



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF AIR QUALITY  
100 W. Water Street, Suite 6A  
DOVER, DELAWARE 19904

Telephone: (302) 739 - 9402  
Fax No.: (302) 739 - 3106

TESTIMONY OF ALI MIRZAKHALILI BEFORE THE  
UNITED STATES SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
HEARING ON  
COOPERATIVE FEDERALISM: STATE PERSPECTIVES ON EPA REGULATORY  
ACTIONS AND THE ROLE OF STATES AS CO-REGULATORS  
MARCH 9, 2016

Chairman Inhofe, Ranking Member Boxer and other members of the Committee, my name is Ali Mirzakhilili and I am Delaware's Director of Air Quality. I also serve as the Chairman of the Ozone Transport Commission's (OTC) Stationary and Area Sources Committee, Co-Chair of the National Association of Clean Air Agencies' (NACAA) Permitting and New Source Review Committee and Immediate Past Chair of the Mid-Atlantic Regional Air Management Association (MARAMA). I thank you for the opportunity to testify today on "Cooperative Federalism: State Perspectives on EPA Regulatory Actions and the Role of States as Co-Regulators."

I would like to share with you Delaware's view of the respective roles and responsibilities of the U.S. Environmental Protection Agency (EPA), states and the U.S. Congress with respect to complying with various environmental statutes and associated

*Delaware's good nature depends on you!*

regulatory actions to protect public health and the environment. I will focus my comments on the Clean Air Act (CAA), but believe they also illustrate points that can be extended to many other programs jointly implemented by EPA and the states, such as the Safe Drinking Water Act, the National Pollutant Discharge Elimination System under the Clean Water Act and the Resource Conservation and Recovery Act.

Congress has provided state and local air pollution control agencies with “primary responsibility” for implementation of the federal CAA. Indeed, our most important responsibility under this legislation is to protect the health and welfare of citizens throughout the country from the harmful effects of air pollution. We have come a long way since Congress first authorized the CAA and we continue to see tremendous health and welfare benefits from its implementation. The CAA has prevented literally hundreds of thousands of premature deaths, as well as averted millions of incidences of morbidity, including, for example, heart disease, chronic bronchitis and asthma. The health benefits associated with the CAA far outweigh the costs of reducing pollution by more than 30 to 1. Moreover, we have accrued these health benefits over the same period as our nation’s gross domestic product has grown. It is fair to say that the Clean Air Act has not only been one of our nation’s most effective environmental statutes, it will likely go down in history as one of our most effective domestic laws ever passed.

The public generally does not differentiate between levels of government; it simply expects the entire system to function effectively. Therefore, it is imperative that each part of government – EPA, Congress and the states – fulfill its respective roles and perform as effectively as possible so that we can continue to protect public health and the environment.

I believe that EPA can best fulfill its role by focusing on the following:

1) Sound science. EPA must set national standards, as Congress mandated, which rely on sound science as a cornerstone of its work and continue to follow the recommendations of its

independent science advisors – the Clean Air Scientific Advisory Committee. I believe EPA has done a good job of setting national standards that are scientifically based.

2) Flexibility. Once EPA establishes its standards, the agency should provide states with appropriate flexibility to meet their obligations under the CAA and protect public health and the environment. States that have been innovative and progressive should be allowed to implement measures that produce better outcomes for them, their citizens and their neighbors. EPA must be demanding of the outcome but receptive to creative and flexible approaches. EPA has sought to do this under the Ozone and PM Advance programs and, most recently, under the Clean Power Plan rule.

3) Timely Rules and Guidance. It is important that EPA issue timely implementation rules and guidance for use by states. These rules and guidance must be finalized in a timeframe that enables states to successfully meet their statutory obligations, including preparing and submitting plans by stipulated deadlines. EPA is improving in this regard with the ozone implementation rule due to be proposed later this year, which will be within one year of the issuance of the final 2015 ozone National Ambient Air Quality Standards (NAAQS).

4) Accountability. EPA should be consistent in the outcomes it expects from states across the country and hold itself and state and local air pollution control agencies accountable for meeting their commitments.

5) Equity. EPA must provide for a level playing field amongst the states. As a downwind state, Delaware finds many requirements are skewed in that most of our air pollution is now coming from our upwind neighbors, yet our state is still required to impose further emission reductions within our borders. We believe that it is EPA's role to ensure equity between where pollution is produced and where it is received.

6) Nationwide Sources. EPA must address sources that states are either preempted from regulating or lack the necessary expertise to regulate or that are most efficiently regulated on a national level. This applies to all sources of national significance, including a variety of mobile sources that should remain an EPA regulatory priority both because of their emissions contribution and because individual states, with the exception of California, do not have authority to regulate them on their own (although some states may opt into California-adopted motor vehicle standards). Other source categories, such as consumer products and paints, are also good candidates for updated EPA rulemakings. Federal measures will bring about improvements in air quality across all states and help everyone meet their State Implementation Plan obligations under the CAA.

