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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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February 23, 2006

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The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Dear Administrator Johnson:

On February 6, 2006, the President released the Administration's FY2007 budget. It would cut grants for State and local air quality programs by \$35 million, or 15 percent of the amount enacted last year. In contrast, the combined FY2007 budget request for all other Categorical State and Tribal Air Grants has gone up compared to last year's enacted levels.

I am concerned that the Environmental Protection Agency (EPA) has recently taken actions that increase States' workloads on air quality issues, has been late in issuing needed guidance to the States regarding this workload, and is now suggesting that State funding be cut.

The Clean Air Act divides responsibility for clean air programs between the Federal Government and State governments, assigning State and local governments a critical role in ensuring that we have healthy air to breathe. For the key air pollutants, the Federal Government sets the health-based level that is acceptable in outdoor air. States then have primary responsibility for developing plans and regulations to bring all areas in the country into compliance with these health-based levels. State and local air programs provide cleaner air, reducing pollution that causes asthma attacks, premature death, and other respiratory and cardiovascular problems.

In light of the responsibility assigned to State governments under the Clean Air Act, EPA provides grants to support core operational expenses of State and local air quality programs. They provide funding that is used to pay State and local employee salaries and other expenses necessary to issue permits, to monitor air quality, and to develop and run State and local air programs. Michigan's Department of Environmental Quality is concerned that a 15 percent cut in funding will result in decreasing the number of staff handling air issues, which they predict could increase the amount of time it takes to process permits and limit their ability to investigate citizen complaints. According to information released by the Environmental Council of the States, other State and local agencies have predicted similar problems if these grants are cut.

Recent EPA actions have increased the workload on State and local air quality agencies. In 2004 and 2005, EPA determined that 126 areas did not meet the new health-based standard for ozone and 39 areas did not meet the new standards for fine particle pollution. As a result of these designations and requirements of the Clean Air Act, over 30 States are required by 2007 or 2008 to develop plans and adopt regulations that will limit air pollution enough to bring these areas into attainment of the national health-based standards.

EPA's failure to issue implementation rules in a timely fashion has made the States' jobs more difficult. In April 2004, when EPA designated ozone nonattainment areas, then-Administrator Leavitt stated EPA's intent to finalize the ozone rule by the summer of 2004, and the PM_{2.5} rule early in 2005. Instead, EPA delayed issuing the second phase of the ozone rule until late fall of 2005. EPA has not yet finalized the PM_{2.5} rule, having only proposed it in November 2005. In addition, EPA's "Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone National Ambient Air Quality Standards" was not finalized until October 2005.

To justify the reduction in State and local air grants, EPA relies in part on its issuance of the Clean Air Interstate Rule (CAIR), which is designed to limit regional power plant emissions that cause ozone and fine particle pollution. CAIR does not, however, bring all areas into attainment. EPA's 2006 analysis projected that 21 PM_{2.5} and 20 ozone areas would need additional reductions to attain in 2010, and 17 PM_{2.5} and 11 ozone areas would need additional reductions to attain in 2015. EPA selected levels for CAIR that have increased, rather than decreased, the work load for some States. In CAIR, EPA refused to adopt more stringent controls requested by a number of States, even though EPA's 2006 analysis of S. 843 (the Clean Air Planning Act) indicates that a significantly tighter SO₂ program would be a cost-effective way to help more areas meet the PM_{2.5} standards. The analysis projected that the levels of control in that bill would bring 10 additional areas into attainment by 2010 and five additional areas by 2015.

To make up for the emission reductions that could have been achieved under a tighter CAIR, States are faced with either controlling local sources to make up the reductions that could have come from a more stringent CAIR or adopting a more stringent sub-regional power plant program. States in the Northeast, the mid-Atlantic, and the Midwest are actively considering programs more stringent than CAIR. EPA is making the States' job even tougher by refusing to provide additional guidance to the States despite repeated requests. Although it would be a relatively simple matter for EPA to provide advice on how best to design a more stringent State program that could be run seamlessly as part of the Federal program, EPA has chosen to leave the States on their own – guessing about what type of more stringent program, if any, might be acceptable to EPA.

EPA's national rule on mercury is also causing extra work for the States because EPA's rule took a broad, national approach and did not attempt to address specific local hot spots (i.e., localized areas with high mercury deposition from power plants). In defending the type of program and level of control in the mercury rule, EPA relied on the estimate that only 8 percent of total mercury deposition in the United States is from the U.S. utility industry. It turns out that

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the national average may not be a fair representation of local conditions across the entire country. EPA-funded research found that nearly 70 percent of mercury in rain collected at an Ohio River Valley monitoring site originated from nearby coal-burning industrial plants, leading one to question what other localities have mercury deposition from nearby coal plants that is dramatically higher than the national average – a question EPA has not answered. A number of States have indicated a concern that they will have to conduct additional work at the State and local level to determine whether they have local hot spots and whether to supplement the Federal rule with additional local control requirements.

To assist us in better understanding the President's budget request for FY2007 and its consequences, please provide responses to the attached questions no later than Thursday, March 9, 2006.

Thank you for your assistance in this matter. If you have any questions regarding this request, please contact me or have your staff contact Lorie Schmidt, Minority Counsel to the Committee on Energy and Commerce at (202) 226-3400.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality

The Honorable Sherrod Brown, Ranking Member
Subcommittee on Health

**Questions for the Honorable Stephen L. Johnson
Administrator, Environmental Protection Agency**

1. Part of the justification provided for reducing States and local air grants is that “Substantial progress has been made in attaining the NAAQS for lead and carbon monoxide (CO). State efforts are now focused on maintaining compliance with the lead and CO NAAQS and therefore funding for these activities reflects this shift.”
 - (a) How much money have States spent each year in the last five years (FY2002 through FY2006) on attainment of the lead and CO NAAQS?
 - (b) How much money do you anticipate that States will need to spend in FY2007 on attainment of the lead and CO NAAQS?
 - (c) Please identify the CO and lead State implementation plans (SIPs) that have been developed and submitted in each of the last five years (excluding minor revisions to existing SIPs).
 - (d) How many CO and lead SIPs do you expect to be submitted in FY2006 and 2007?
2. What activities that were funded through the States and local air grants in FY2005 or FY2006 do you believe States do not need to do in FY2007? How much do each of these activities cost?
3. EPA designated areas as nonattainment for ozone in 2004 and for PM_{2.5} in 2005, which triggered obligations to submit State implementation plans in 2007 and 2008, respectively.
 - (a) For each year from FY2004 through FY2006, please indicate how much States spent developing ozone and PM_{2.5} SIPs.
 - (b) Of the President’s FY2007 budget request for State and local air grants, how much is for development and adoption of ozone and PM_{2.5} SIPs?
4. The Budget Justification indicates a decrease of \$15.6 million in State and local air grants due to progress in attaining the NAAQS for CO and lead, and for other reductions from national programs such as CAIR. Compared to previous years, States also have increased responsibilities such as adopting ozone and PM_{2.5} SIPs. Does the President’s FY2007 budget reflect increase funding for these increased responsibilities? If so, what is the increase?
5. For each year, FY2005 through FY2007, how much money do you believe States and regional planning organizations have spent analyzing power plant reductions or developing power plants regulations more stringent than CAIR?
6. EPA intends to finalize a new coarse particle standard in September 2006. Will this require new monitors or monitoring efforts by the States? If so, what additional funding for this effort is provided in the FY2007 budget request?