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& ENVIRONMENTAL CONTROL
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June 1, 2016

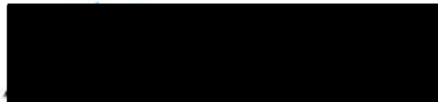
United States House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20510-6115

Dear Chairman Whitfield and Ranking Member Rush:

I would like to thank you once again for providing me the opportunity to testify before the Committee on April 14, 2016. It is a privilege to be able to assist the Committee while it considers important matters of public interest.

I received follow-up question from the Committee, which I have responded to the best of my ability in the attached document. Please feel free to contact me with any additional questions.

Sincerely,



Ali Mirzakhalili, P.E.
Director
Division of Air Quality

Attachment

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Responses of Ali Mirzakhalili
Director, Division of Air Quality, Delaware Department of Natural Resources and Environmental Control
to Additional Questions for the Record from the Honorable Frank Pallone
Ranking Member, House Energy and Commerce Committee
in Follow Up to the
April 14, 2016 Hearing, "H.R. 4775, Ozone Standards Implementation Act of 2016"

1. Section 3(d) creates a loophole in the law, that if EPA fails to meet new procedural requirements, the bill would allow a facility to get a permit by measuring its emissions against an outdated, less stringent air quality standard. In your testimony you call this "amnesty." What is the practical effect of allowing a new facility to be permitted under an outdated standard?

A. The primary practical effect is that the public will not be protected from adverse impacts of air pollution. In an attainment area, the facility emissions could cause or contribute to nonattainment because the emissions are not evaluated against the new standard. This is of particular concern with respect to health-based standards with short averaging times such as the 1-hour SO_2 and 1-hour NO_2 standards. In an area that is nonattainment for the new standard, air quality is already above the standard and Section 3(d) allows new sources of air pollution to be added to the airshed without regard to the new standard, which would result in a lesser level of emission control (i.e., BACT instead of LAER).

2. Section 3(d) of the bill also shifts the burden of air quality improvements from new to existing industrial facilities. How will this affect existing industrial sources in your state, particularly if a new facility pushes an area into violation of the air quality standards? Do you think this approach is cost-effective?

A. The amnesty for new sources shifts the burden to existing sources. I will attempt to illustrate this point by way of an example: Consider an area that has total emissions of 1,000 tons from all of its sources and will need to reduce the emissions to 800 tons to meet the new air quality standard. That is a 20-percent reduction obligation from existing sources. Now, under the proposed Section 3(d), new sources could be built without having to comply with the requirements of the new standard. Assuming 200 tons of new emissions are added to the area under this exemption, the total emissions would now be 1,200 tons, which must still be reduced to 800 tons in order to meet the new air quality standard. This means garnering 400 tons of reductions which can come only from the area's existing sources, which translates to a 40-percent reduction burden for those sources, which, in many areas, have already complied with control requirements. Similarly, this same logic would apply if the new facility were to push the area into violation of the standard; reductions would be required from existing sources as necessary to meet the air quality standard. Controlling emissions from new units at the time of construction can always be done more cost effectively than retrofitting existing units, which makes this amendment contrary to economic reality, unfair to existing sources and not in the interest public health.

3. Has your state ever been unable to issue preconstruction permits because EPA had not issued guidance or implementing regulations for a new air quality standard? Is this a situation that states have the ability to handle?

A. Delaware has always been able to issue permits in the absence of EPA's final implementation regulations or guidance. Delaware, like many other agencies across the country, has a long history of issuing permits and some aspects of our program even predate the Clean Air Act (CAA). We know how to issue permits and stand ready to help other sister agencies that lack the necessary experience to issue complex permits. It is noteworthy, however, that by this point in the implementation of the CAA there are multitudes of guidance documents, applicability determinations and example permits, so that no agency should feel unable to issue a permit regardless of the complexity of the project.

4. A number of proponents have stated that the bill does not "roll back" the new ozone standard, or any Clean Air Act requirements or protections. Do you agree with this assessment? Could you give a few examples?

A. Timely attainment of national ambient air quality standards is, by design, a primary objective of the CAA. The Act, in Sections 172(a)(2) and 181(a)(1), requires that attainment of a NAAQS be achieved "as expeditiously as practicable." The proposed bill defies this objective by delaying area designations and implementation of a health standard for eight years. The notion of "as expeditiously as practicable" loses its meaning under such a construct and, therefore, is a significant rollback. Delaware is dependent on upwind states reducing their emissions in order for our air quality to meet the new and old ozone standards. This bill removes the obligation of states to do any planning by delaying implementation of the new standard. The delay in implementation means delay in formulation and implementation of good neighbor State Implementation Plans and therefore a roll back of the relief from pollution that Delaware anticipates receiving from proper implementation of the CAA.

Exempting new sources from complying with requirements under a new NAAQS in the absence of final EPA guidance will allow additional growth upwind of Delaware without regard to the existing air quality violations, thus exacerbating Delaware's and other downwind states' struggle with transported pollution. This is a roll back.

Consideration of technical feasibility of a standard is an implementation issue and is not part of the standard-setting process. The fact that an air pollutant may be difficult to control does not change its impact on human health and should not be used in setting a health-based standard. Further, the CAA is a technology-forcing statute and has been a tremendous tool in advancing the science of air pollution control. For instance, in Delaware we established standards for gas turbine nitrogen oxide emissions at 88 parts per million (ppm) in the 1990s and were able to reduce them to 25 ppm in early 2000 and to 9 ppm by end of that decade. Today, we are issuing permits at 1 to 2 ppm of nitrogen oxides. The requirements for clean generation have also spurred installation of non-emitting sources as well as use of renewable resources. The proposed change in the standard-setting process fundamentally alters the science-based approach that the CAA has relied upon; it injects technical feasibility based on today's technologies and closes the door on future advances. This is a roll back.

5. Proponents of this bill indicate that section 3 is intended to facilitate more efficient implementation of air quality standards by states. In your opinion, are the provisions of H.R. 4775 likely to help or hinder implementation of NAAQS requirements by states?

A. We cannot agree that delaying implementation of a health-based standard in anyway equates to efficiency. The proposal seeks to delay actions that will reduce pollution that enters the environment, while meeting a new NAAQS requires actual emission reductions. The proposal makes it easier to redefine air pollution as something that does not count under the guise of an "exceptional event" and goes on to widen the exceptional event definition to include conditions such as "hot days" and atmospheric "inversions." These provisions only invite inaction and further delays in implementation while the breathing public still will inhale unhealthy air whether Congress defines it as an "exceptional event" or not. This is merely an accounting exercise that does not help advance our mission for clean air. To the extent that H.R. 4775 preserves the ability to grow emissions without planning for attainment and delays obligations that are triggered under the current provisions of the CAA, it hinders states' ability to implement NAAQS over the short and long term and makes reaching attainment more difficult. From the perspective of states such as Delaware that are so significantly impacted by transported air pollution, H.R. 4775 allocates even more of our air resources to the polluters, thereby placing us at an economic disadvantage. This bill denies Delaware and any other state similarly situated downwind the ability to implement the NAAQS according to the original CAA concept of "as expeditiously as practicable" and therefore violates the cooperative federalism that is a fundamental cornerstone of the CAA.