



July 27, 2012

The Honorable Ed Whitfield
Chairman, Subcommittee on Energy and Power
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bobby Rush
Ranking Member, Subcommittee on Energy and Power
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush:

I would like to thank you and the members of the Subcommittee on Energy and Power for inviting me to participate in the forum on "State, Local, and Federal Cooperation in the Clean Air Act" scheduled for Tuesday, July 31, 2012. I am pleased to share my experiences and discuss some of the challenges we, as a local air quality agency, face in implementing the Clean Air Act (CAA).

My name is Brad Poiriez, and I have been the Air Pollution Control Officer in Imperial County for the past 4 years, but I have worked for the Imperial County Air Pollution Control District (ICAPCD) for the past 19 years. I also serve on the board of the California Air Pollution Control Officers Association (CAPCOA), where I currently serve as the vice president and legislative committee chair. Additionally, I am a past co-chair of the Imperial Valley/Mexicali Valley Air Quality Task Force. For over a decade, I have continued to participate in this federally recognized regional task force group in an effort to address international air quality concerns.

I am addressing you in my role as Imperial County's Air Pollution Control Officer. Imperial County is located at the southeastern tip of California and has a population of roughly 178,000 people within a boundary of 4,500 square miles. The county is bordered by Arizona to the east, and Mexico to the south. Mexicali, Mexico lies just South of our border and is an urban metropolitan area consisting of well over 1 million residents.

Imperial County enforces some of the most aggressive air pollution control laws anywhere in the country, and over the last decade has been at the forefront of the battle over controlling particulate matter (PM) from a variety of sources. The county cares deeply about the health and welfare of its residents, and devotes its limited budgetary resources to their protection. The county also recognizes that there are some sources of PM over which it has absolutely no

control, and those sources occasionally cause monitoring results to exceed the national standards.

Imperial County undertook an intensive and expensive technical effort to provide the State of California and the Environmental Protection Agency (EPA) with a demonstration that the handful of days where PM emissions were above the standard were all caused by high winds and weather conditions that cannot be affected through additional rules or controls. It seemed clear that there could be no justification for imposing requirements that would have a substantial impact on the economy and employment in the county, when those rules and controls would not change the ability of the county to meet the standards on those few high PM days. EPA disagreed and now the county is faced with the imposition of sanctions that includes the withholding of federal highway funds as a consequence of not getting full approval of the State Implementation Plan (SIP) rules, which could jeopardize highway construction, airport infrastructure, and ports of entry.

Imperial County is California's poorest county and consistently ranks amongst the top in unemployment rates in the nation. Nearly one out of every five families lives below the poverty line. Our residents rely heavily on local irrigated farming for their livelihood, despite living in one of California's hottest and driest desert areas along the state's border with Mexico (the county receives less than 3 inches of rainfall per year).

Not surprisingly, the county struggles each year with windblown dust whipped up from dry and undeveloped desert lands. The problem is significantly aggravated by uncontrolled dust, smoke, and soot originating across the border from Mexicali, Mexico -- a dense metropolitan area of over one million people where dust from unpaved roads, and particulate matter from open burning of trash, tires and other waste materials is a daily occurrence. Still, over the past decade, the county has been successful in taking aggressive and costly steps to virtually eliminate exceedances of the PM national ambient air quality standards (NAAQS).

Typically, levels of PM in the county are less than one-third of the federal standards. Moreover, as a result of the county's efforts, in 2010, 94% of the days in the county were considered "Good" air days in accordance with the EPA's Air Quality Index (AQI). However, because of the large natural and cross-border dust sources discussed above, the county occasionally experiences high windblown dust readings that are simply out of its reasonable control to prevent.

Congress specifically designed the federal Clean Air Act to protect places like Imperial County from being unfairly punished for such occasional high windblown dust readings:

- The Act forbids EPA from reclassifying areas to more stringent emissions control categories where those areas would have met the national standards but for foreign emissions.
- The Act also allows EPA to waive control requirements and compliance deadlines when high dust readings are caused by natural dust sources rather than man-made ones.

- And when monitored dust levels are shown to be caused by uncontrollable natural events, the Act provides for the exclusion of that data from air quality planning decisions.

Each state with nonattainment areas is responsible for creating and enforcing a State Implementation Plan (SIP) for coming into attainment with the PM10 standard. As far back as 2004, Imperial County fully collaborated with EPA, the California Air Resources Board (CARB), industry, health officials and the public in a transparent and exhaustive SIP development process. This process provided numerous opportunities for comment and participation from all interested parties and multiple EPA field visits. Both EPA and CARB reviewed draft documents and on multiple occasions provided comments and changes that were incorporated into the proposed rules.

