



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



*Celebrating 25 years of protecting
New Hampshire's environment.*

July 27, 2012

The Honorable Ed Whitfield
Chair, Subcommittee on Energy and Power
U. S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: Responses to Clean Air Act Forum Questions

Dear Representative Whitfield:

Thank you again for inviting me to participate in the "State, Local, and Federal Cooperation in the Clean Air Act" forum scheduled for July 31, 2012. I believe this is a promising opportunity for various voices to be heard on how the Act is being implemented at various levels of government. You have asked the participants to answer several questions in writing prior to the forum, and the following are my responses to those questions.

1. In your agency's experience implementing the Clean Air Act, what is working well? What is not working well?

Working well:

The Clean Air Act (CAA) has resulted in a dramatic improvement in air quality since 1970. The amendments of 1977 and 1990 have resulted in significant and continuing reductions of ozone, sulfur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOCs), lead, carbon monoxide (CO), and hazardous air pollutants (HAPs).

Air quality science and air pollution control technologies have continuously improved over the past 40 years. There have been significant advances in health risk assessment, the process of developing standards, emissions testing techniques, air quality monitoring and the forecasting of poor air quality days. Improvements in the health-based science can largely be attributed to the CAA, which established the Clean Air Scientific Advisory Committee (CASAC) to advise EPA on the setting of national ambient air quality standards (NAAQS) for various regulated pollutants. In addition, air quality regulations have driven the development of advanced air pollution control technologies, and encouraged pollution prevention efforts and the associated creation of new local jobs.

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Not working well:

- Federal funding for state programs is insufficient, including funding for core state requirements such as SIP development, ambient air monitoring and compliance/enforcement efforts. For all practical purposes, federal funding to the states for CAA work has at best been flat over the past ten years, while during the same period EPA requirements upon the states to meet CAA requirements have increased significantly.

- Timing issues can also be challenging: often states are working on SIPs for multiple pollutants for which EPA had established different compliance deadlines. At the same time, EPA may be revising the NAAQS for a particular pollutant, leading to a constant state of flux in which the states and individual sources must try to reconcile complex and potentially conflicting requirements. This situation is further exacerbated by legal challenges on numerous fronts to many EPA standards and rules.

2. Do state and local governments have sufficient autonomy and flexibility to address local conditions and needs?

- Generally speaking, yes. State and local governments have some flexibility in selecting strategies to meet the NAAQS.

- Some emission categories are difficult to regulate at the state level, such as the VOC content in consumer products. In these cases, federal regulations on the manufacture and distribution of such is necessary, appropriate and more effective than efforts undertaken by individual states.

3. Does the current system balance federal, state and tribal roles to provide timely, accurate permitting for business activities, balancing environmental protection and economic growth?

- Yes. State and local agencies implement most of the permitting programs and are attuned to the need for the timely consideration of permit applications.

- Facility siting issues and objections can create timing challenges for permitting, especially if public concerns about the location of a facility are not addressed at the local level before an application is filed for an air permit.

4. Does the CAA support a reasonable and effective mechanism for federal, state, tribal and local cooperation through State Implementation Plans? How could the mechanism be improved?

- The mechanism is reasonable but could be far more effective. Over the past 3 years, in particular, EPA and the states have collaborated to identify and implement appropriate mechanisms for improving the SIP process. EPA is to be commended for its willingness to work with the states on these issues.

The SIP process could see significant improvement if EPA had adequate resources to engage earlier with the states as the states are developing SIPs, provide more timely guidance to states and act on SIP submittals in a more timely manner, such as within a few months rather than some years later.

5. Are cross-state air pollution issues coordinated well under the existing framework?

Unfortunately, the CAA is not effectively structured to deal with cross-state air pollution issues. Across the entire country, downwind states are often unable to meet standards when there is significant transport of air pollutants from upwind states, and additional tools are needed to ensure that sources in upwind states are promptly and adequately addressed either by states or EPA. For example, air quality in the Northeast and mid-Atlantic states is significantly degraded by emissions from large electric generating units, industrial sources and large urban areas located south and west of the region. Many eastern states, such as New Hampshire, have implemented extensive air pollution control programs required by our non-attainment status which have significantly reduced in-state emissions but have been unable to address the effects of transported emissions.

6. Are there other issues, ideas or concerns relating to the role of federalism under the CAA that you would like to discuss?

Overall, we have made significant progress in reducing air pollution and associated public health impacts and improving air quality under the existing CAA framework, and we believe that EPA is best positioned to set national ambient air quality standards and to tackle interstate transport issues.

These are general thoughts that I would be pleased to discuss in more detail at the forum. Please feel free to contact me anytime before or after the forum if you have any questions or would like additional information. I look forward to meeting you and to exchanging ideas with all of the participants.

Sincerely,



Thomas S. Burack
Commissioner