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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

February 10, 2017

The Honorable Reince Priebus
Assistant to the President & Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Mr. Priebus:

Thank you for your January 20, 2017, Executive Memorandum entitled "Regulatory Freeze Pending Review" (hereinafter "Priebus Memo"). This type of memo is a routine, but important step during a transition to allow an incoming President and his designees to review and assess any pending administrative actions. The Priebus Memo established a regulatory freeze on almost all pending matters as of noon on January 20, 2017.

Despite this clear directive, on Friday, February 3, 2017, the Environmental Protection Agency (EPA) published a final rule that disapproves parts of Wyoming's state implementation plan relating to interstate transport and the 2008 ozone standard, entitled "Approval and Disproval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Wyoming," Final Rule, 82 Fed. Reg. 9142 (Feb. 3, 2017). I am surprised and concerned this rule was finalized after January 20, 2017 without going through a comprehensive review in accordance with the Priebus Memo.

It is our understanding that EPA told Wyoming officials that this rule was exempt from the Priebus Memo because the agency was acting pursuant to a judicial deadline of January 17, 2017. However, EPA is under no judicial deadline relating to this matter. EPA and the Sierra Club have *proposed* a consent decree to resolve a pending lawsuit relating to EPA approval of a number of state plans. The court has not yet entered that decree. Accordingly, EPA's disapproval of Wyoming's state implementation plan should have been subject to the Trump Administration's regulatory freeze, as provided under the Priebus Memo.

The action taken by EPA on February 3rd also raises significant policy concerns. Wyoming submitted its state implementation plan in February 2014 using EPA's 2013 guidance on plan development. In September 2015, the Sierra Club sued EPA regarding the agency's review of state plans. Wyoming had no notice of this lawsuit until June 2016. At that time, EPA published a notice in the Federal Register of its intent to settle the lawsuit by agreeing to deadlines for action on state plans, including that of Wyoming. Around the same time, again with no notice to Wyoming and other states, EPA replaced the 2013 guidance that Wyoming had relied upon. EPA's new methodology for evaluating ozone transport in the West uses a model developed for Eastern states that fails to account for Western topography and exceptional events,

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such as wildfires. In November 2016, EPA proposed to disapprove Wyoming's plan to address the 2008 ozone standard. After sitting on Wyoming's submission for over two and a half years, EPA gave Wyoming only 30 days to comment. Wyoming asked for a 90-day extension to address EPA's new methodology. EPA denied that request, stating that it could not agree because the Sierra Club did not concur. This sequence of events left Wyoming with no opportunity to develop an approvable plan.

The actions described above took place during the Obama Administration. However, EPA continues to disregard Wyoming's legitimate concerns. EPA chose to violate the Priebus Memo by finalizing the disapproval of Wyoming's implementation plan instead of using its lawful discretion to work cooperatively with the state.

It is important that agencies such as the EPA follow the Priebus Memo and its strictures, to ensure that states such as Wyoming are not harmed by ill-conceived actions set in motion during the Obama Administration.

Sincerely,

John Barrasso, M.D.
Chairman
Committee on Environment and Public Works
United States Senate

cc: Don Benton, Senior White House Advisor, EPA