

MEMORANDUM

TO: EPA Administrator-Select Michael Regan and Executive Team

FROM: Former State Environmental, Health, and Natural Resources
Commissioners, Secretaries, and Directors

DATE December 21, 2020

RE: Building a Better, More Effective and Sustainable EPA/State Partnership

We congratulate President-elect Biden and Vice-President-elect Harris on their election to the highest offices in the land and congratulate you on being selected as Administrator of the Environmental Protection Agency (EPA). We can appreciate the hard work ahead for you and your Executive Team as you formulate an agenda that is responsive to a wide range of old and new public health and environmental challenges. For your consideration, we extend our hand and offer several recommendations based on core themes we believe will ensure your agenda is achievable and built on a better, more effective and sustainable EPA/State Partnership.

As former leaders of state environmental, health, and natural resource protection departments, we have worked for Republican, Democratic and Independent Governors and have represented virtually every geographic area of our country. Collectively, we have hundreds of years of experience working in the public health and environmental protection arena and believe this experience can be of value to you. We know first-hand that protecting public health and the environment inherently is and should be blind to partisanship. All people need clean air, clean water, productive lands, and safe communities. We are confident that our recommendations and suggestions can assist you in meeting the demands of the 21st Century and provide the public with the security of knowing federal and state regulators, as well as tribal and local regulators, are working together to attain a healthy, clean environment in harmony with sustainable development and social justice.

The environmental regulatory regime we have operated under since the 1970s and 1980s is based on the principle of cooperative federalism, with Congress anticipating defined roles under the laws for both EPA and the states (as well as tribes and, to a different extent, local governments). In broad terms, the states receive funding to administer the laws on a day-to-day basis while EPA is charged with setting minimum, nationwide protection standards and monitoring state performance. As a nation, we have made great progress under this system in reducing pollution, minimizing human exposure to harmful chemicals, and protecting irreplaceable ecological resources.

But much has changed in the intervening fifty years. Complex, emerging pollution problems like “forever” chemicals deserve our immediate attention and prompt action, and a comprehensive national response to climate change is long overdue. This will require the dedication of funding, scientific research, and staffing resources that go well beyond the current capacities of the federal and state governments. Moreover, additional resources are necessary if we are to eliminate systemic issues that have resulted in disproportionate health and pollution impacts on communities of color and low-income communities. Consider also that additional progress must be made to

improve air and water quality and to address legacy contamination issues. Understandably, the regulatory burden shouldered by EPA and the states under existing laws has steadily increased due to new federal rulemakings and added program responsibilities. At the same time, funding support for federal and state environmental programs has plummeted.

The recommendations and suggestions we provide below are intended to assist you and your Executive Team in structuring a governance framework and operational system that best emphasizes the respective strengths and capabilities of EPA and the states, has sufficient resources to tackle new and existing environmental challenges, and restores the central role of science and law in decision making. As we note below, this will require the transformation of cooperative federalism into a true collaborative federalism in which EPA and the states are co-equal partners in the delivery of our nation's environmental programs, services and protections.

Transforming the EPA/State Governance Partnership

The cooperative federalism embedded in our nation's major environmental laws has always included a healthy dose of "creative tension" between EPA and the states, which often has resulted in the robust exchange of ideas and improved outcomes. Yet, on other occasions, it has resulted in conflict and indecisiveness on the part of federal and state regulators, to the detriment of the public good. For cooperative federalism to succeed states must be vital partners, not just end-of-the-line implementers, when it comes to carrying out our federal environmental laws. This will require a transformative model of shared governance in which the EPA and the states work together to streamline and modernize environmental programs, identify priorities, solve problems, and enhance and improve overall program performance.

Tribal nations are sovereign nations and often assume responsibility for administering environmental programs on tribal lands. Their distinct role requires a high level of collaboration to ensure protection of tribal lands and people. Consistent with federal law, local governments bear significant responsibilities relative to land use, drinking water, wastewater, and nuisance abatement. Consequently, tribes and local governments, consistent with their roles and responsibilities, must be active participants in any conversation on transforming the existing governance framework.

