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November 20, 2012

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

Re: Responses to Clean Air Act Forum Questions

Dear Representative Whitfield:

Thank you for inviting me to participate in the "State, Local, and Federal Cooperation in the Clean Air Act" forum scheduled for September 19, 2012. It is a privilege to share with the subcommittee the State of Montana's perspective on the implementation of the Clean Air Act. In preparation for this forum, you have asked the participants to answer several questions in writing. Allow me to respond to your questions:

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

It has been mentioned by others already, and it is important to mention again, that the Clean Air Act (CAA) has been very instrumental in improving air quality in virtually every area of the United States over the last forty years. The drafters of the CAA had a tremendous vision of what the nation's air quality could become and put in place some very important programs that not only addressed the issues that were present at the time, but also provided mechanisms for dealing with future challenges. The State of Montana finds that the New Source Review permitting program, even though it is incredibly complex and very controversial, is one example of the CAA that continues to remain useful in ensuring that large facilities operate in a manner that is protective of human health and the environment.

From the State of Montana's perspective, not all aspects of the CAA have been implemented in a manner that allows us to keep pace with the changes in air quality management. An example of this is the State Implementation Plan (SIP) process. Managing and implementing an effective air quality program requires states be able to adapt to different situations in a somewhat expeditious manner. This may mean that when states invent new and creative ways of regulating emissions, such as the State of Montana's Oil & Gas Registration Program, they need to modify their SIPs to incorporate such a program and address other air quality challenges that arise. Unfortunately, changing any requirement

already approved into the SIP is a very difficult, resource-intensive effort that is often times either not acted upon in a timely fashion or results in a disapproval of the requested change. The State of Montana has had many of the same SIP provisions for 30-plus years, even though the air quality issues that we face today are very different from the issues of the early 1980s. In addition, the tools of the 1980s have since been replaced with much more complex tools today that may be used in much different ways to make very different demonstrations. Montana utilizes an enterprising and transparent stakeholder process (which includes citizens, industry representatives, and environmental groups) called the Clean Air Act Advisory Committee. We think our stakeholders would agree it would be very beneficial to encourage periodic updates to SIPs to reflect air quality management of today and of the future using a SIP-approval process that is clearly understood by all parties.

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

In general, the State of Montana has sufficient flexibility to address local conditions. However, as described above, we are somewhat limited when we try new, innovative measures that are environmentally beneficial and administratively more efficient than some of the traditional approaches. Montana believes in state experimentation that generates innovative regulatory options. An example of this is the State of Montana's Oil & Gas Registration Program. This program replaces the traditional and time-intensive site-by-site permitting process. In this instance, the State of Montana and its stakeholders (industry and environmental groups) developed a program where individual permits are replaced by specific rules that require the highest levels of controls. This program eliminates the paper and administrative fuss and allows state personnel to get into the field and offer compliance assistance and verification for the affected industry. This program has yet to be approved into Montana's SIP even though it was originally submitted in 2006.

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

As stated previously, implementing the permitting requirements of the CAA is very complicated and controversial and we sometimes find ourselves at odds with EPA Region VIII staff over various regulatory issues. However, recently the State of Montana began a process with other states in the region to strengthen functional relationships with EPA Region VIII staff and management, which has the potential to increase EPA support for state ideas. Improvement in this working relationship does not occur by accident. Over the last several years Montana and EPA Region VIII technical staff and management have put considerable effort into building a much stronger, more collaborative and trusting relationship. Montana is committed to pursuing a better relationship with EPA as the regulated community in Montana consistently expresses a preference to obtain air quality permits from the State of Montana as opposed to the federal government.

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?

In the State of Montana's experience, the CAA supports cooperative federalism through SIPs. However, as stated previously, we have experienced tremendous difficulty in getting efficient, practical, and appropriate SIPs and SIP changes approved. Over the last fifteen years, the State of Montana has

submitted over a dozen SIP packages consisting of nearly fifty rulemaking efforts to EPA Region VIII. These submittals weren't acted upon until a group filed suit and EPA entered into a consent decree agreeing to a timeframe for SIP action relating to SIP submittals for Montana and several other states. The practice of suing EPA and then EPA settling with groups on state developed and implemented programs needs to be stopped. The State of Montana would find it much easier to propose innovative clean air programs and manage our air quality responsibilities if EPA would appropriately act upon a state's SIP submittal. EPA establishes NAAQS and emission limits applicable nationwide. That's fine. Let states figure out the best ways to attain and maintain those standards.

We also believe EPA could take a default position of SIP approval rather than assuming disapproval until the state meets some nearly unachievable burden of proof. As a partner in implementing the CAA, the State of Montana should not have to file suit against EPA to prompt action on a SIP submittal. The State of Montana recognizes our responsibility to provide an appropriate analysis in support of our submittals. We are committed to doing our part and would welcome opportunities to work much closer with EPA to define the extent of any requested analysis or demonstration.

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

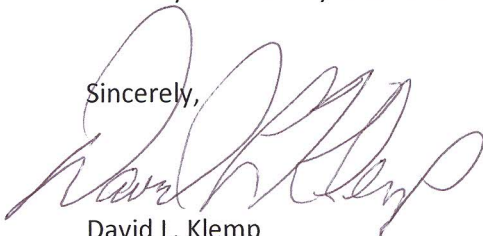
The State of Montana enjoys positive relationships with neighboring states and finds its neighbors amenable to coordinating on any air quality issues that arise. We work very closely with the states of Wyoming and North Dakota in the regulation of oil and gas activities and with Idaho to minimize air quality impacts resulting from open burning activities. Staff share technical expertise and the states generally have a common interest and work extremely well together.

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

The State of Montana believes the CAA is best implemented through a state/EPA relationship that is based upon trust and is reflective of a cooperative partnership. Times have changed and are continually changing. EPA needs to be more open to alternative techniques, explanations, and interpretations. States work very hard to implement the CAA in an appropriate fashion under state-specific conditions that take into consideration the policy, technical, and legal implications of the CAA. We remain hopeful that EPA also views state implementation of the CAA in this fashion.

I hope that the Subcommittee finds these general thoughts useful and I would be pleased to discuss these and any other issues in greater detail at the forum. Please feel free to contact me at any time should you need any additional information.

Sincerely,



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