UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

February 5, 2020

Director Richard Whitman
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204

Dear Director Whitman,

The partnership between state environmental departments and the U.S. Environmental Protection Agency is what makes environmental protection in the United States possible. Next week many of your Governors are going to be arriving in Washington, D.C. as part of the National Governors Association winter meetings. In advance of that meeting I wanted to reach out to you and reflect upon our common mission of environmental protection and our accomplishments over the past three years.

The crucial partnership between states and EPA is not an accident of history. It was the goal of those who drafted our nation's federal environmental laws and those who created EPA. They knew that a decentralized Agency and decentralization of decision-making authority was necessary to achieve the best environmental results. They envisioned states being responsible for implementation while EPA would establish standards and provide flexible oversight.

In 1970, the President's Advisory Council on Executive Organization, chaired by Roy L. Ash, recognized that the creation of EPA would provide the states with a partner at the federal level in their environmental protection efforts. In the Ash Council Memo, they wrote that:

> "Federal anti-pollution programs must rely heavily on state and local efforts. The trend toward merger and coordination of environmental efforts at the state and local level is often inhibited by present Federal fragmentation. The EPA will simplify relationships with state and local governments and reduce the need to shop around for grant programs and other assistance."[37]

The first EPA Administrator, the late William Ruckelshaus, understood that state-federal collaboration was crucial. He prioritized establishing EPA regional offices because he wanted to push implementation out from Washington, D.C. closer to the states. During both of his terms of service at EPA, Administrator Ruckelshaus recognized the key environmental protection role of states, local governments, and tribes.

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[37] Available at https://archive.epa.gov/epa/aboutepa/ash-council-memo html

The role of states is significantly greater now than in 1970. States are responsible for implementing over 96 percent of authorities available under federal law. During the past three years, we have also worked with tribes so they can assume a leadership role implementing environmental law in Indian Country. The result of our 50-year partnership is a clear and unambiguous success. Just a few data points tell the story:

- From 1970 to 2018, U.S. criteria air pollutants fell 74 percent while the economy grew 275 percent;
- From 1990 to 2018, annual emissions from power plants of sulfur dioxide (SO_2) fell by over 90 percent and nitrogen oxide (NO_x) emissions fell by over 80 percent; and
- In the past decade, mercury emissions from power plants decreased by nearly 90 percent.

With the remainder of this letter, I want to provide examples where states and EPA have worked together and acknowledge the EPA employees who exemplify the creed of the Agency on a daily basis. I asked staff to put this together because I wanted to know how we were doing, and I wanted to use this letter as an opportunity to share the great work of both career and political EPA employees. What follows is also a testament to all of you in the states and the work you do. I look forward to continuing to work with states in 2020 to accomplish even more for the citizens of our country.

Communicating with States

Early in my tenure as Acting Administrator of EPA, we issued a memorandum entitled, *Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes*. A key part of that memorandum identified the need for effective communication between EPA and the states. We have made it a priority to have senior leaders, including myself, available to the states to discuss and resolve state-federal issues.

Our regional administrators are the first line of communication with states, tribes, and local governments; and over the past three years, they have made over 3,450 contacts with local, state, and tribal governmental leaders. These contacts were made in one-on-one visits, phone calls, and larger community meetings. It also includes meetings with leaders from American territories. Staff from headquarters has also been heavily engaged with state and local governments. Since 2017, our Office of Congressional and Intergovernmental Relations has had over 4,200 consultations in small groups or over the phone with state and local governments. Also, either I or my predecessor had over 338 contacts with state and local elected officials, including 183 meetings with governors, 52 meetings with the heads of state environmental agencies, and 44 meetings with mayors or other municipal leaders.

Recognizing the important role of our state and local partners, we have also held events or made joint announcements of major grant, regulatory, and compliance actions together. In October 2019, I participated in a roundtable with North Dakota state leaders to discuss the definition of "waters of the United States" (WOTUS). In April of last year, along with regulators from the State of Colorado, EPA jointly announced a major settlement with an oil and gas company for Clean Air Act violations. We also signed memoranda of agreement (MOA) with Wyoming and North Dakota on the implementation of their state self-audit laws. These MOAs acknowledge the strength of the self-audit laws in these states. They also clearly identify that

when the regulated community complies with those laws EPA will defer to the state's judgment on the assessment of penalties in individual cases and will limit EPA's role to ensuring that programmatically the terms of state delegation or authorization are met. Also, in 2018, I jointly announced with state environmental officials a cleaner trucks initiative to reduce NO_x from heavy duty trucks (for which I signed an Advanced Notice of Proposed Rulemaking in January 2020). I also held two separate events with Agriculture Commissioners in Georgia and Tennessee to discuss our efforts to bring clarity to the federal definition of "waters of the United States."

Our partnership also includes rolling up our sleeves and working with states and tribes on difficult issues. One example, of many, is dicamba, where we partnered with state agriculture commissioners to determine how dicamba could be safely used on crops. We have used our enforcement authorities to ensure that the safeguards on dicamba use are met. We have worked with agricultural leaders on other pesticide issues by funding 74 cooperative agreements for states and tribes to implement pesticide programs in areas such as worker protection, certifying applicators, endangered species protection, and protecting water quality. We also funded the Pesticide Regulatory Education Program through Washington State University, which was attended by 154 state and tribal participants.

