

STATE OF COLORADO

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Colorado Department
of Public Health
and Environment

November 23, 2012

The Honorable Ed Whitfield
Chair, Subcommittee on Energy and Power
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: Responses to Clean Air Act Forum (Part III) Questions

Dear Representative Whitfield:

Thank you for the opportunity to participate in the “State, Local, and Federal Cooperation under the Clean Air Act” forum scheduled for November 29, 2012. Set forth below is the Colorado Department of Public Health and Environment’s responses to the questions you asked participants to provide prior to the forum meeting.

1. In your agency’s experience implementing the Clean Air Act (CAA), what is working well? What is not working well?

The CAA has produced significant nationwide air pollution reductions over the past 40 years. Pursuant to our delegated authority under the CAA, the Colorado Department of Public Health and Environment and the Colorado Air Quality Control Commission have implemented numerous air pollution control programs that provide significant emission reductions and public health benefits to our citizens.

Successful implementation of the CAA effectively requires input from and partnerships between diverse stakeholders. In Colorado, these include state agencies, the U.S. EPA, federal land managers, Governor-appointed air quality planning agencies (such as the Regional Air Quality Council and the North Front Range Metropolitan Planning Organization), city and county health departments, the regulated community, environmental organizations and citizens. Colorado’s air quality has improved by effectively utilizing these relationships.

The State Implementation Plan (SIP) process has produced essential carbon monoxide (CO), ozone, and particulate matter (PM10) reductions at over a dozen Colorado non-attainment areas, resulting in widespread compliance with the National Ambient Air Quality Standards (NAAQS). Colorado has also developed a robust stationary source permitting review program that has lead to considerable additional air pollution reductions at thousands of sources. Moreover, federal technology standards, including new

car standards, fuel standards, and new source performance standards for industrial facilities, have pushed the envelope of technological progress, resulting in noteworthy air pollution reductions nationwide.

EPA's recent oil and gas rules are another example of a CAA initiative that worked well from our perspective. EPA did unprecedented outreach with many stakeholders, including states, industry, and environmental groups. EPA took the time to understand Colorado's existing oil and gas framework and considered our comments before moving forward with a set of national rules that will lead to cost-effective air pollution controls, while allowing industry to operate on a clear and level playing field.

Despite the unambiguous successes of the CAA, implementation of the Act has become increasingly challenging. The obvious and comparatively simple emission reduction strategies have already been implemented. This, combined with such factors as evolving information about human health and environmental impacts, increasingly tightening standards, growing populations, cross-boundary emission transport, and the need for continued economic growth, present significant challenges for state and federal air quality planners. As with any program that is forty years old, the CAA can benefit from fresh thinking and innovation.

As one example, the ambitious schedule for evaluating and promulgating NAAQS revisions every five years has created an inefficient planning process. Numerous SIP submittals undergoing delayed EPA review are often superseded or replaced by subsequent SIP revisions, which further add to the SIP processing backlog. The backlog has produced a delay in EPA's timely consideration of SIPs, which should be evaluated under the applicable guidance and policy that existed when the SIP was submitted. Unfortunately, the prolonged delay in SIP review can produce a differing interpretation of what EPA deems acceptable, which was not clear when the SIP was originally submitted.

Associated with the ambitious NAAQS review schedule is the challenge of producing implementation guidance that coincides with the revision of the standard. The absence of timely implementation guidance produces a lack of clarity on SIP expectations, and often creates considerable uncertainty in the planning process, because states are reluctant to proceed with expensive technical planning activities that are later superseded by belated guidance that may differ significantly from the states' approach. In Colorado, this is further complicated by the fact that all SIPs must undergo legislative review prior to EPA submittal, which reduces the period available for providing a timely plan.

On these and other issues, EPA should consider ways to simplify or otherwise streamline CAA programs, while maintaining air quality protections. SIPs and other demonstration packages from states are only getting more voluminous and complex, often without concurrent air quality benefits. As further examples, exceptional events, aggregation (particularly in the oil and gas arena), and backsliding determinations are all unduly complex. States spend untold resources on these demonstrations, without clear guidance, and EPA rarely reviews them in a timely manner. With increasing oil and gas development nationwide, tightening standards, and more extreme weather events, one can reasonably expect an increase in these types of submittals. EPA must work with states to craft more straightforward approaches to these issues, or else we will simply exacerbate the existing resource drain, with ongoing unsatisfactory results for all concerned.

2. Do state and local governments have sufficient autonomy and flexibility to address local conditions and needs?

The CAA provides adequate autonomy and flexibility to state and local governments to address air quality concerns, particularly with respect to emissions from stationary sources. However, state and local governments have limited ability to significantly reduce emissions from non-road engines and

some emissions associated with mobile sources, where EPA has regulatory primacy in establishing standards.