This expensive and intensive effort successfully culminated on November 8, 2005 with the EPA representative for Region IX testifying in a public hearing. His testimony reaffirmed that if the plan were adopted by the local air control board, EPA would act expeditiously to approve it. That plan was adopted by the local air board and all the measures have been implemented with success since January, 2006, three years before being required. However, EPA failed in their commitment to provide final approval.

In early 2010, EPA finally took action on the pending rule, disapproving portions of it and seeking a variety of new and different measures before it would even consider approval of the 2005 plan submittal. Due to the action and with no other recourse, Imperial County has pursued all its legal remedies which is time consuming and costly at a time when resources are better suited for implementing emission reduction programs and permitting sources while ensuring compliance with the CAA.

Participant Questions

**In your agency's experience implementing the Clean Air Act (CAA), what is working well?
What is not working well?**

There is no question that the CAA has been vital in our nation's effort to improve our air quality and quality of life. The CAA outlines a comprehensive strategy for attaining National Ambient Air Quality Standards – these form the basis for our efforts to adopt, implement, and enforce regulations; to monitor for criteria pollutants and toxics; to permit new and modified sources; and to improve, attain, and maintain the standards. The CAA sets up a federal-state partnership that, in theory, is designed to entrust the states and local air districts with the majority of the substantive implementation and air quality regulation decisions. This recognizes the fact that the states and districts are the experts on their sources, their industries, and their local air quality issues, and are in the best possible position to design air quality regulations that fit those realities. We feel the CAA works best when the federal government follows this system of delegated authority, and supports the efforts of the states and the local districts to enforce the types of rules that work best for their areas.

The CAA works best in areas where the technical and regulatory support of the EPA is coordinated with the local knowledge and resources of the local agency. An example is the CAA

Section 179(b) that allows for a “but for” determination when foreign emission can be well documented, even though it is quite rigorous and resource intensive, it provides a mechanism for an area impacted by foreign emissions to not be held liable for those emissions when determining attainment status.

One of the areas that needs to be addressed involves the timeframes for finalizing regulations and State Implementation Plans (SIPs). Delays and SIP gaps cause significant uncertainty and difficulty both for local agencies and the community. The CAA needs to be updated to address EPA’s inability to meet its own deadlines and to redefine the rule approval process when EPA fails to act in a timely manner. The CAA requires EPA to act upon approval/disapproval of SIP rules within 12 months; however, EPA often takes years to act on SIP plans and associated rules (many times not acting until threatened with potential litigation), without any consequences to EPA for the delay. For states and local districts, this causes confusion, challenges, and burdensome consequences. By the time EPA finally acts on a rule, the rule is often evaluated under very different standards and circumstances than the ones that were in place when the rule was originally adopted, making it very difficult for states/districts not only to get final approval for rules, but to even formulate rules that will ultimately receive SIP approval.

The regulation by informal guidance and determinations by EPA outside of formal rulemaking is another area that needs to be addressed. Perhaps the CAA could be updated to more clearly define and recognize the states’ primary authority to develop air quality rules to implement federal and state standards, so EPA cannot use things like guidance documents or rule interpretations to undermine this authority. As an example, the Exceptional Events Rule (EER), as described under Section 319 of the CAA, is written to relieve states from having to regulate emissions caused by natural or other uncontrollable exceptional events like high winds and wildfires. Instead, the Rule gives states the authority to determine reasonable and appropriate control measures to apply to any human-caused emissions affecting those events. However, EPA recently has issued guidance re-interpreting the Rule to require states to adopt a host of “best available control measures” to EPA’s liking before EPA **will** even decide whether an uncontrollable wind event caused an exceedance. EPA **alone** gets to decide when the controls are tough enough, and there are no clear standards for states to know when their rules are good enough to be approved.

