



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

## Department of Environmental Conservation

OFFICE OF THE COMMISSIONER

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February 9, 2016

The Honorable James M. Inhofe  
United States Senate  
Committee on Environment and Public Works  
Washington, DC 20510-6175

Dear Senator Inhofe:

In response to your January 12, 2016 letter, the Alaska Department of Environmental Conservation (ADEC) provides the following information related to state resources and efforts necessary to comply with EPA regulatory actions and whether the current regulatory framework between EPA and the states upholds the principle of cooperative federalism. We appreciate your interest in this issue and Alaska's experience in working as co-regulators with the U.S. Environmental Protection Agency (EPA).

The volume of EPA regulatory actions is challenging for Alaska. ADEC has limited resources to track and comment on EPA regulatory proposals. Often the EPA's rule proposals are developed in a centralized, national manner that are not well-suited to Alaska's unique situation. ADEC staff spend significant time analyzing proposals and providing comments to the EPA, typically raising concerns or requesting flexibility to address specific Alaska circumstances. The EPA in focusing on the national perspective does not always provide the flexibility that a state like Alaska desires and needs to more practically implement environmental requirements.

Alaska has been successful at times in gaining some flexibilities that allow the state to implement EPA rules in a manner that better fits our unique circumstances, but this is not generally the case. An example of a success was when the EPA tailored diesel engine rules to address concerns about impacts to rural Alaska fuel distribution and power generation. This success came only as a result of significant state effort over a number of years to raise our unique concerns and provide data to the EPA in support of a more practical and less burdensome approach.

The high number of EPA regulatory actions that must be implemented by states, or adopted into state regulation, can also act to crowd out other state environmental priorities and initiatives that may better address local concerns. As noted in your letter, many federal rules require significant time to implement and this means that ADEC must often divert attention and initiate work well in advance of compliance dates. The sheer volume of EPA rulemakings makes it difficult to proactively initiate actions early on all requirements; ADEC must prioritize its efforts and may ultimately not be able to meet all the new requirements in a timely manner.

ADEC notes that the principle of cooperative federalism recognizes the shared authorities between states and federal agencies. ADEC has taken primacy for a number of federal environmental programs, including wastewater permitting and air quality planning and permitting. The implementation of these programs at the state and our partnership with the EPA in implementing environmental laws requires continual interaction and open communications. In recent years, the EPA's focus on litigation response has driven their efforts toward policies and priorities that may or may not produce the most important environmental benefits. States are then put under pressure from the EPA to also take steps to advance those priorities within their programs sometimes at the expense of other higher priority efforts.

ADEC has enclosed a list of examples of some recent EPA regulatory actions that impact Alaska's water and air quality programs. There are times when the EPA does appear to engage the states in the spirit of cooperative federalism, but the process surrounding many of these actions speaks to the need for continued improvement to allow for better upfront collaboration between the EPA and the states. Even if the EPA provides ample opportunity for input on regulatory actions and guidance, a state with unique issues, like Alaska, can find that its concerns are overwhelmed by a broader national perspective. In addition, better alignment and clarity on the respective roles of the EPA and the ADEC in implementing environmental programs could be helpful in ensuring the efficient and effective use of limited state and federal resources.

Sincerely,



Larry Hartig  
Commissioner

Enclosure

cc: Nathan Butzlaff, Office of the Governor, Washington DC

## ENCLOSURE

### **Alaska Department of Environmental Conservation Observations on the Cooperative Federalism Framework and the Impacts of EPA Rules on State Resources**

The Alaska Department of Environmental Conservation (ADEC) provides the following specific examples depicting impacts of EPA rulemakings on state resources and providing observations on the implementation of cooperative federalism between the EPA and ADEC.

The following rulemakings highlight some water program actions where the EPA has not fully engaged with the state as a partner or addressed significant state concerns prior to rule finalization. In these cases, there are also resource implications to the state in implementing the final rules.