The good news is EPA already has a well-developed initiative in place that can lead the way in continuously reforming and improving our regulatory partnership. That initiative, E-Enterprise for the Environment, began in 2013 under the Obama Administration with the enthusiastic support of EPA and the states, but we are concerned that it has not of late been enabled to achieve its true purpose. At its core, E-Enterprise for the Environment is about a shared governance philosophy through which agreement is reached on the problems that need to be addressed and then durable solutions are developed that are most likely to succeed because the state, tribal and local agencies that will implement them were actively involved not only in defining the problem but also in designing the remedy. The challenge of course is to ensure inclusive, streamlined and transparent processes that quickly lead to incremental improvements in the nation's programs. More effort and resources are needed to ensure that this vision becomes the daily practice across all of EPA's programs and the entire national environmental enterprise.

We recommend that you and your Executive Team express and provide leadership support for E-Enterprise for the Environment and rely on it as a platform for realigning EPA, state, tribal and local government roles and responsibilities to emphasize the respective strengths, capabilities and capacities of each level of government, and for building strong support in the development and implementation of key policies on everything from climate change to scientific integrity, and from environmental justice to prioritizing action on drinking water contaminants. This is especially important given existing budget and staffing limitations. As noted below, we support significant increases to the EPA's and the states' budgets to properly fund existing environmental programs and to address climate change and other emerging pollution problems.

Regardless of funding support, we owe it to the American people to become as efficient as possible in spending their tax dollars wisely in achieving expected environmental and public health outcomes. This necessitates that EPA, the states, tribes and local governments are provided adequate funding and staff for public health and environmental protection and given flexibilities in order to eliminate redundancy in the delivery of environmental services, thereby ensuring dollars are spent in the most efficient and productive way. Being efficient with funding, however, does not mean sacrificing proper EPA oversight, ignoring the respective strengths each level of government offers, or forgoing the collection and open sharing of environmental data and information with each other and the public.

Pursuing Budget Stability and Flexible Funding

In 2017, a number of the signatories to this memorandum authored a memorandum in opposition to the proposed cuts to EPA's FY 2018 Budget. In that memorandum, we stated: "*[t]o maintain a balanced federal/state partnership requires sufficient funding for both the EPA and the states. Providing insufficient funding to either EPA or the states can compromise the overall effectiveness of the federal environmental safety net.*" Our concern over adequate funding for EPA and the states is even greater today.

In recent years, EPA and state program funding has been stagnant at best or shrinking at worst. New and complex challenges have emerged that require substantial funding from Congress and action by EPA and the states. Most notably is the need to address and respond to a changing climate that is affecting every environmental and public health program for which the agencies are responsible. It is imperative that EPA and the states have adequate resources to work collaboratively with governments, businesses and the public alike on carbon emission reductions and adaptation programs.

With acknowledgment of the budget challenges that lie ahead, we strongly support an EPA budget that ensures the agency is fully funded to carry out its mission, including funding to cover existing environmental programs and initiatives such as E-Enterprise for the Environment as well as enough resources to meet new challenges like climate change. It is absolutely necessary that EPA fully support funding the State Tribal Assistance Grants (STAG) to ensure states and tribes are capable of carrying out their delegated responsibilities. What the public may not entirely appreciate or understand is that STAG monies provide the funds necessary for the states to administer the myriad of regulatory programs delegated to the states under existing federal environmental laws – programs to protect and improve air and water quality, to clean up contaminated sites, and to protect the public from exposure to toxic chemicals.

On average, STAG funds make up 25 - 30% of state environmental agency budgets. The STAG monies thus are extremely important to the states and their ability to adequately protect human health and the environment. The unfortunate truth, however, is that these funds often fall far short of what is needed. In addition, the STAG grants come with only limited flexibility to use the dollars in the most efficient way. Developing a robust EPA budget that provides states with greater flexibility in determining how funds are applied will go a long way towards better meeting the public's health and environmental protection expectations and improving the overall performance of both EPA and the states.

