is a core principle of environmental statutes, including the Clean Air Act...where EPA and the states work together to meet environmental goals." Obviously, mutual respect is essential and necessary to forge a strong working

relationship between EPA and state regulators. Working together, cooperatively, will allow all of us to achieve our environmental goals and objectives.

Specific to the Clean Air Act, "cooperative federalism" is more than a catch phrase. Once EPA establishes a standard or an applicable requirement under Title I of the Clean Air Act, the states are primarily responsible for the implementation and enforcement of those standards and requirements. These standards include national ambient air quality standards, standards of performance, national emission standards for hazardous air pollutants, and waste incineration rules.

To ensure that states are provided with the ability to carry out its obligations under the Clean Air Act and effectively administer its delegated authorities, EPA must:

- Establish nationally uniform emission standards based on sound science;
- Promulgate reasonable regulations and fully consider implementation requirements of state, tribal, and local air pollution control agencies;
- Allocate stable and adequate resources and funds to state, tribal, and local air pollution control agencies;
- Provide timely implementation guidance and technical support; and,
- Meet all of its non-discretionary statutory duties by the prescribed deadlines.

EPA's Strategic Plan for FFY 2018-2022 underscores each of these necessities. In its strategic plan, EPA establishes a goal of "Cooperative Federalism" and sets forth its objectives to "enhance shared accountability" and "increase transparency and public participation." EPA's goal and objectives are consistent with those of state, tribal, and local air pollution control agencies.

In Kentucky, we take our responsibilities seriously and work diligently to fulfill our obligations under the Clean Air Act. We are proud of the significant improvement in air quality, and we understand that there is more work to conduct.

In the spirit of cooperative federalism, I would like to provide a status report on the air quality in Kentucky and to detail activities conducted by our Cabinet to fulfill our obligations under the Act. Air Quality in Kentucky is improving dramatically. In the last 10 years, emissions of sulfur dioxides from Kentucky electric generating units decreased by more than 83% and emissions of nitrogen oxides decreased by more than 70%. Our robust ambient air monitoring network measures these positive results. Currently, all of the monitors in the Commonwealth, except for one ozone monitor in Louisville, measure compliance with all of the national ambient air quality standards, including the 2015 ozone standard.

These reductions and our success in air quality improvement are achieved through significant investments to install and upgrade air pollution controls. In the last 10 years, our utilities invested more than \$8 Billion dollars for air pollution controls. And these expenditures are shared by all of the ratepayers in the Commonwealth.

Generally, the State Implementation Plan serves as the roadmap of the state's ability to implement, maintain, and enforce primary and secondary national ambient air quality standard; whereas, a state or local air quality permit program acts as the vehicle for the implementation of the standards and requirements for stationary sources. And finally, the inspections and compliance evaluations performed by an agency establish accountability and enforcement of the applicable requirements. EPA provides oversight and is the approving authority for these delegated activities.

Relative to Kentucky's air quality permitting program, I am pleased to report that all of the Title V operating permits in at least the last 5 years were issued under Part 70 of 40 CFR, the state's authority, and no permits were issued by EPA under Part 71. During calendar year 2017, the Cabinet issued 368 permit actions that contained federally-enforceable requirements. Similarly, our stationary source inspectors conducted 327 full compliance evaluations for sources located in Kentucky; whereas, EPA only conducted 3 stationary source inspections. Clearly, Kentucky serves as the primary authority to implement and enforce the Clean Air Act requirements related to stationary sources.

