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The Honorable John Shimkus
C/O United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment
2125 Rayburn Office Building
Washington, DC 20515-6115

March 10, 2017

RE: “Modernizing Environmental Laws: Challenges and Opportunities for Expanding Infrastructure and Promoting Development and Manufacturing” Hearing and Questions for the Record

Dear Chairman Shimkus,

I am writing in response to your letter sent following a hearing held by the committee on Feb. 16 regarding modernizing our environmental laws, at which I had the opportunity to testify. This letter contains a response to the following questions for the record that you have forwarded on behalf of Representative Marsha Blackburn.

- 1. The authors of this whitepaper raise concerns that when EPA revises National Ambient Air Quality Standards, the agency does not typically provide implementation rules and modeling guidance at the same time, and this can lead to permitting delays. They recommend that when EPA revise a standard, it also makes available the necessary implementation rules and modeling guidance.**
 - a. Why are implementation rules and modeling guidance important?**
 - b. Would more timely implementation rules and guidance help avoid permitting delays?**

Implementation rules and modeling guidance are not just important but necessary to both applicants and air quality permitting agencies. These rules and guidance documents help agencies gather the necessary information to define non-attainment areas and to make permitting decisions that conform to the law. Applicants also need the rules and guidance to make informed business decisions, as the cost and operational restrictions to comply with applicable regulatory requirements in non-attainment areas can significantly alter the economic feasibility of a project.

As EPA develops more stringent National Ambient Air Quality Standards that are applied in shorter and shorter periods of time (for example, a 1-hour SO₂ standard and an 8-hour ozone standard versus daily, rolling three month or annual standards for other pollutants), monitoring data may not be robust enough or even available to define non-attainment areas, requiring agencies to instead rely on modeling. The modeling itself relies on a vast number of assumptions and inputs, and federal modeling guidance defines what EPA believes to be appropriate for these types of assumptions and inputs. The absence of guidance places any project permitted without it at significant litigation risk.

Per the Clean Air Act Section 110, states may not permit projects that would operate in a manner that places an area that is attaining a National Ambient Air Quality Standard out of attainment or inhibits its progress towards attainment if it is already out of attainment. As discussed in the testimony submitted to

the committee for the hearing, projects constructed in non-attainment areas must accept more stringent emissions limits and secure emissions reduction credits. Non-attainment areas must first be defined before permitting decisions regarding projects within them can be made. Absent finalized implementation rules and modeling guidance, project applicants and agencies are left in an extremely difficult position: proceed with permitting (in the face of significant legal risk) or wait until guidance is finalized. Undoubtedly, more timely implementation rules and guidance would help avoid permitting delays and minimize litigation risk.

The Pennsylvania Chamber of Business and Industry supports any legislative measure that would obligate the Environmental Protection Agency to publish final implementation rules and modeling guidance documents in conjunction with any final revision to the National Ambient Air Quality Standards.

Sincerely,

A black rectangular redaction box covering the signature of Kevin Sunday.

Kevin Sunday
Director of Government Affairs