We recognize that securing adequate funding for all the environmental problems and priorities you and your Executive Team must confront may seem a formidable task. Rest assured you have allies in this effort. We offer our support collectively and individually and urge you to reach out to the Environmental Council of the States (ECOS) for their support as well.

Integrating Social Justice and Equity into all Environmental Programs

We are far beyond the time of assuring that environmental and public health programs are inclusive and protective of the health and well-being of all Americans regardless of race, ethnicity or income level. We know through experience that environmental laws and programs have not always been evenly applied resulting in communities of color and low-income communities bearing the brunt of environmental pollution. It is our belief that environmental and public health laws are intended to protect all Americans. Accordingly, all levels of government must manage their programs with social justice and equity at the forefront.

Over the years, we have seen cost considerations take priority over benefits derived from the implementation of environment laws and programs. We do not disagree that the cost is important, however at the same time and on equal footing we must consider the public health and environmental benefits gained by regulation. The foundation for that benefit is considering the impact on individuals and communities typically overlooked. We recommend that EPA expand their Social and Environmental Justice Program to ensure proper representation and consideration of all under-served individuals and communities in every element of their decision making. We encourage EPA to engage the states and tribes in developing a robust Social and Environmental Justice Program with a goal of ensuring all Americans the full benefit of environmental and public health protection.

Drinking Water and Wastewater Infrastructure

The public expects and demands safe water for public consumption and effectively treated wastewater. We must ensure there is safe drinking water and that any further degradation of our streams, rivers, waterways and groundwater is prevented. The truth of the matter is that many drinking water and wastewater systems are sorely out of date and reaching the end of their useful life. The need for infrastructure replacement can no longer be ignored and we are very pleased that President-elect Biden is making rebuilding the nation's infrastructure a priority.

We are keenly aware of the very real funding needs required to replace or upgrade drinking water and wastewater infrastructure systems nationwide. The EPA revolving loan programs have been an historical source of funding, yet they have not kept pace with deteriorating infrastructure which

has direct consequences for the American public. Despite periodic influxes of additional funding such as ARRA in 2009, critical needs persist and keep expanding. The cost of removing and replacing lead drinking water service lines alone will cost communities billions of dollars.

The consequences of our nation's failure to provide safe drinking water or adequately treated wastewater are catastrophic. We strongly recommend EPA work closely with the states and local governments to develop a grant and loan program that addresses this extraordinary need.

Restoring the Primacy of Science and Scientific Integrity

The importance of science and scientific integrity within EPA decision making is imperative. In the last four years, reliance on science within EPA has been significantly diminished. We know EPA, and by extension the states, needs to regain the public's trust and reassure the public that science is the foundation for all important environmental and public health decisions. The EPA is well positioned to, and must provide leadership on, scientific and technical matters. Therefore, we recommend EPA rebuild its science-based programs to historic levels and beyond as needed.

We also urge EPA to pursue technology research and collaborations with other governmental agencies, academia, the nonpartisan/nonprofit sector, and the private sector, and to especially promote research on remote sensing/pollution monitoring systems with the goal of minimizing reliance on information developed by regulated entities. Scientific and technological breakthroughs in this area certainly would advance the cause of evidence-based decision making and foster greater transparency and accountability.

Collaborative Rule Making

Almost every major federal environmental law authorizes and requires EPA to write rules/regulations to provide the regulatory and implementation details that fill in the "interstices" for what are otherwise broadly written statutes. The challenge has been ensuring such rules are achievable and implementable. In most instances, the states are brought in near the end of an EPA rulemaking effort and are provided little if any opportunity for advance consultation or to comment on proposed rule language before the official public comment period. As a consequence, the states are left with the responsibility of implementing the new rules without having had an opportunity to provide meaningful input to help ensure the regulations can be applied as intended and will actually achieve the desired outcome.

We recommend that the pre-rulemaking and rulemaking phases be reimagined to allow early and meaningful consultation and collaboration with the states as substantive partners in the EPA regulation setting process. We acknowledge that there may be existing legal and procedural hurdles to allowing early state involvement in all circumstances, but we would ask EPA to take a hard look at any such limits and eliminate or minimize such impediments where possible. The states should be valued participants in the rule review and development process in order to help make sure that new or modified rules can be successfully implemented.