Other examples of our work with the states and tribes include:

- In September 2019, Region 1 provided training to New Hampshire's Household Hazardous Waste team to assist in its adoption of a lean management system. Region 1 has also focused on improving the Performance Partnership Agreement process, a joint effort necessitating the involvement of states or tribes who use that system in support of their annual prioritizing, planning, and funding activities.
- Region 7 has hosted numerous trainings for states and tribes on lean management and embraces learning from and sharing resources across states, such as Nebraska.
- At the November 2019 E-Enterprise Leadership Council meeting with Region 8, the region provided information on their quality assurance team accomplishments. Through visual management, the team is working to accelerate time and resolve sticking points, all while building team effectiveness and cohesiveness and improving working relationships with tribal partners.

Research and Development

EPA's Office of Research and Development (ORD) is the premier environmental scientific research agency in the world. It provides technical assistance and independent research to not just EPA and other federal agencies, but also to state agencies. ORD has increased its collaboration with states over the past three years by:

- Working with the Environmental Research Institute of the States to collect valuable feedback from states on how ORD can assist states in doing their work.
- Engaging with the states directly for the first time in ORD's strategic research planning and implementation process.

- Inviting all states to nominate participants for Research Area Coordination teams to help refine research outputs and identify specific science products. A total of 17 state members from 14 states participated on about one-third of these teams.
- Hosting 13 meetings with states at different EPA laboratories over the past three years to discuss science needs and potential collaborations.
- In 2018, for the first-time, inviting states to the annual Regional/ORD Community of Science Networking Program, an ongoing program that gives states and regional scientists and engineers the opportunity to learn about ORD's research and how it can help them. ORD continues to invite the states. Thirty participants from 26 states have attended these events so far.
- In Fiscal Years 18 and 19, ORD provided approximately 35,000 hours of technical assistance to states, tribes, and local governments. ORD first began to track technical assistance in FY 18 because we wanted to make certain we were broadly sharing the expertise of our career scientists.

Over the past three years, EPA technical experts have worked particularly closely with states on issues such as harmful algal blooms (HAB), lead in drinking water, and PFAS. A few examples:

- EPA responded to state requests for assistance during HAB events in Oregon and we worked with the Ohio River Valley Sanitation Commission in the development of a risk characterization model that will help identify conditions conducive to HAB outbreaks.
- In 2019, Region 8 analyzed more than 150 algal bloom samples for its states, and we assisted states in the development of their own monitoring and analytical programs.
- Also, together with the Massachusetts Department of Environmental Protection, EPA launched a river-specific Community Support Collaborative to develop and identify innovative, cost-effective, and efficient ways to reduce nutrients and address HABs.

We also worked with the National Aeronautics and Space Administration (NASA), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Geological Survey (USGS) to develop an app to detect algal blooms in over 2,000 of the largest freshwater lakes and reservoirs in the United States. This app was made available to state and local water quality managers and allows them to make faster, more informed management decisions in their communities. EPA through ORD also provided technical assistance to over 95 communities on lead reduction in drinking water related to corrosion control treatment and practices and other lead reduction efforts.

It has also been a priority of mine to assist small drinking water systems and help them achieve and maintain compliance. Thanks to the diligence of EPA and state, local, and tribal regulators we are blessed in the United States with safe drinking water, but there are areas where more work and help are necessary. As all of you know, management of small drinking water systems can be difficult and presents unique challenges. We have provided assistance by making our scientific experts available to train operators of these small systems. In 2019 alone, EPA experts:

- Held webinars as part of our small system monthly webinar series that reached over 9,800 people from all 50 states, 4 territories, and 47 tribes.
- Held the 16th annual EPA drinking water workshop attended by 422 people from 42 states, 3 territories, and 6 tribes and where over 1,700 hours of continuing education credits were awarded.
- Held a regional small systems workshop with Region 6 states, with over 128 participants from every state in Region 6 and from six tribes.

EPA continues to devote significant time, energy, and resources to the states through research and technical support to advance our collective mission to protect public health and the environment. While we have increased our outreach over the past three years, I would appreciate hearing from any of you on what else EPA's research and development arm can do to assist states dealing with the unique issues you face.

PFAS

All of us are aware that emerging containments of concern pose dynamic challenges for both EPA and state regulators. While EPA has been working on per- and polyfluoroalkyl substances (PFAS) since 2002, we struggled to implement a coordinated internal strategy and to communicate steps and timelines for action externally. In February 2019, we developed a coordinated strategy through the release of our PFAS Action Plan. The Action Plan is a follow-up to the national summit held in 2018 where over 220 participants, including senior officials from 40 states, 3 tribes, Guam, Northern Marianas Islands, 13 federal agencies, congressional staff, and dozens of associations, industry groups, and non-governmental organizations participated in discussions on PFAS.

At that meeting, participants noted the lack of larger strategic goals and timelines on what steps we were going to take to address PFAS. Our Action Plan is a comprehensive response to what we heard at the national summit and outlines what EPA has done and what we can do moving forward. Our PFAS Action Plan had input from states and establishes priorities and goals that we can jointly work on. The actions outlined in the plan include:

- Researching analytical methods and remediation technologies,
- Outlining goals for establishing MCLs,
- Developing mapping tools to identify potential PFAS exposures, and
- Working with states on risk communication efforts.

