

Testimony

U.S. House Committee on Science, Space, & Technology

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by

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Mr. Chairman, members of the Committee. My name is Misael Cabrera, I am the Director of the Arizona Department of Environmental Quality, and I greatly appreciate the opportunity to offer testimony today.

As we discuss expanding the role of States in the U.S. Environmental Protection Agency (EPA) Rulemaking, we should also discuss its corollary: reducing the role of EPA in State rulemaking. Let me explain, the Clean Air Act (CAA) calls for states to prepare Implementation Plans when national air quality standards are not being met. These State Implementation Plans (state plan) contain state-specific rules; rules that are developed through extensive stakeholder involvement and designed for environmental protection and local effectiveness. When EPA rejects a state plan or when it issues its own Federal Implementation Plan (federal plan), it effectively coerces states to write state rules in the specific way that EPA sees fit. One example of this is what I like to call, *"The EPA Regional Haze Maze."*

- 1990 - Congress established the regional haze program calling for states to develop plans for reasonable progress toward the national visibility goal set in 1977. Congress also established authority for visibility transport commissions and mandated the Grand Canyon Visibility Transport Commission ("Commission").

- 1992 – EPA established the Commission addressing specific parks and wilderness areas in a nine state region made up of eight Governors, four Tribal Leaders, four Ex-Officio Federal organizations, with the Arizona Governor serving as the Chair. Once established, the Commission formed working committees of 200 experts in air quality, regulatory programs, and economics.
- 1996 – The Commission issued a final report with recommendations to EPA.

At that point, EPA should have implemented the Commission’s recommendations. Instead, we were led further into “The EPA Regional Haze Maze:”

- 1997 - EPA proposed regulations that totally ignored the Commission’s findings.
- 1998 - Upset Western Governors provided guidance to EPA on how to implement the Commission recommendations and the Senate held oversight hearings.
- 1999 - EPA issued revised regulations with two programs: a general program for any state (40 CFR 51.308), and an optional program for the Commission states (51.309).
- 2004 - Arizona, New Mexico, Utah, and Oregon were the first states in the nation to submit regional haze plans. The next few years included court challenges to EPA rules, and states trying to appease the desires of EPA.
- 2009 - EPA published a finding that 34 states had failed to submit state plans by the regulatory deadline and that three states, including Arizona, had failed to submit required “elements” of the plans.
- 2011 - Arizona determined that implementing regional haze requirements under the optional program (CFR 51.309) would not be feasible, and submitted a replacement plan under the general program (CFR 51.308).
- 2011 - Earth Justice sued EPA for failing to act. EPA and Earth Justice settled requiring EPA to act on a submitted state plan or issue a federal plan.
- 2012 - EPA partially disapproved Arizona’s submittal, and issued a federal plan for several facilities in Arizona. EPA’s plan had an estimated cost of over \$500 million.

The worst part of “The EPA Regional Haze Maze” is that after 20 years of extensive stakeholder meetings and negotiations, multiple Commission reports, two state plans, four lawsuits, a federal plan that would cost over \$500 million...after all that...the modeled improvement to visibility will not be perceivable to the human eye. Let me repeat that: EPA’s insistence on controls that cost of over \$500 million would not have created a perceivable visibility difference in the Grand Canyon State.

Given that States now have mature regulatory programs and technical expertise, EPA should give deference to competent State regulators who develop state plans and state-specific rules; only in rare instances where minimum criteria are not met, should EPA reject state plans or issue a federal plan. In short, we should absolutely expand State involvement in EPA rulemaking and we should reduce EPA involvement in state rulemaking via the state implementation planning process set forth by the Clean Air Act.

In closing, I would like to mention that I am very encouraged by EPA Administrator Pruitt’s statements regarding a renewal of collaborative federalism. I am also encouraged by the ongoing work of the Environmental Council of States to partner with EPA towards that end. Together we can establish a new relationship where Congress establishes the laws, EPA sets the minimum standards, and the States are free to execute without unnecessary cost or waste.

Thank you for this opportunity to provide testimony, and I am happy to answer any questions that you might have.