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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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January 12, 2016

David Small
Secretary
Delaware Department of Natural Resources and Environmental Control
Richardson & Robbins Building
89 Kings Highway
Dover, DE 19901

Dear Secretary Small:

As the Secretary of the Delaware Department of Natural Resources and Environmental Control you are in the unique position of managing Delaware's compliance with federal environmental regulatory actions, namely those actions by the U.S. Environmental Protection Agency (EPA). Indeed, EPA actions issued under environmental statutes such as the Clean Air Act and Clean Water Act are based on the principle of cooperative federalism, which requires state and federal governments to work together in meeting such federal actions. Given the U.S. Senate Committee on Environment and Public Works' jurisdiction over these environmental statutes and responsibility for overseeing EPA, the Committee is particularly interested in hearing your state's perspective on the current EPA regulatory framework. EPA programs may require substantial time and resources from your department to comply, including myriad regulatory, permitting, and enforcement obligations. Your input on these actions is invaluable to the Committee's understanding of the dynamics between states and EPA in achieving environmental regulations.

According to the Environmental Council of the States (ECOS), states are responsible for carrying out 96.5% of federal environmental programs.¹ As such, the Committee seeks to better understand the impacts of recent EPA regulatory actions on states such as yours and identify ways to ensure the unique interests of states are adequately considered by EPA in its regulatory process. For instance, according to a recent report by the Association of Air Pollution Control Agencies in December 2015 states are facing nine regulatory deadlines under the Clean Air Act in 2016 alone.² These actions range from developing attainment plans for national ambient air

¹ Environmental Council of the States (ECOS), available at (https://www.dropbox.com/s/jgdbu4rql29oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx).

² State Clean Air Act Deadlines, 2016-2021, Assoc. of Air Pollution Control Agencies (Dec. 2015), available at http://www.csg.org/aapca_site/news/documents/Timeline12-18-15.pdf.

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quality standards (NAAQS) for particular matter to establishing an air quality approach for the sulfur dioxide NAAQS.³

Even those actions with compliance deadlines beyond 2016 presumably require your department's attention and resources now. However, it is unclear the extent to which states are able to manage competing deadlines and resources to meet multiple EPA actions. Recent news reports have mentioned resource and timing constraints by some state environmental regulators, and the Committee seeks to better understand the scope of ongoing work and resources dedicated to EPA regulatory actions.⁴ In testimony before the Committee last year, a Mississippi Department of Environmental Quality (MDEQ) regulator explained that with respect to EPA regulations, "State environmental agencies and specifically MDEQ are being asked to do more with less."⁵ In regards to the recently finalized NAAQS for ozone, the Texas Commission on Environmental Quality (TCEQ) reported that "to develop an attainment demonstration and reasonable further progress to [state implementation plan] SIP revisions for a moderate nonattainment area [under the ozone NAAQS] is 45,000 to 55,000 hours of staff time."⁶ These are just a couple examples that shed light on state planning to meet EPA regulatory actions.

Accordingly, the Committee respectfully requests your feedback on the state resources and efforts necessary to comply with EPA regulatory actions, and whether the current regulatory framework between EPA and the states upholds the principle of cooperative federalism. It would be greatly appreciated if any such information or comments on these matters be submitted to the Committee by February 9, 2015.

Thank you for your attention to this request. If you have any questions, please contact the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman

cc: Barbara Boxer
Ranking Member

³ *Id.*

⁴ InsideEPA, *ECOS Eyes Help For States Adopting EPA Rules, Avoids Policy Statements* (Dec. 18, 2015).

⁵ Oversight of Litigation at EPA and FWS: Impacts on the U.S. Economy, States, and Local Communities and the Environment: Hearing Before the Subcomm. on Superfund, Waste Mgmt., and Regulatory Oversight of the S. Comm. on Env't & Pub. Works, 114th Cong. (Aug. 4, 2015) (testimony of Dallas Baker, Air Dir., Miss. Dept. of Env'tl. Quality), available at <http://www.epw.senate.gov/public/cache/files/2866f007-9a61-4629-83f9-33e5e31eefaa/baker-testimony.pdf>.

⁶ Texas Commission on Environmental Quality Implementation of the 2015 Ozone NAAQS: State Deliverables and Information Needs, available at www.reginfo.gov.