In closing, we hope you find the above recommendations to be helpful as you formulate your agenda. If put into practice, we sincerely believe our suggestions will result in a better, more effective and sustainable EPA/State Partnership and, most importantly, environmental and public health programs that inspire confidence and fully meet the expectations of the public.

December 21, 2020

We are happy to provide more specifics and detail about each of the recommendations. If interested, please contact Steve Chester at 517-420-8151 or Dick Pedersen at 503-320-0246 or contact any of the signatories to this letter.

Respectfully,



Steve Chester, Director
Michigan Department of Environmental
Quality (2003-2010)



Dick Pedersen, Director
Oregon Department of Environmental
Quality (2008-2016)



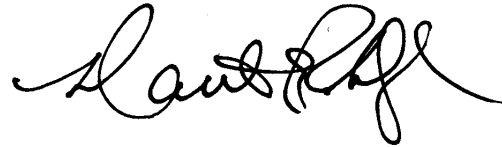
Larry Hartig, Commissioner
Alaska Department of Environmental
Conservation (2007-2018)



Teresa Marks, Director
Arkansas Department of Environmental
Quality (2007-2014)



Tom Looby,
Director, Office of Environment
Colorado Department of Public Health and
Environment (1987-1997)



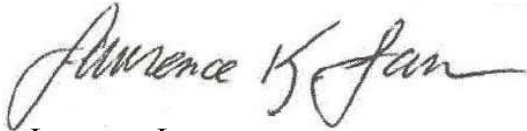
Martha Rudolph, Director of Environmental
Programs
Colorado Department of Public Health and
Environment (2007-2019)



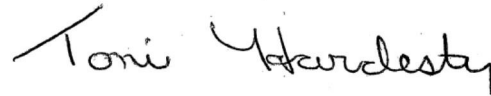
Daniel C. Esty, Commissioner
Connecticut Department of Energy and
Environmental Protection (2011-2014)



Gary Gill
Deputy Director for Environmental Health,
Hawaii Department of Health (1998-2002,
2011-2015)



Laurence Lau
Deputy Director for Environmental Health,
Hawaii Department of Health (2003-2010)



Toni Hardesty, Director
Idaho Department of Environmental
Quality (2004-2012)



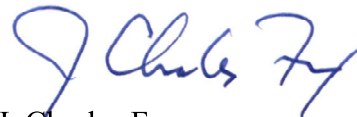
Wayne Gieselman, Division Administrator
Iowa Department of Natural
Resources (2002-2011)



Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment
Kansas Department of Health and
Environment (1995-2008)



Kai Midboe, Secretary
Louisiana Department of Environmental
Quality (1992-1994)



J. Charles Fox
Secretary, Maryland Department of Natural
Resources (2001-2003)
Assistant Secretary, Maryland Department
of the Environment (1995-1997)



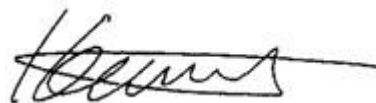
Shari Wilson, Secretary
Maryland Department of Environment
(2007-2010)



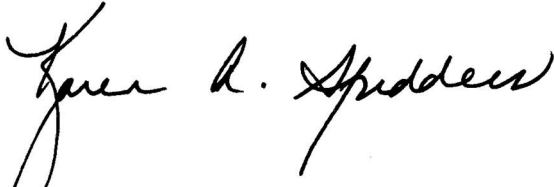
David Cash
Commissioner, Massachusetts Department
of Environmental Protection (2014-2015)
Commissioner, Massachusetts Department
of Public Utilities (2011-2014)



Robert W. Golledge, Jr.
Secretary, Massachusetts Executive Office
of Environmental Affairs (2006-2007)
Commissioner, Massachusetts Department
of Environmental Protection (2003-2006)



Ken Kimmell, Commissioner
Massachusetts Department of
Environmental Protection (2011-2014)



