

## Office of the Governor

August 2, 2013

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
EPA Docket Center  
Mailcode: 2822T  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460-0001

Re: Docket number EPA-HQ-OGC-2013-0500

Dear Administrator McCarthy:

Thank you for the opportunity to comment on EPA's and the Sierra Club's proposed consent decree which would require EPA to take action by October 15, 2013 on Wyoming's state infrastructure implementation plan for the 1997 small particulate matter air quality standard ("plan").

EPA proposes a consent decree with a special interest group that may force Wyoming to expend additional resources completing unnecessary and duplicative tasks. These burdens fall on Wyoming not because of something Wyoming did but because of what EPA failed to do. EPA sat on Wyoming's plan, which the state submitted over five years ago. While EPA was sitting on its hands with respect to Wyoming's plan, EPA was also changing the requirements for infrastructure plans. This course of conduct – inaction combined with changing the requirements – is detrimental to our state, and it is not proper.

Here is the history. Wyoming submitted its infrastructure plan for small particulate matter to EPA Region 8 on March 26, 2008. The plan complied entirely with EPA's infrastructure plan requirements at the time. Accordingly, EPA Region 8 found Wyoming's plan to be complete on October 22, 2008. EPA then failed to take final action on Wyoming's plan, even though the Clean Air Act required EPA to take such action within one year of finding the plan to be complete – that is, by October 22, 2009.

While Wyoming's plan languished, EPA rewrote the requirements so Wyoming is now having to look at new requirements. The question arises whether EPA uses delay as a tool to allow

Gina McCarthy  
August 2, 2013  
Page 2

issuance of new guidance that might then affect the outcome on a plan like Wyoming's submitted under EPA's earlier guidance.

As a result of EPA's neglect of Wyoming's plan submission, the Sierra Club sued EPA on November 28, 2012. EPA rolled over and agreed to settle the case. EPA and the Sierra Club now propose to enter into a settlement agreement that will force EPA to take action on Wyoming's plan, more than five years after Wyoming submitted it, more than four years after EPA should have acted on it, and after EPA has changed the plan requirements.

This case is troubling. It is part of a pattern of conduct where EPA is neglectful and, through a close relationship with special interest groups, a "sue and settle" strategy follows. States like Wyoming, which have expended resources and worked hard on their plan submissions, are cut out of the loop and cooperative federalism is lost.

EPA has a poor track record, which includes neglecting state plan submissions, exposing itself to lawsuits, and changing the requirements before acting on good state plans that are already on the table. Such conduct is problematic for a number of reasons. For example, the lawsuits lead to closed door negotiations with special interest groups that affect air quality policy at the expense of the states.

Congress mandated that states, not special interest groups, be EPA's partners in environmental regulation. EPA skirts the Congressional mandate through the "sue and settle" pattern it has fostered. The agency's course of conduct in this instance is part of the pattern. Skirting the law this way is inappropriate and improper, and it should stop.

Sincerely,



Matthew H. Mead  
Governor

MHM:md

cc: The Honorable Mike Enzi, U.S. Senate  
The Honorable John Barrasso, U.S. Senate  
The Honorable Cynthia Lummis, House of Representatives