In addition to the PFAS Action Plan, EPA provides significant technical support to multiple states on PFAS contamination and treatment. Along with general information provided to states and communities on PFAS, we also provided more targeted and specific guidance, along with timely and actionable data reports that have supported state regulatory actions.

EPA has also taken civil enforcement actions related to PFAS. We have initiated 12 enforcement actions since 2002, including four since 2017. We will continue to partner with states on compliance assistance and enforcement as necessary. We are continuing to investigate

PFAS releases, including issuing 20 information request letters and conducting 11 onsite inspections since July 2017, including joint inspections with states.

In addition to the above:

- EPA has issued a number of information requests regarding PFAS, including:
    - Five Clean Water Act (CWA) information request letters since November 2018 regarding discharges of PFAS from manufacturing or processing facilities;
    - Thirteen Toxic Substances Control Act (TSCA) information request letters since January 2018;
    - One Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) information request letter in November 2017; and
    - One Resource Conservation and Recovery Act (RCRA) information request letter in April 2018.
- OECA, with support from its National Enforcement Investigations Center and Regional enforcement divisions, has carried out 11 inspections at eight PFAS manufacturing or processing facilities since July 2017, under the authority of TSCA, CWA, and/or RCRA, including joint inspections with states.

Another example, in December 2019, EPA released a final interim PFAS Groundwater Guidance, providing interim recommendations for addressing groundwater contaminated with Perfluorooctanoic acid (PFOA)/perfluorooctanesulfonic acid (PFOS) under federal cleanup programs. This guidance incorporates comments received from states and other federal agencies on the April 2019 draft and fulfills a key PFAS Action Plan commitment.

EPA is also supporting a request from the State of Massachusetts and local communities to the United States Army, asking the Army to address the contamination of an underground source of drinking water by PFAS emanating from the former Fort Devens facility. Following EPA engagement, the Army and the Department of Defense stepped up and voluntarily provided alternative water supplies and funding for water treatment.

We look forward to further close collaboration.

Water

Protecting and enhancing water quality has been one of my top goals as the Agency's Administrator. Water is a commodity that Americans greatly value – they expect local, state, tribal, and the federal governments to diligently protect water quality. As we saw in Flint, Michigan the failure of local, state, and federal governments to do their job can have direct and devastating impacts to communities and result in the loss of confidence in environmental regulators.

While water quality regulation is generally a state responsibility under the Clean Water Act, EPA has important oversight and direct implementation responsibilities that we do not take for granted. EPA needs to do its job to protect water quality but not overreach and do the job of the states, unless a state is not performing. An important part of our job at EPA is to work with states in a timely manner on state required submittals to EPA. I have made it a point of emphasis

with the programs and the regions that they need to work early and closely with states on water quality standards (WQS) and total maximum daily loads (TMDLs) to ensure that we are not holding up progress.

We have focused on working with states to ensure that when new or revised WQS are submitted to EPA, they can be approved. Relative to the first three years of the previous administration, I am proud that we have been able to approve a greater proportion of state water quality packages. As demonstrated by the chart below, we approved an average of 35.27 packages for every package disapproved. The previous administration approved an average of 8.23 packages for every package it disapproved. In the last two years, our approval rate for WQS has been 43.75 approvals for every disapproval. This doesn't just happen, it requires the close collaboration of state and EPA staff so that issues can be identified early and then addressed so that disapprovals do not occur. This is a joint success that we should be proud of and continue to work to improve.

FY	Approval Actions	Disapproval Actions	Total WQS Actions	% Approved	% of Water Quality Standards Disapproved	Ratio of WQS Actions Approved per Action Disapproved
2009	65	9	74	87.8%	12.2%	7.2
2010	82	10	92	89.1%	10.9%	8.2
2011	65	7	72	90.3%	9.7%	9.3
2012	48	8	56	85.7%	14.3%	6.0
2013	89	7	96	92.7%	7.3%	12.7
2014	89	5	94	94.7%	5.3%	17.8
2015	59	12	71	83.1%	16.9%	4.9
2016	57	8	65	87.7%	12.3%	7.1
2017	73	4	77	94.8%	5.2%	18.3
2018	80	2	82	97.6%	2.4%	40.0
2019	95	2	97	97.9%	2.1%	47.5
10-year Average	73	7	80	91.6%	8.4%	10.8

Addressing drinking water quality through modernized regulation is also a top priority for the Agency. As part of our efforts, in October 2019 we proposed to update the Lead and Copper Rule. Our goal was to modernize a rule that has not seen significant revisions in almost three decades. Our proposal – currently out for public comment – would incorporate new technology and modern practices in drinking water protection. The proposal would provide more information for state regulators and allow for more targeted efforts to address communities that are at most risk for lead leaching into their drinking water.

EPA worked closely with states and local governments and associations that represent them on putting together this proposed rule. Consistent with Executive Order 13132, EPA did hold an initial federalism consultation on November 15, 2011, but did not follow-up with another consultation until January 8, 2018. However, quickly after the January 2018 consultation we held five follow-up meetings between January and March of 2018. Along with the input received at these meetings we also provided an opportunity for states and local governments to submit written comment within 60 days after the initial meeting. Specifically, we engaged with:

- National Governors Association,
- National Conference of State Legislatures,
- Council of State Governments,
- National League of Cities,
- U.S. Conference of Mayors,
- National Association of Counties,
- International City/County Management Association,
- National Association of Towns and Townships,
- County Executives of America, and
- Environmental Council of States.
- Association of State Drinking Water Administrators,
- Association of Metropolitan Water Agencies,
- National Rural Water Association,
- American Water Works Association,
- American Public Works Association,
- National School Board Association,
- American Association of School Administrators, and
- Western Governors' Association.