Congress also has a major responsibility in environmental protection, including most importantly, ensuring that it provides adequate funding to EPA and the states to assist in meeting legislative mandates and that clean air goals are met. Unfortunately, in recent years, Congress has fallen short in this respect. The CAA authorizes the federal government to provide grants for up to 60 percent of the cost of state and local air pollution control programs and calls for states and localities to provide a 40-percent match. In reality, however, this has not been the case. State and local responsibilities have expanded significantly since 1990, while the grants have not, resulting in Delaware and most other states self-funding over 75 percent of their air program operating budgets. State air programs are dramatically underfunded, which is resulting in the degradation of states' abilities to fulfill their statutory obligations and, more importantly, to provide the citizens of this nation the clean, healthful air to which they are entitled.

Despite these challenges, states are trying to do their best to comply with all EPA rules and regulations under the Clean Air Act. In Delaware, I am proud to say, we are meeting all of

our CAA obligations, focusing our limited resources so as to ensure all emitting sources in the state are reasonably and appropriately controlled.

This year, states face a number of important regulatory deadlines under the CAA. These deadlines do not differentiate between large states with ample resources and small states, like ours, with fewer resources. I believe Delaware's practice of ensuring all emitting sources are appropriately controlled is key to our ability to manage this workload in light of insufficient funding. If we can do it, so can others.

Five of the deadlines states face this year are related to important health-based air quality standards. As part of Delaware's efforts to attain and maintain compliance with earlier particulate and ozone standards and the regional haze program, Delaware took measures to ensure all of our large emitting sources are controlled. Because of this prior work, Delaware has complied with the 2012 PM<sub>2.5</sub> standard, and is subject only to the first of the three sulfur dioxide requirements. Because of EPA's work in removing lead from gasoline, Delaware attained the lead NAAQS many years ago. By ensuring all Delaware sources were appropriately controlled, and remain so, these deadlines do not represent a significant workload for Delaware in 2016.

We are continuing our work this year to reduce greenhouse gas (GHG) emissions, which are endangering public health and welfare. In 2008, Delaware and eight other states took action to reduce GHG emissions from power plants through the Regional Greenhouse Gas Initiative (RGGI). This year, Delaware will continue its RGGI work and prepare our state's strategy under the Clean Power Plan (CPP). While we had anticipated submitting our full CPP state plan in September 2016 – before the court stayed the CPP – we will be ready to submit our plan as soon as the stay is lifted. I believe the CPP is an excellent example of how EPA is thoughtfully and successfully working with states and stakeholders to craft achievable and flexible rules. By meeting frequently with and listening carefully to states during the rule development process,

EPA was well informed of their perspectives and issued a final rule that provides states tremendous flexibility for meeting their targets.

Two of the other upcoming deadlines are related to the ozone standard. All Delaware sources emitting smog-forming pollution are well controlled, yet Delaware continues to experience poor air quality and impacts from ozone on public health and our economy. Delaware's emission control efforts to reduce ozone precursor emissions have resulted in a situation where more than 90 percent of the ozone concentrations adversely affecting Delaware are attributable to emissions transported into Delaware from upwind areas. Under the CAA, upwind states were required to mitigate these emissions more than five years ago, yet they have not done so. In some cases the problem is that upwind emitting sources have not been controlled. In others, appropriate emissions controls have been installed on units but, incredibly, are not being operated. Any action this Committee can take to require upwind states to comply with the CAA, and to increase EPA resources to enable the agency to ensure equity, would greatly help Delaware and others in similar situations.

In closing, Delaware believes the appropriate relationship between federal and state/local governments is as it is envisioned in the CAA, where the EPA sets targets based on the best science available and then allows the states to develop strategies to meet those targets while providing technical assistance as needed.

Our nation has made incredible progress in cleaning up our air resources. More work lies ahead and in order to continue to meet these challenges, EPA and the states must have adequate resources. We urge Congress to do more to meet its obligations under the CAA by adequately funding state implementation efforts. For FY 2016, the President's budget request for state and local air agency grants under Sections 103 and 105 of the CAA was \$268.2 million, but was cut by Congress by \$40 million in the FY 2016 appropriation. For FY 2017, the President has again

requested \$268.2 million for state and local air agency grants. We recommend that you appropriate at least this amount to keep faith with our citizens that all levels of government are doing their part to protect the public health and the environment.

Once again, thank you for this opportunity to testify. I look forward to answering your questions.