Karen Studders, Commissioner
Minnesota Pollution Control Agency and
Chair of the Citizens Board (1999-2003)



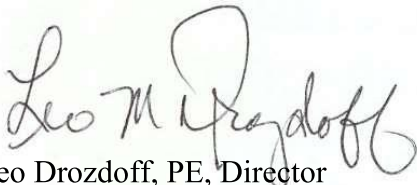
Mark Templeton, Director
Missouri Department of Natural Resources
(2009-2010)



Leanne Tippet Mosby
Director, Division of Environmental
Quality (2009-2011, 2013-2016)
Deputy Director for Operations (2011-2012)
Missouri Department of Natural Resources



Mike Linder, Director
Nebraska Department of Environmental
Quality (1999-2013)



Leo Drozdoff, PE, Director
Nevada Department of Conservation and
Natural Resources (2010-2016)



Thomas Burack, Commissioner
New Hampshire Department of
Environmental Services (2006-2016)



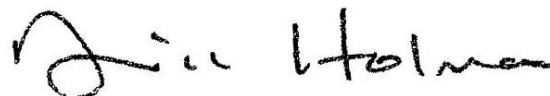
Bradley Campbell, Commissioner
New Jersey Department of Environmental
Protection (2002-2006)



Denise Fort, Director
New Mexico Environmental Improvement
Division (1984-1986)



Dee Freeman, Secretary
North Carolina Department of Environment
and Natural Resources (2009-2013)



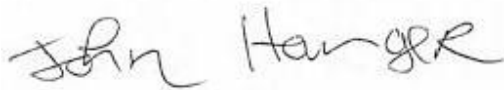
Bill Holman, Secretary
North Carolina Department of Environment
and Natural Resources (1999-2001)



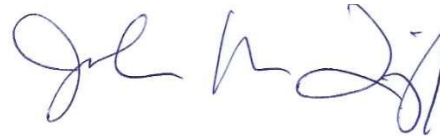
William Ross
Secretary, North Carolina Department of
Environment and Natural Resources
(2001-2009)
Interim Secretary, North Carolina Department
of Environmental Quality (January 3-17, 2017)



Joseph P. Koncelik, Director
Ohio Environmental Protection
Agency (2005-2006)



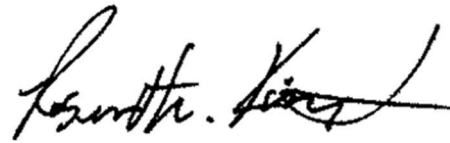
John Hanger, Secretary
Pennsylvania Department of Environmental
Protection (2008-2011)



John Quigley, Secretary
Pennsylvania Department Conservation
and Natural Resources (2009-2011)
Pennsylvania Department of Environmental
Protection (2015-2016)



James Seif, Secretary
Pennsylvania Department of Environmental
Protection (1995-2001)



Robert King, Jr.
Deputy Director for Environment
South Carolina Department of Health and
Environmental Control (2004-2012)



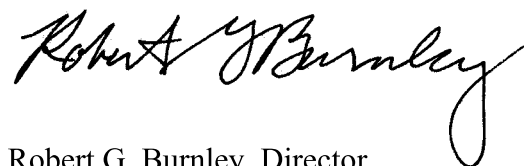
Robert Martineau, Commissioner
Tennessee Department of Environment and
Conservation (2011-2018)



Justin Johnson, Commissioner/Deputy
Commissioner, Vermont Department of
Environmental Conservation (2006-2013)
Deputy Secretary, Vermont Agency of
Natural Resources (2013-2014)



Deborah Markowitz, Secretary
Vermont Agency of Natural Resources
(2011-2017)



Robert G. Burnley, Director
Virginia Department of Environmental
Quality (2002-2006)

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Maia Bellon, Director
Washington State Department of
Ecology (2013-2019)



Matt Frank, Secretary
Wisconsin Department of Natural
Resources (2007-2010)



Scott Hassett, Secretary
Wisconsin Department of Natural
Resources (2003-2007)