In the last two years, we have also worked diligently to address the infrastructure issues facing states through the implementation of the Water Infrastructure Finance and Innovation Act (WIFIA). Since 2018, we have provided $3.5 billion in loans for total project costs of $8 billion. These loans have helped create over 15,000 jobs and provided much needed infrastructure improvements. We also recently announced 38 new projects in 18 states for loans of approximately $6 billion to help finance over $12 billion in projects.

Air

Air quality protection is another area in which states generally take the lead in implementation with EPA ensuring that statutory deadlines and requirements are met. Over the past three years, we have prioritized our work with states to support their development of State Implementation Plans (SIPs) instead of developing Federal Implementation Plans (FIPs) on their behalf. Along those lines, we have turned FIPs into SIPs, approved over a thousand SIPs submitted by states, reduced the backlog of SIPs nationwide, and worked with all of you to redesignate nonattainment areas.

In past decades, the political leadership at EPA has not done its job of prioritizing the approval or disapproval of SIPs in a timely manner. SIPs are a critical element of air quality protection and a backlog existed at the Agency due to inaction. I have made the elimination of the national SIP backlog a priority and thanks to states and EPA regions we are making progress. As an example, we have made strides in partnership with California to reduce their SIP backlog. Several months ago, California had the largest SIP backlog in the nation with 130 unapproved SIPs. Over the past several months and, as of the date of this letter, California has withdrawn 43 unapprovable, unnecessary, or old SIPs in response to a letter I sent to them in September 2019. California's leadership in this area has not only reduced the backlog for their state, it has also significantly reduced the national backlog. While there are still too many SIPs in backlog, over the past three years the regions and states have been reducing that number. In the beginning of 2017, there were about 700 SIPs awaiting action at EPA and I have instructed the regions to significantly reduce or eliminate the backlog of SIPs at EPA.

Over the past three years, we have also reduced the number of FIPs by 30 and converted them to SIPs, in contrast to the previous administration which issued a total of 21 FIPs. We have not proposed any new FIPs, but we did finalize two in 2017 that were proposed by the previous administration. I'm perhaps most proud of our joint work to re-designate 36 nonattainment areas across the country during this Administration. Formal re-designation from non-attainment to attainment demonstrates the commitment between the states and EPA to work together to improve air quality and protect public health. Within the static framework of the Clean Air Act and despite challenges the national ambient air quality standards present for the unique, local characteristics of your states, you worked diligently to identify and implement protective, aggressive, and creative solutions to improve air quality. In turn, I want you to know that I am personally committed to ensuring we work with states and provide the greatest amount of flexibility and discretion possible to achieve our joint goal of improving air quality.

The work EPA Region 5 and its states are doing is another example of this progress. Region 5 developed streamlined processes for developing and approving state re-designation requests. The region developed multi-year targets and schedules with their states for nearly all nonattainment areas that are monitoring attainment. The region routinely reviews early drafts and works in partnership with states to ensure that re-designation requests are approvable when they are submitted. On average, it takes Region 5 less than 12 months to process a re-designation request, more than six months faster than the statutory deadline. Examples of this approach in practice include the recent re-designations of the Columbus, Ohio 2015 8-hour ozone area, the first non-attainment area in the nation to meet the 2015 ozone standard; Cleveland, Ohio for the 2012 PM2.5 standard; and Steubenville, Ohio for the 2010 SO_2 standard all in 2019.

Our true partnership approach on challenging issues is also demonstrated through our close work with states in responding to issues such as ethylene oxide (EtO). This has been a difficult issue and we have collaborated with states to provide timely and accurate information to communities. Here are a few examples of that collaboration.

EPA Region 7 has engaged the state of Missouri and its citizens regarding EtO emissions at a sterilization facility and a chemical facility in the state. EPA partnered with Missouri to provide timely and clear risk communication at public availability sessions, community stakeholder meetings and in presentations before both city councils. EPA Region 8 partnered with the Colorado Department of Public Health and Environment, Jefferson County Public Health and a medical device sterilization facility with EtO emissions to hold an open house to answer questions from interested community members about EtO emissions. EPA Region 4 has closely coordinated with the Georgia Environmental Protection Division to provide information to the public and government officials on air emissions of EtO, particularly from several commercial sterilizers in the Atlanta area. For example, in collaboration with EPD and other government agencies, EPA held an open house and community meeting on August 19, 2019, for communities around the Cobb County, Georgia, Sterigenics sterilizer facility and on August 20, 2019, for communities around the BD sterilizer facility in Covington, Georgia. And, finally, EPA Region 5 has worked closely with Illinois EPA to achieve significant reductions in EtO emissions at multiple facilities. While the state has focused on working with sources to permit upgraded emissions controls consistent with stringent state laws, EPA has taken the lead on providing the state and the public with information about potential risks and effective control technologies. EPA also provided multiple forums for discussing EtO in Willowbrook, Illinois, including presentations on potential human health risks by EPA, Illinois Department of Public Health, and the Agency for Toxic Substances and Disease Registry. EPA maintains websites that address public concerns about potential EtO risks in Willowbrook and in Lake County. As a result of this state/federal partnership, several facilities in Illinois are projected to achieve 99.9 percent control of their EtO emissions.