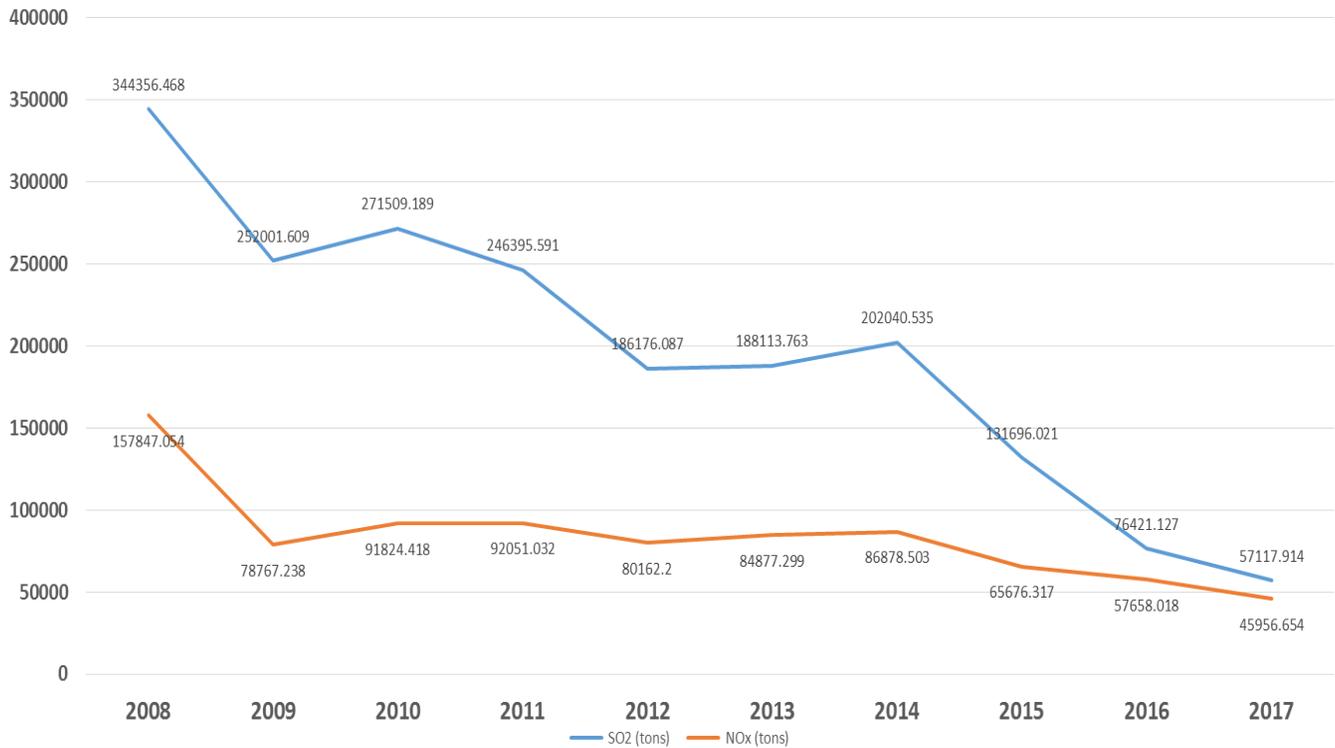
Despite these efforts, EPA during the last Administration disapproved several State Implementation Plan revisions and issued Federal Implementation Plans as a result. The vast majority of EPA's negative actions to disapprove or issue a Federal Implementation Plan resulted from "Sue-and-Settle" decisions.

For today's hearing, I would like to highlight and provide context to the Administrator's statement: "Past sue-and-settle tactics, however, undermined this principle of cooperative federalism by excluding states from meaningfully participating in procedural and substantive Agency actions." The Administrator correctly assesses the negative impact of sue-and-settle negotiations when states are excluded from meaningful participation. As mentioned, several issues related to Kentucky's State Implementation Plan have been and are subject to third-party litigation. EPA settled those matters with no input or interaction with our agency or any representative of the Commonwealth. When Kentucky's air quality representatives would inquire on the status or substance of the litigation, EPA would explain that those are matters under litigation and EPA is prevented from discussing the issues with the affected states.

It is also worth noting that there are instances where matters related to the Kentucky State Implementation Plan are filed and decided in the U.S. District Court for the Northern District of California. Although our Cabinet counsel has explained to me the legality of the venue; as a layperson, I do not understand, nor agree, why a judge in Northern California should decide a matter relating to the Kentucky State Implementation Plan or the designation schedule of a national ambient air quality standard. The venue of the Northern California District Court limits the Commonwealth's ability to meaningfully participate in the procedural and substantive EPA actions related to the Kentucky State Implementation Plan. Instead, national ambient air quality standards, or actions related to state implementation plans, are matters affecting national policy and law and should be decided in the DC Circuit to establish national consistency.

In closing, the Commonwealth of Kentucky is meeting its statutory obligations under the Clean Air Act and we are “Good Neighbors” by reducing our emissions and providing the rest of the country with the manufactured goods and products necessary to improve the quality of life for all. To accommodate “cooperative federalism” and strong working relationships, we request that EPA apply a state implementation approach rather than aggressive federal overreach. Again, thank you for the opportunity to testify today, and I look forward to any questions or comments you may have regarding my testimony.

Kentucky Electric Generating Unit Emissions



Source: EPA's Clean Air Markets Division (<https://ampd.epa.gov/ampd/>)

Number of Facilities with a Full Compliance Evaluation



<https://echo.epa.gov/trends/comparative-maps-dashboards/state-air-dashboard?state=KY&view=activity>