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OFFICE OF ATTORNEY GENERAL
STATE OF WEST VIRGINIA



PATRICK MORRISEY
ATTORNEY GENERAL

May 15, 2017

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Submitted electronically via Regulations.gov

Re: Comments of the States of West Virginia, Alabama, Arkansas, Indiana, Louisiana, Michigan, Oklahoma, and South Carolina on the Environmental Protection Agency's request for comment on regulations that may be appropriate for repeal, replacement, or modification, Docket No. EPA-HQ-OA-2017-0190.

Dear Administrator Pruitt:

As the chief legal officers of our respective States, we respectfully submit the following comments on the Environmental Protection Agency's request for comment on regulations that may be appropriate for repeal, replacement, or modification. During the Obama Administration, we experienced first-hand the devastating effects of unlawful executive overreach on jobs and our States' local energy economies. We welcome the opportunity to participate in the process of scaling back these unlawful regulations, restoring the rule of law, and ultimately, returning key decisions about

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energy production and priorities to the States and their citizens. We also believe that the EPA now has an opportunity to evaluate its regulatory programs more broadly and identify places to ease the regulatory burdens on the States.

As you know, on February 24, 2017, President Trump sought to change the regulatory direction at the EPA by signing Executive Order 13777, “Enforcing the Regulatory Reform Agenda” (the “EO”), establishing a federal policy “to alleviate unnecessary regulatory burdens” on the American people. The EO directs federal agencies to establish a Regulatory Reform Task Force to evaluate existing regulations and “make recommendations to the agency regarding their repeal, replacement, or modification.” The EO instructs the task force to focus on identifying regulations that eliminate jobs or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; create a serious inconsistency or interfere with regulatory reform initiatives and policies; rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent; or derive from executive orders that have been rescinded. We submit these comments to assist EPA’s Regulatory Reform Task Force in its effort to identify specific rules for repeal, replacement, or modification.

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DISCUSSION

As state officials who have spent the past eight years fighting on behalf of our States against federal regulatory overreach by the Obama Administration, we welcome the new Administration's efforts to reduce regulatory burdens on the citizens of our States.

We have already achieved success in preventing the implementation of some of the Obama administration's onerous rules by challenging them in court. As a result of our litigation efforts, courts have determined that the regulations are likely unlawful and that their effectiveness should be stayed pending the outcome of litigation. For example, the Supreme Court issued an unprecedented stay of the Clean Power Plan, 80 Fed. Reg. 64,661 (Oct 23, 2015). Order, *West Virginia v. EPA*, No. 15A773 (Feb. 9, 2017). In addition, the U.S. Court of Appeals for the Sixth Circuit and the U.S. District Court for the District of North Dakota put the unlawful Waters of the United States Rule, 80 Fed. Reg. 37053 (June 6, 2015), on hold. *In re EPA*, 803 F.3d 804 (6th Cir. 2015); *North Dakota v. EPA*, 127 F. Supp. 3d 1047 (D. N.D. 2015). EPA now has the opportunity to provide permanent relief from these and other regulations that are hindering economic development in our States and costing scarce state resources. To further that end, the undersigned state officials respectfully make the following suggestions.

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First, we recommend that EPA consider repealing, replacing, or modifying some or all of the Obama-era regulations set forth in Exhibit A to this letter, the specific arguments against which have been well documented in the course of litigation, letters, or through the rulemaking process.

Second, we recommend that EPA review and streamline its process for allowing States to administer their own permitting programs under Section 404 of the Clean Water Act. 33 U.S.C. § 1344. Section 404 establishes a process for regulating the discharge of dredged or fill material into waters of the United States, including wetlands. That process requires miners and developers to obtain a federal permit before dredged or fill material may be discharged into waters of the United States. The Clean Water Act also provides States with the option of administering their own permitting program and opting out of the federal program, on the theory that the States are often more familiar with the local resources and issues associated with protection of wetlands and waters within their borders. But in part because the EPA's current application process is burdensome, only two States are currently approved to administer their own permitting program under Section 404.¹ EPA should streamline the application process in order to make it easier for States to assume responsibility for their own permitting programs under Section 404.