At the national level, we are also taking regulatory steps to address emissions of EtO. In November 2019, we proposed amendments to the Miscellaneous Organic Chemical Manufacturing National Emissions Standards for Hazardous Air Pollution that will reduce hazardous air pollutants, including EtO. The proposed amendments are expected to reduce emissions of hazardous air pollutants from source categories by 116 tons including a 93 percent reduction of EtO from covered facilities. EPA is also reviewing the National Emissions Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations. On December 5, 2019, the agency issued an Advance Notice of Proposed Rulemaking (ANPRM) to outline potential approaches and to gather comments and data. The ANPRM seeks information on several key topics including approaches to calculate and control fugitive emissions, improvements to EtO monitoring technologies, and process differences between types of sterilization facilities, among others. EPA is working with other government agencies – most notably, FDA – on the development of appropriate regulations for sterilization facilities.

Land and Emergency Response

Over the past three years we have placed emphasis on the implementation of our responsibilities under CERCLA. It is EPA's responsibility to ensure that communities most severely impacted across the country by hazardous waste receive prompt and protective cleanups. While this is not a program that can be delegated to the states, we can allow states to take the lead at CERCLA sites. In recent years, the political leadership at EPA has not placed the emphasis it should have on cleaning up CERCLA sites effectively and expeditiously and the result has been disheartening for many communities who have felt lost and forgotten. We have sites that have been sitting on the National Priorities List (NPL) for decades and communities wondering when, if ever, their hometowns will be cleaned up.

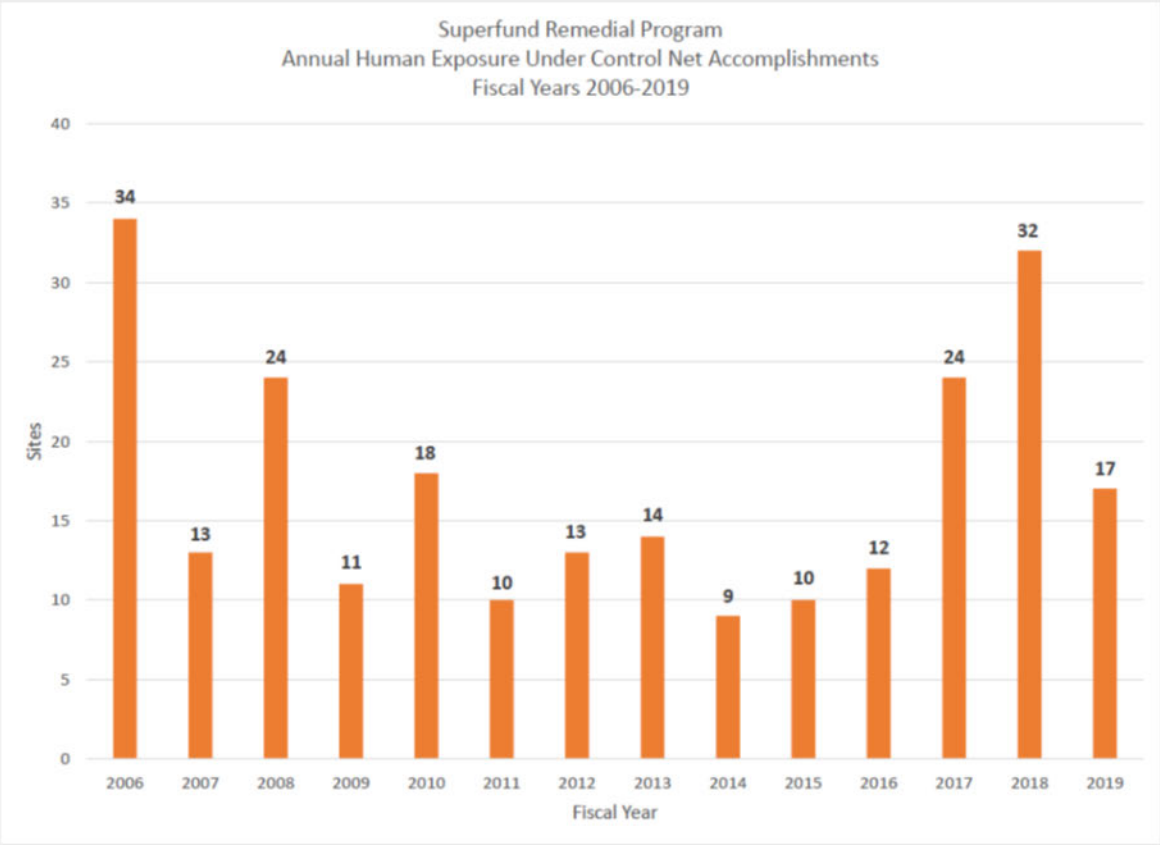
Over the past three years we have worked with many of you to begin addressing these sites. For example, in February 2018, EPA agreed to defer to the State of Nevada regarding oversight of much of the cleanup of the Anaconda Copper Mine. Also, in October 2017, EPA transferred oversight of cleanup work of Coronet Industries, a phosphate mining site to the Florida Department of Environmental Protection. This effort has shown deference to you, our state partners who are closer to the impacted communities and may be better equipped to identify and implement the appropriate clean up strategy for the sites in your states. We have also worked closely with the elected leadership of Montana as well as the professionals at the Montana Department of Environmental Quality to address sites that have been languishing for decades in the state. I know that 2020 will be a productive year for environmental cleanup in Montana thanks to regional staff, Montana DEQ, and the state's elected leadership.