In addition, we note that of Colorado's SIPs have to date involved smaller or discrete areas within the state, where targeted and flexible plan development can be coordinated between state and local governments. In the foreseeable future, however, it is anticipated that standards (particularly ozone) will be lowered. Depending on the revised standard(s), this could lead to additional non-attainment areas in Colorado and other states. In this scenario, it is likely that planning activities may involve many more jurisdictions and could encompass large geographic (and cross-boundary) areas, which could impact the states' autonomy and flexibility in developing SIPs within a multi-state region.

3. Does the current system balance federal, state, and tribal roles to provide timely, accurate permitting for business activities, balancing environmental protection and economic growth?

The permit review process provides for appropriate consideration of cost effective emission controls. That being said, the current preconstruction and operating permit review process can be very complex and time consuming. The timeliness of permits has been a longstanding challenge, particularly for major sources because of the level of technical analysis involved, complexity of regulations that sometimes change, public comment process and EPA review. In Colorado, we have implemented numerous innovations in our minor source permitting program, such as general permits, to streamline the permitting processing while still ensuring that cost-effective and protective emission controls are utilized.

4. Does the CAA support a reasonable and effective mechanism for federal, state, tribal and local cooperation through State Implementation Plans? How could the mechanism be improved?

Historically, the CAA has been an effective mechanism for SIP collaboration and development; however, the level of cooperation between the EPA and state, tribal and local agencies has appeared to diminish in recent years, over disagreements on legal interpretations of the federal regulations that are neither clear nor specific. The difficulty of reaching compromise has sometimes stifled collaboration with state, tribal and local agencies responsible for developing SIPs and resulted in expensive delays because of plan revisions necessary to comply with EPA directives. In some instances, there appears to be discrepancies between EPA Regions on interpretations of specific rules, resulting in differing SIP expectations nationwide.

Colorado supports working in partnership with EPA on developing innovative and flexible approaches to resolving complex problems that benefit air quality and comply with the law. EPA Region 8 based in Denver has made significant efforts to improve communication with states and to work up front on difficult issues, and we support its efforts.

Nonetheless, the SIP process does not currently allow for dispute resolution in situations where EPA rejects a state's proposal for compromise. Presently, states have the option of either accepting EPA's regulatory interpretation, or the potential of a Federal Implementation Plan.

The SIP process also does not require that EPA provide implementation guidance in the form of a rule when a NAAQS is promulgated. Such guidance seems warranted considering the complexity of the SIP development process. Consequently, one possible solution that may lessen future disputes is to consider a regulatory or policy initiative specifying that EPA provide a detailed implementing regulation (subject to notice and public comment) that must be issued concurrent with any final NAAQS regulation, in order to provide clarity on SIP expectations and implementation consistency amongst EPA Regions.

5. Are cross-state air pollution issues coordinated well under the existing framework?

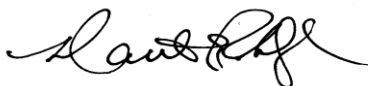
Colorado acknowledges the challenges involved in coordinating cross-state air pollution impacts. Technological advancements in regional/continental modeling capabilities have improved our understanding of air pollution transport and the associated interstate impacts. Improvements in technology have produced an expectation that states use regional modeling to demonstrate out-of-state air pollution impacts. Unfortunately, regional modeling is very expensive and difficult for individual states to perform, because of limitations in acquiring other states' emission inventories. Consequently, improvements to the existing framework may be appropriate if EPA decides that national scale modeling is necessary to determine cross-state air pollution impacts.

6. Are there other issues, ideas or concerns relating to the role of federalism under the CAA that you would like to discuss?

The Clean Air Act has been an effective tool for motivating and focusing efforts to improve air quality nationwide. Much of the focus or impetus for many CAA initiatives has related to air pollution issues in heavily populated areas of the Eastern United States. However, the Western United States has many emerging and equally important air quality challenges and considerations. It is critical that the D.C.-based EPA not lose sight of this fact, and that the Western states have an equal voice on national air quality issues. For example, Colorado has over a dozen national parks and wilderness areas, where haze reduction and visibility improvements are being implemented as envisioned by the CAA. Western states have higher background levels of ozone, particularly at altitude, where background levels can reach over 50 ppb. This is a critical consideration for EPA as it contemplates lowering the ozone NAAQS. Similarly, the arid West has significant challenges with dust and other particulate matter. Addressing Western concerns on issues such as EPA's exceptional events rule and prescribed fire and wildfire guidance is imperative if EPA is to successfully implement these programs. New approaches may be necessary to effectively deal with future air quality challenges.

Thank you again for the opportunity to participate in the forum. I look forward to meeting you and joining in the forum discussion on November 29th.

Sincerely,



Martha E. Rudolph
Director of Environmental Programs