



MATTHEW G. BEVIN
GOVERNOR

CHARLES G. SNAVELY
SECRETARY

ENERGY AND ENVIRONMENT CABINET

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502-564-3350
TELEFAX: 502-564-7484

R. BRUCE SCOTT
DEPUTY SECRETARY

TESTIMONY OF SEAN ALTERI

ON

“LEGISLATION ADDRESSING NEW SOURCE REVIEW PERMITTING REFORM”

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

ENERGY AND COMMERCE SUBCOMMITTEE ON ENVIRONMENT

May 16, 2018

Good morning, Chair Shimkus, Ranking Member Tonko, and members of the Subcommittee. My name is Sean Alteri and I currently serve as the Director of the Kentucky Division for Air Quality. I am honored to testify today and appreciate this opportunity to share a state’s perspective on the New Source Review permitting program.

As an air quality regulator, I applaud your efforts to address elements of the New Source Review permit program. The New Source Review program is utilized by EPA, State, Local, and Tribal air pollution control agencies to attain and maintain compliance with National Ambient Air Quality Standards. The New Source Review program is necessary to protect public health and carry out the Congressional declaration of purpose “to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources.”¹

¹ Clean Air Act, CAA § 160(3)

In Kentucky, the New Source Review Program is codified into Kentucky law and approved into the State Implementation Plan by EPA. Prior to the construction of a major emitting facility, the Energy and Environment Cabinet must first issue a permit to the owner or operator of the proposed facility.

To effectively administer the New Source Review program, permitting authorities must be provided with regulatory certainty. During this February's New Source Review hearing, Chair Shimkus correctly noted that there are over 700 guidance memos and documents related to New Source Review. Under Kentucky law, unlike the federal government, the Cabinet is prohibited from regulating by policy and guidance.² Codification of EPA's New Source Review guidance memos will provide regulatory certainty to State, Tribal, and Local permitting authorities, as well as the regulated community.

PROPOSED LEGISLATION

Regarding the proposed reform legislative discussion paper included with this hearing, the narrow scope of the language further defining "modification" highlights issues related to "routine maintenance, repair, and replacement" or "RMRR." Pursuant to Section 111 of the Clean Air Act, a physical change to an emissions unit or a change in the method of operation constitutes a "modification" and may subject the facility to New Source Review. Due to potential New Source Review requirements and the applicability of new source performance standards, facilities have unfortunately forgone efficiency improvements that can provide significant environmental benefits.

Under current New Source Review requirements, an efficiency project that substantially increases utilization of a unit, even if the project reduces emissions on an hourly basis, would require New Source Review. In an effort to reduce significant delays in permitting, the proposed

² KRS 13A.130

amendment to the definition of “modification” does not apply to projects that implement efficiency measures, which reduce the amount of any air pollutant emitted by the source per unit of output. The proposed amendment also addresses projects that are “designed to restore, maintain, or improve the reliability or safety of the source” and limits the emissions increases to the maximum achievable hourly emission rate demonstrated in the last ten years.

These proposed amendments will provide for the timely issuance of permits related to energy efficiency measures. Permitting energy efficiency projects effectively will be critical when EPA issues a Clean Power Plan replacement rule and states are mandated to reduce its CO₂ emission rates from existing electric generating units.

In addition, the proposed legislative text also clarifies the term “construction” under the New Source Review program and when a modification should be subject to New Source Review as a “major modification.” The proposed statutory text clarification provides regulatory certainty and eliminates confusion as to when New Source Review applies.

Relationship to the National Ambient Air Quality Standards

As mentioned previously, the New Source Review program establishes the preconstruction evaluation to determine whether a project will cause or contribute to a violation of the National Ambient Air Quality Standards. Currently, the most difficult aspect of permitting a major emitting facility under the New Source Review program is air dispersion modeling.

Last March, I testified before this subcommittee and expressed the need for EPA to fully develop and codify implementation requirements at the same time EPA revises a National Ambient Air Quality Standard. HR 806 proposed to extend the review time of a NAAQS to a period of 10 years, which would allow EPA to complete the technical aspects of the NAAQS evaluation and provide regulatory certainty to the permitting authorities. Specifically, the air

dispersion modeling requirements necessary to evaluate the consequences of any decision to permit increased air pollution in an area must be promulgated at the same time EPA revises a National Ambient Air Quality Standard.

As an example, EPA revised the National Ambient Air Quality Standard for particulate matter less than 2.5 microns in July of 1997. However, due to technical issues and limitations associated with the PM_{2.5} emissions inventories and modeling techniques, EPA applied the “PM₁₀ Surrogate Policy” until March 23, 2010.³ EPA’s inability to promulgate clear regulatory requirements unnecessarily led to several title V permit objections.

To reiterate, EPA must promulgate implementation requirements at the same time it promulgates a new or revised National Ambient Air Quality Standard to avoid costly, unnecessary delays.

Other recent examples of regulatory uncertainty associated with the New Source Review program include the 2010 revisions of the National Ambient Air Quality Standards for oxides of nitrogen (with nitrogen dioxide as the indicator) and sulfur oxides (sulfur dioxide). Although the Sulfur Dioxide standard was revised in 2010, EPA promulgated amendments to the modeling techniques in February of 2017. These amendments addressed significant, unresolved technical limitations of the models. As a result of the regulatory uncertainty, several projects were not able to conduct the necessary evaluations required by the New Source Review program. And thus, limiting the potential for economic growth and development.

In closing, State, Tribal, and Local permitting authorities must be provided with regulatory certainty throughout the New Source Review permitting process of new, modified, and reconstructed stationary sources. The regulatory certainty is necessary to carry out our

³ EPA Memorandum, “Modeling Procedures for Demonstrating Compliance with PM_{2.5} NAAQS” issued March 23, 2010 by Stephen D. Page, Director, Office of Air Quality Planning and Standards.

statutory obligations, which include providing for economic growth. Thank you for the opportunity to participate in today's hearing and I look forward to any questions you may have regarding my testimony.