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

The CAA recognizes the states in identifying the best ways to attain ambient air quality standards in their areas, but the reality is that local agencies such as ICAPCD do not always get the autonomy and flexibility that appears to be contemplated by the CAA. It is the states or the local air districts that generate the air quality data on the ground, analyze that data, consider the impact of meteorology and foreign sources of emissions, assess the state of the available control measures and technology, determine what is feasible and achievable on the ground, and then carefully balance all of that in devising air quality rules and SIPs, and thereby have the responsibilities associated with implementing and enforcing those rules and plans. No doubt EPA provides an important oversight role, but it is simply in no position to substitute its

judgment for the state, or second-guess the data and information developed at the local level. The CAA leaves the complex policy judgments and regulatory choices to the state in the first instance, and if those choices meet the requirements of the CAA, EPA should not be permitted to hold up approval of those rules absent arbitrary or capricious actions by the states or local air districts. Local flexibility is diminishing and the process of developing, adopting, and implementing plans and rules has become increasingly burdensome.

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

Accurate and timely issuance of permits is one of our primary responsibilities at a local level. When a permit is finalized and it has gone through the appropriate environmental review and public process it is assured that the appropriate federal, state, and local regulations are being applied and are able to be met, they include any needed mitigation measures required to ensure compliance. Timeliness is also a concern and due to the fact the entire process can be time consuming and complicated which presents challenges to permitting agencies and applicants in terms of moving the projects forward it can impact economic growth if projects falter not due to environmental protection but due to the process. The process can be further impacted when those opposing particular permits or projects utilize the complex public process to hold up, delay, or even in some cases cause a permit to be denied.

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 CAA is a reasonable and appropriate mechanism for cooperation. However this mechanism fails in instances where EPA is allowed to use guidance and other documentation that results in EPA interpreting or creating restrictions on granted authority to States by the CAA. In those instances, it nullifies local efforts or otherwise makes the coordination process difficult and onerous. The SIP process does work and is an effective mechanism that appropriately involves the public and stakeholders when developing plans that include the requirements that need to be met in order to move toward attainment and maintenance of the NAAQS. Improvement to the mechanism could be as simple as better cooperation and communications between all levels and the understanding that a "one size does not fit all" approach when developing regulations and strategies and use real life, on the ground, feasibility assessments for the area would be helpful in moving feasible measures forward expeditiously to get necessary emission reductions.

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

Imperial County deals with international air pollution impacts on a larger scale than cross-state impacts because we share a border with Mexico. Because Mexico is a sovereign nation, we can only make limited progress at the local level, and have no power to require Mexico to do anything about emissions that affect our county. Currently in Mexico, sources of air emissions are not required to meet the same level of control and stringency as similar source categories just

minutes to the north of the border. It is also not uncommon on any given day to have a border wait time for vehicle crossings approach two hours in length. This translates into thousands of cars idling daily endlessly at our border crossings emitting tons of emissions that are transported into Imperial County's air shed and seriously impact our ability for further progress toward attaining the health based National Ambient Air Quality Standards (NAAQS). Federal coordination on both sides of the border is critical to addressing these issues, and must be ramped up in order to get valuable change and air quality improvements along the border. Increased efforts by EPA and our federal government to work with our counterparts in Mexico urging them to establish and implement common standardized regulations comparative to the U.S. in efforts to reduce air quality emissions to protect the public health is vital in efforts to improve air quality the along the border region.

This is one of the reasons why the CAA should be updated to allow a mechanism for creation and use of international emission reduction credits (ERC) to aid economic development and facility permitting in border areas. Throughout the U.S., there are limited and dwindling sources of ERC that new or modified sources can access to grow or establish. Many companies that would like to expand and grow in non-attainment areas find it nearly impossible due to the scarcity and cost of traditional federally recognized ERCs.

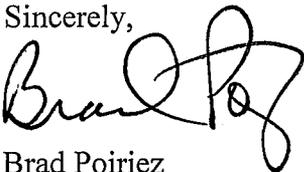
Congress should also look at mechanisms by which to further reduce the impacts from the mobile source emissions being transported into the U.S. and adversely impacting the air quality and ability to improve air quality. One solution that could help alleviate some of this problem and the impacts it causes could be additional funding for additional infrastructure improvements such as increased Ports of Entry.

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

While the CAA is written to clearly recognize the primary role of the states in implementing the CAA on the ground, real-world practice tells a very different story. The implementation of the CAA over the past several years has involved EPA increasingly substituting its judgment and policy choices for those of the states. The CAA often requires controls that are "reasonable" or sometimes even the "best available" technologies and rightfully so - but these terms are sufficiently broad and undefined as to allow EPA to exercise a great deal of top-down control over state policy, and which rules ultimately get approved.

Thank you for the opportunity to participate in the forum. Please feel free to contact me if you have any questions or comments.

Sincerely,



Brad Poiriez
Air Pollution Control Officer