- Clean Water Act (CWA) Electronic Reporting Rule: In September 2015, the EPA mandated new data submittal requirements with tight implementation schedules and no additional resources to states to assist with compliance. Alaska provided comments about the challenges of remote, rural internet access, difficulties in retaining qualified operators, and the costs of new technology management and maintenance. These issues were not addressed in the EPA's final action.
- Water Quality Standards Rule: In August 2015, the EPA finalized a rule updating the national water quality standards. The EPA developed the initial rule without the benefit of state dialogue and then scheduled state workgroup meetings after the comment period that only resulted in minor changes to address state concerns.
- Waters of the U.S. (Clean Water) Rule: The EPA finalized the Clean Water Rule in June 2015, which is currently under litigation by a number of states including Alaska. The EPA hosted calls with states on the rule proposal under the auspices of cooperative federalism, but they did not engage in meaningful dialogue. Alaska commented on the rule and identified specific, unique conditions for the EPA to consider, such as permafrost conditions, but the EPA did not address Alaska's concerns in the final rule.
- Alaska Seafood Effluent Limitation Guidelines (ELG): The EPA published a notice of data availability and possible revisions to the ELG without any upfront discussion with the state. While the ELG only applies to Alaska, the state was relegated to participating through the formal public notices process; the EPA has never engaged with ADEC regarding the evaluation and decision making process to modify the ELG.

Despite the above examples, there are times when the EPA does appear to engage the state's water program in the spirit of cooperative federalism. In 2014, at the request of states and others, the EPA convened a Federal Advisory Committee Act subcommittee to study which waters and wetlands a state will have authority over if they assume the CWA Section 404 Program from the U.S. Army Corps of Engineers. Alaska is participating on this subcommittee and a meaningful dialogue is underway.

With respect to EPA rules that impact air quality, the EPA has recently engaged in dialogue with ADEC on some critical rulemakings and actions. The examples below reflect, to some extent, the challenges the agencies share in the co-regulation of air quality. They also identify recent efforts on air quality rulemaking and implementation that have resulted in the State spending considerable resources to engage in a shared dialogue and to provide sufficient documentation to satisfy the EPA in allowing for Alaska's specific concerns to be addressed:

- Clean Power Plan Rule: The State of Alaska expended significant resources from multiple agencies over many months to provide comments and data to the EPA on the Clean Power Plan proposal. In our comments, we requested that Alaska be exempted from the Clean Power Plan because of our unique circumstances. The EPA did not include Alaska in the final rule released in August 2015 and indicated that it had delayed action to gather additional information on Alaska's power system. While the EPA appears to have heard the State's concerns, significant concerns remain about the resources and potential impacts of any future efforts associated with the EPA's regulation of greenhouse gas emissions from the power sector in Alaska.
- Fine Particulate Matter (PM2.5) Planning: The State of Alaska has a PM2.5 air quality problem area within the Fairbanks North Star Borough. The EPA and ADEC have worked collaboratively with the local government to develop a Clean Air Act state implementation plan to address the pollution issue, which is primarily a result of wintertime wood smoke from home heating sources. EPA's PM2.5 planning regulations and guidance require the State to conduct numerous technical and policy-related analyses. The EPA guidance on PM2.5 had been developed in the context of large urban area PM2.5 pollution that occurs year round. As a result, ADEC has found that some of the requirements add little value to addressing specific pollution concerns. This includes some required technical analyses as well as the analyses of best available controls for sources having little direct impact on PM2.5 levels in this community.

In addition, the EPA's interpretation and revision of PM2.5 air monitoring rules in recent years has resulted in a difficult situation within this nonattainment area. The PM2.5 air monitoring rules have made it more challenging for ADEC to characterize the extent of air pollution; the use of special purpose monitoring is leading to requirements for additional formal, long term compliance monitors that then stress state and local resources. This also impacts ADEC and local government as more resources are expended to alleviate more onerous planning requirements. In this case, disagreement over the representativeness and classification of a special purpose monitor led the state to take a number of additional actions, including a request to split the nonattainment area. As the EPA rules and Clean Air Act requirements escalate and force more planning and onerous control actions, the state and local government want the flexibility to address the different levels of pollution in this community (as monitored) in a manner that focuses on fair and appropriate controls rather than most stringent controls on all pollution sources throughout the broader area.