Our partnership in cleaning up contaminated sites is further exemplified by the full or partial removal of sites from the NPL. As you know, communities can feel stigmatized by their listing on the NPL. It can be a disincentive for businesses and potential neighbors to move to a community with a Superfund site when they can choose to go to another community that does not have these red flags. Over the years, EPA has not been as mindful of this impact as it should have been. Cleaning up and delisting sites more quickly requires support from our state partners, and over the past three years with your support, we have fully or partially delisted 55 sites and we're not done yet. By comparison, in the entire first term of the past administration, 47 sites were delisted.

The number of sites designated as Sitewide Ready for Anticipated Use (SWRAU) under the Superfund Program and Ready for Anticipated Use (RAU) under RCRA also demonstrates our joint priority to clean-up sites in partnership with our state co-regulators. States deserve the credit for sites that are RAU, demonstrating that both states and EPA are interested in delivering results that return contaminated land into productive use. Below is a chart of SWRAU and RAU determinations in Fiscal Years 2017 through 2019. The SWRAU measure reflects the importance of considering future land uses as part of the Superfund cleanup process and communicates to our communities that a cleanup is protective of public health for certain anticipated uses. Under RCRA, the RAU milestone demonstrates that human exposures are under control, cleanup goals have been achieved for media that may affect current and reasonable anticipated future uses, and that all institutional and engineering controls for long term protection from existing contamination are in place – even if all cleanup standards at a RCRA Corrective Action facility may not yet be met.

Fiscal Year	RAU	SWRAU
2017	72	43
2018	117	51
2019	127	48

Our focus on remediation has made a difference for communities around some of the most contaminated sites in the United States. As demonstrated in the bar graph below, we have significantly increased the number of sites in our Superfund remedial program where human exposure pathways have been assessed and are now determined to be under control. A site that has achieved this designation means that, "… there are currently no unacceptable human exposure pathways anywhere on site." We're going to continue to focus on the work of the Agency that results in real cleanup for communities across the country.



States are also our partners in responding to emergencies. The number of emergency response and removal actions we have taken together over the past three years more than any other metric demonstrates our shared commitment to serving the people the United States.

The tables immediately below represent the time critical and non-time critical removals over the past three years and our emergency response efforts over that time. Our emergency response work may be our most important work and is done in close collaboration with states, tribes, local governments, and our federal partners like Federal Emergency Management Agency (FEMA). Whether it is a major hurricane off our Atlantic Coast or a wildfire out west when Americans need assistance, we are there.

Total Time Critical and Non-Time Critical Removals

Region	2017	2018	2019	Total (Region)	Total FY17-19
1	11	10	11	32	
2	16	9	7	32	
3	5	5	6	16	
4	11	8	10	29	
5	29	25	24	78	
6	6	6	11	23	
7	9	10	14	33	
8	7	13	10	30	
9	10	9	5	24	
10	3	4	5	12	
Total (FY)	107	99	103		309
Total FY17-19				309	

Total Emergency Responses

Region	2017	2018	2019	Total (Region)	Total FY17-19
1	4	1	2	7	
2	14	18	13	45	
3	8	7	11	26	
4	37	36	34	107	
5	22	20	26	68	
6	15	16	15	46	
7	13	15	6	34	
8	18	14	12	44	
9	2	10	5	17	
10	12	11	10	33	
Total (FY)	145	148	134		427
Total FY17-19				427	

As an illustration of our joint emergency response efforts, here are at a few recent examples. In Region 4, EPA on-scene coordinators (OSCs) and Response Support Corps members responded to hurricanes Florence, Michael, and Dorian and provided response support to Region 9 for wildfires in California and Typhoon Yutu in the Western Marianas Islands. Take Hurricane Florence as a specific illustration of our partnerships improving the effectiveness of emergency response. Hurricane Florence made landfall in North Carolina on September 14, 2018. For three days, the storm slowly made its way through the Carolinas, bringing heavy rainfall and catastrophic flooding. Before landfall, Region 4 deployed oil and hazardous materials technical experts to liaise with state agencies and FEMA at the State Emergency Operations Centers in North Carolina and South Carolina.

I am also reminded of a few very recent emergency responses in Region 5: Heavy rains in Michigan in late November led to a shoreline seawall collapse at the Detroit Bulk Storage property on the banks of the Detroit River. The primary concern: Revere Copper and Brass occupied the site during World War II and into the 1950s, extruding uranium rods for the Atomic Energy Commission (now the Department of Energy). Though EPA had conducted a site assessment and PCB removal in the 1980s, the public and media in both Metro Detroit and

Windsor, Ontario, were concerned about radiation risks. Coordination between Region 5 and the Michigan Department of Environment, Great Lakes, and the Department of Energy resulted in prompt surface surveys, which confirmed no radiation risks at ground level. The agencies are currently collaborating on additional sub-surface surveys to determine if any radiation risks exist at the property.

