

## The State-Federal Relationship in Environmental Protection

**Background:** Since the creation of the Environmental Protection Agency and the passage of the major federal environmental statutes in the early 1970's, the federal government and the Commonwealth of Pennsylvania have shared a complex, layered, and frequently confusing partnership in protecting and restoring the environment in Pennsylvania. Managing the relationship with the U.S. EPA and other federal agencies involved in environmental programs has been a key responsibility and at times a significant challenge for past administrations and the leadership team at DEP. The CAC believes that many issues on the near-term and long-term horizons will again make this relationship a central feature in the successful implementation of environmental programs, and recommends that the Wolf Administration place an early focus on establishing and maintaining an effective working relationship with EPA and the other federal partners, as well as with other states that often share the concerns and challenges of Pennsylvania.

Most program elements of the Clean Air Act, Clean Water Act and other major federal media statutes are designed to be delegated to the states for implementation and DEP has over the years received and maintained "primacy" or "authorization" to implement almost all of them. The program implementation grants that come from the federal government with this delegation pay for staff and other expenses, but often not the entire cost of implementing the programs. Pennsylvania and other states have often sought greater flexibility in the use of these federal grants to try to meet the requirements of the federal program in ways that are cost effective and appropriate for conditions in each state. "Unfunded mandates," or new requirements imposed without additional federal funding, are a long-standing bone of contention among the states.

Permitting and enforcement are areas where friction often arises in this relationship. Some permits issued by the Commonwealth are subject to review by EPA, and applicants may get conflicting answers from EPA and DEP. The timeliness and appropriateness of enforcement actions by the state pursuant to federal requirements is also reviewed by EPA and can lead to conflicts among the regulators and confusion among the regulated community.

**Pennsylvania's Challenges:** In addition to these on-going program management challenges, a number of specific issues loom in which DEP must comply with federal requirements or face various sanctions.

The Chesapeake Bay Watershed Implementation Plan requires that Pennsylvania meet specific targets for reductions of nutrient and sediment loadings to the Chesapeake Bay by way of the Susquehanna River. Meeting these targets will be very challenging, and disagreements about the appropriate reduction credits for various measures are currently being aired. EPA recently assessed Pennsylvania's efforts as off-track for meeting the next major milestone (please see "Chesapeake Bay TMDL"). The recent changes to stream buffer requirements in Act 162 may further complicate EPA's scoring of Pennsylvania's reduction measures.

EPA recently proposed new tighter National Ambient Air Quality standards for ozone, and a “Clean Power Rule” proposal seeking to limit carbon emissions from power plants (please see “Climate Change”). These rules will likely result in Pennsylvania needing to submit new proposed non-attainment area designations and State Implementation Plans (SIPs) to meet the standards. These are invariably controversial both in the burdens they place on regulated sources, and in real and perceived inequities among neighboring states’ efforts.

Important hurdles remain in the implementation of the federal Municipal Separate Storm Sewer System (MS4) Permitting program that places requirements and imposes costs on many communities large and small around the Commonwealth.

**Policy Considerations:** In addressing these and the host of other important challenges in which state and federal responsibilities overlap, the CAC urges the Wolf Administration to assure open and candid communication both inside DEP in raising potential federal compliance issues to senior management early, and in discussing possible alternative approaches that make sense for Pennsylvania with EPA. Flexibility is not always easily agreed to, but becomes even harder to achieve when deadlines are imminent. Regular personal contact between the state and federal leadership teams goes a long way to improve trust and cooperation.

Not infrequently, DEP may believe that some federal requirements are not necessary for effective environmental protection, or that appropriate flexibility is not being offered, or that a “one-size-fits-all” solution is not right for Pennsylvania. The CAC urges that the Wolf Administration’s leadership continue and expand efforts at fostering regional cooperation with other states to share solutions to common problems, to develop cooperative solutions, and to strengthen our hand in negotiations with EPA and the other federal partners. The Secretary’s personal engagement in the Environmental Council of the States (ECOS) is recommended as one very effective avenue for leveraging the power of Pennsylvania’s voice in discussions and negotiations with EPA.

Pennsylvania’s environment will benefit from both a strong voice and a cooperative spirit in the state-federal relationship, but challenges will multiply if we are ineffective advocates or unnecessarily hostile parties. The CAC recommends that careful attention to this relationship be included among DEP’s key priorities.