Third, EPA should review and revise regulations to improve the State Implementation Plan (SIP) approval process. The SIP is the federally-enforceable

¹ <https://www.epa.gov/cwa-404/state-or-tribal-assumption-section-404-permit-program>.

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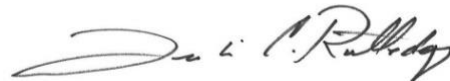
plan for each State that sets out how that that State will attain the various National Ambient Air Quality Standards (NAAQS) set forth in the Clean Air Act. The agency should continue to work efficiently to clear the backlog of SIPs, align SIP approval dates, and improve communication with the States.² EPA should also consider expanding its letter approval process to cover more SIP revisions in order to allow EPA to speed up the approval process and provide States with greater certainty about the validity of their SIPs.

We thank EPA for its consideration and look forward to working with the agency on these and other issues important to our citizens and our States in the future.

Sincerely,



Patrick Morrisey
West Virginia Attorney General



Leslie Rutledge
Arkansas Attorney General



Steven T. Marshall
Alabama Attorney General



Curtis T. Hill, Jr.
Indiana Attorney General

² http://www.marama.org/images/Day_1_pm_6_EPA-Rehn-final.pdf.

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Handwritten signature of Jeff Landry in black ink.

Jeff Landry
Louisiana Attorney General

Handwritten signature of Mike Hunter in blue ink.

Mike Hunter
Oklahoma Attorney General

Handwritten signature of Bill Schuette in black ink.

Bill Schuette
Michigan Attorney General

Handwritten signature of Alan Wilson in black ink.

Alan Wilson
South Carolina Attorney General

EXHIBIT A

REGULATIONS APPROPRIATE FOR REPEAL, REPLACEMENT, OR MODIFICATION

- Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (“Clean Power Plan”), 80 Fed. Reg. 64,661 (Oct 23, 2015)
- Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510 (Oct 23, 2015)
- Clean Water Rule: Definition of “Waters of the United States”, 80 Fed. Reg. 37,053 (June 6, 2015)
- Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 Fed. Reg. 74,504 (Oct. 26, 2016)
- Standards of Performance for Municipal Solid Waste Landfills (“New Landfill Methane Standards”), 81 Fed. Reg. 59,331 (Aug. 29, 2016)
- Mercury and Air Toxics Standards, 77 Fed. Reg. 9,304 (Feb. 16, 2012)
- Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (“Existing Landfill Methane Standards”), 81 Fed. Reg. 59,275 (Aug. 29, 2016)
- Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 80 Fed Reg. 75,177 (Dec. 1, 2015)
- State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 Fed. Reg. 33,839 (June 12, 2015)
- Reconsideration on the Mercury and Air Toxics Standards, 81 Fed. Reg. 52,346 (Aug. 8, 2016)
- Oil and gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (“Oil and Gas Methane New Source Performance Standards”), 81 Fed. Reg. 35,823 (Jun. 3, 2016)
- Implementation of the 2015 National Ambient Air Quality Standards (NAAQS) for Ozone: State Implementation Plan (SIP) Requirements, 81 Fed. Reg. 81,276 (proposed Nov. 17, 2016)

- Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 80 Fed. Reg. 67,837 (Nov. 3, 2015)
- Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), 82 Fed. Reg. 4,594 (Jan. 13, 2017)
- Protection of Visibility: Amendments to Requirements for State Plans, 82 Fed. Reg. 3,078 (Jan. 10, 2017)
- Greenhouse Gas Reporting Rule: Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, 81 Fed. Reg. 86,490 (Nov. 30, 2016)
- Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009)
- Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018, 81 Fed. Reg. 89,746 (Dec. 12, 2016)
- National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65,292 (Oct. 26, 2015)
- Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, 81 Fed. Reg. 58,010 (Aug. 24, 2016)