Finally, in September 2019, Ohio EPA requested Region 5 assistance in responding to a massive fire at the MetalX Recycling facility in rural Fulton County. At the time, numerous local fire departments were already at the scene, working to control a fiery scrap metal pile of crushed and shredded cars. For several days, EPA and its START contractor supported the effort by conducting air monitoring and working with partner agencies to evaluate meteorological conditions during a shelter-in-place event. EPA, Ohio EPA, and local authorities collaborated effectively, with the fire contained and shelter order lifted in just a few days.

Enforcement

Enforcement of environmental laws can be a controversial aspect of the state-federal relationship. Absent good communication, EPA enforcement actions, in both state-lead programs and programs that EPA implements directly can be perceived as a lack of respect of state primacy. Much of the controversy in this area can be due to the perception, and in some cases reality, that by acting directly EPA is displacing state authorities. To address this issue, I have worked closely with our enforcement office to try and reduce the potential of conflict between states and EPA when it comes to enforcement. In July 2019, the enforcement office issued a policy, *Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work* that communicates how we work with states. This policy articulates how and when EPA enforcement coordinates with their state counterparts. The policy was developed in coordination with the states and builds upon my October 2018 memo, *Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes*. The October 2018 memo articulated the goals of cooperative federalism by striving for certainty and collaboration in the operation of EPA programs.

Over two years ago we developed a new metric called "state assists." This measures the assistance we provided states in identifying a violation or assisting a state in developing a case. State assists count EPA's collaborative efforts that go beyond actions such as joint inspections and oversight. While this measurement will be refined over time, it does tell an important story that, over the past two years, we have provided over 243 state assists.

States also are co-plaintiffs in many of our judicial cases. For example, in December 2019, EPA's settlement with Lehigh Cement Company included seven states and state or regional agencies as co-plaintiffs consisting of Indiana, Iowa, Maryland, New York, Pennsylvania, the Jefferson County Board of Health, and the Bay Area Air Quality Management District in California. The settlement resolved violations at 11 Portland cement manufacturing plants. EPA also recently partnered with the Texas Commission on Environmental Quality to settle with the City of Houston sanitary sewer overflow permit violations under the CWA, leaving only a handful of major cities that had not settled similar violations with EPA.

While the Clean Air Act regulation of mobile sources is not delegated to states, we also collaborate with states, each using our own authorities, to ensure that we maintain the air quality benefits from vehicle emissions controls. A great example of this has been our enforcement against large automakers such as Fiat Chrysler Automobiles (FCA). In mid-2017, EPA and the Department of Justice initiated a lawsuit against FCA for alleged defeat devices in over 100,000 vehicles from model year 2014-2016. Under the settlement, FCA must pay a $305 million civil penalty, which is split with California who was a partner to EPA on the case from beginning to end. FCA must also recall and fix the offending vehicles so they meet emissions standards, and the company is well on its way toward meeting that obligation. FCA must also mitigate the excess emissions of nitrogen oxides by improving the efficiency of 200,000 aftermarket catalytic converters that will be sold for use on light-duty vehicles across the country.

The result of actions like the FCA and the previous Volkswagen settlement help ensure that air quality across the country is improved.

One of our National Compliance Initiatives for 2020-2023, announced this past summer, is to stop/prevent the manufacture, sale, and installation of aftermarket defeat devices for vehicles and engines used on public roads as well as on nonroad construction and farming equipment. States often have their own consumer protection authorities that can supplement EPA's Clean Air Act anti-tampering authorities and we are working together with states on these matters.

EPA is also collaborating with the Association of Clean Water Agencies to achieve our priority goal of reducing the rate of significant non-compliance with CWA permits. This collaboration supports the agency's Strategic Plan goal of increasing compliance with environmental laws as well as reducing the number of impaired waterways. Over 20 states are engaged with EPA to address this issue. We worked with states to develop and provide in-person training for hundreds of state employees on a wide range of topics such as inspections, evidence collection, data quality, enforcement tools and techniques, criminal matters, and cleanup activities.

Similarly, EPA is working with the Association of State Drinking Water Administrators and directly with our state, territory, and tribal Primacy Agency partners to implement a National Compliance Initiative to reduce noncompliance with drinking water standards at community water systems. Under this initiative, EPA plans to work with Primacy Agencies to use both enforcement and compliance assistance tools to advance the Agency's Strategic Plan goal of reducing the number of community water systems out of compliance with health-based standards. EPA has visited and sought input from a variety of Primacy Agencies across the country. These visits and discussions with Primacy Agencies have focused on best practices for joint work planning and effective communication to further our goal of shared accountability for consistent enforcement of the law while making the best collective use of resources and expertise.

We have also maintained a robust criminal enforcement program. Over the past three years we have opened 414 new criminal cases and working with the Department of Justice (DOJ) have incarcerated criminal violators for a total of 309 years. We have also collected almost $3 billion in criminal fines. We work with state environmental crimes task force partners and many

of our criminal cases are the result of referrals from states, tribes and local governments. Our joint effort makes a difference and I want to thank you for your assistance in these and other matters.

Federalism is either implied or explicitly stated in the laws that EPA is charged with administering. The best way for EPA to meet the goals of federalism is ensuring that we provide certainty to our state, tribal, and local partners in how we manage our congressionally required oversight of state-run programs. My emphasis on certainty is not intended to undercut the broad principle of cooperative federalism. Instead, it is meant to provide a tangible concept for implementation of federalism. Together, these policies are designed to provide clarity and maximum flexibility to our co-regulators. These policies, along with other EPA actions, such as our MOAs on state self-audit laws with Wyoming and North Dakota, are designed to ensure we meet congressional oversight expectations while allowing states to do what you do best, use your unique knowledge of your jurisdiction to ensure the environment is protected in a reasonable manner.

I believe certainty in how we manage our role in enforcement of federal programs is a crucial element of federalism. States should not have to guess how EPA will act. Our role should be clearly spelled out and we have taken significant steps to execute federalism by providing certainty and clarity. While progress is a journey and not a destination, I believe that we have worked more closely with states over the past three years than previous administrations not just in policy guidance, but also in practice.

Policy

Over the past decade there has been significant discussion of federalism and what it means in the context of the state-EPA relationship. However, there can be little or no disagreement that the past administration in the pursuit of its policy goals disregarded the principles of federalism in many of the major regulatory actions it took.

I believe that EPA needs to regulate what Congress intended for it to regulate when it passed federal environmental laws and not try to stretch laws thin to achieve favored policy goals. The late Justice Scalia once wrote, "[w]e [the Supreme Court] expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." I agree and have instructed the Agency to draft regulations that respect the laws Congress passed.

This is important because many of the federal environmental laws contemplate a clearly defined federal role and a clearly defined state role. Previous administrations have at times blurred the lines between the appropriate role of the federal government and of state government when promulgating regulations. Nowhere is certainty and cooperative federalism more married than in the development of regulations clearly identifying where the federal government's jurisdiction ends and a state's begins. Cooperative federalism cannot mean much if it doesn't mean that EPA regulations should provide clarity to states and the regulated community while adhering to statutory text. Regulations resulting in a balkanization of regulatory requirements across the country based upon different court rulings defeat the purpose of national regulation. My goal has been to avoid overreaching into areas appropriately regulated by state or local

governments and to provide clear lines of federal authority and therefore clear lines of state authority.

A good example was properly defining what constitutes "waters of the United States." In 2015, the previous administration established a definition that was so sweeping that they found it necessary to clarify the regulatory status of puddles. Resulting litigation on the rule broke the country into two different regulatory spheres – those that were covered by the 2015 rule and those that were covered by an earlier definition of "waters of the United States." By repealing the 2015 definition we have taken the first step to addressing the uncertainty created by the 2015 rule. We have also just completed the final step. This month I announced the Navigable Waters Protection Rule, which provides a new definition of what is a navigable water and therefore subject to federal jurisdiction. This new rule will bring certainty and clarity to states, landowners, and businesses. It will curtail the need to hire teams of lawyers to advise Americans of what they can do on their property. Properly delineating state and federal jurisdictions on an issue as fundamental as water is cooperative federalism.

Another example of appropriate regulation is the Affordable Clean Energy rule (ACE). As you know, the Clean Power Plan (CPP) was stayed by the United States Supreme Court before it could take effect. This was the first time in United States history a rule promulgated by an Agency was stayed prior to a D.C. Court of Appeals decision. Among the issues raised by many states when objecting to the CPP was that it usurped the role of state regulators to determine energy sources for their state. The previous administration's CPP dictated to states the sources of their energy generation, a role that has historically been reserved to states. We replaced the CPP with ACE, which is clearly moored to the legal authorities granted to EPA in the Clean Air Act.

Finally, EPA and the Department of Transportation finalized a part of the Safer, Affordable, Fuel Efficient Vehicles (SAFE) Rule in 2019. This action makes clear that federal law preempts state and local tailpipe and greenhouse gas (GHGs) emissions as well as zero emission vehicle (ZEV) mandates. EPA also withdrew California's Clean Air Act preemption waiver granted to the State in 2013. Under the Clean Air Act, federal preemption of state emissions standards for new motor vehicles can be waived for California under certain circumstances. Once California has such a waiver other states can adopt California's standards, which some have done. California received a waiver of preemption in 2013 for its Advanced Clean Car Program, which includes state GHG and ZEV requirements. The result is that auto makers would be forced to manufacture two different kinds of cars – those for states that have adopted the standards and those for states that have not. In the alternative, auto manufacturers could adopt the more stringent of the standards. This would create a de facto new regulation mandating fuel economy standards applicable to all states. From a legal perspective, the 2013 waiver should not have been granted. California's GHG and ZEV requirements are preempted by federal law – they do not address environmental issues unique to California or that could be meaningfully addressed by California's standards. While the legal requirements of the CAA drove the decision to revoke the waiver it is also true that if the waiver had remained in place it would have established fuel standards for vehicles across the country. It would have established national regulation of automobiles across the country that would be set by one state or a small number of states. There is no definition of cooperative federalism that accepts an outcome where one state can establish standards for every other state.

During my tenure at EPA, I have always kept in mind that state environmental agencies don't exist as adjuncts to the federal government. The relationship 50 years ago may have been different, but today states are more sophisticated and capable, something that previous administrations may not have appreciated either in implementation of delegated programs or in the development of regulations. I do appreciate that and look forward to continuing to work with all of you over the next several years.

The theme for 50th anniversary is "Progress for a Stronger Future." Together we can all assure the American public that we are safeguarding public health and the environment for the next 50 years.

Sincerely,

Andrew R. Wheeler