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# Implementation of U.S. EPA Regulatory Programs: Arkansas/Mississippi/Oklahoma Responses to U.S. Senate Environment and Public Works Committee Chairman Inhofe's Questions

## Arkansas Environmental, Energy, and Water Law Blog

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As noted in a previous post <http://www.mitchellwilliamslaw.com/united-states-senate-environment-and-public-works-committee-chairman-inhofe-sends-letters-to-arkansas-and-other-committee-member-states-requesting-feedback-on-state-implementation-of-us-environment>, United States Senate Environment and Public Committee Chairman, Jim Inhofe (Republican-Oklahoma) sent letters to Committee member states requesting feedback on state implementation of United States Environmental Protection Agency ("EPA") regulatory programs.

Three of the Committee member states included Arkansas, Oklahoma and Mississippi.

The Committee Chairman's letter to Arkansas and the other states quotes the Environmental Council of the States as placing 96.5% of the responsibility for carrying out the federal environmental programs on the states. The letter asks Arkansas and the other states to assist the Committee in better understanding the impacts of recent EPA regulatory actions on the states. It also expresses interest in identifying ways to ensure the "unique interests of states are adequately considered by EPA in its regulatory process."

Arkansas Department of Environmental Quality ("ADEQ") Director Becky Keogh responded to the Committee request in a March 3<sup>rd</sup> letter. The Oklahoma Department of Environmental Quality and Mississippi Department of Environmental Quality also responded to the query.

ADEQ Director Keogh's letter contains sentiments similar to her written statement accompanying her testimony at the recent Committee hearing addressing the subject of "cooperative federalism" <http://www.mitchellwilliamslaw.com/us-senate-environment-and-public-works-committee-hearing-addressing-cooperative-federalism-arkansas-department-of-environmental-quality-director-becky-keogh-testimony>.

Ms. Keogh's March 3<sup>rd</sup> letter to the Committee noted that states shoulder almost 90% of the cost of implementation of federal Clean Air Act and Clean Water Act mandates but that the "sticker shock" was previously "mitigated by the healthy respect and accompanying deference we received from our federal regulatory partner." She cites a decrease in time and tolerance for Clean Air Act State Implementation

Programs and a “dramatic increase in EPA takeovers, of Federal Implementation Programs.” The letter also expresses concern regarding federal supervision of Arkansas’s water-quality criteria stating:

This system of water-quality protection was designed to establish natural water-quality conditions for **extremely pure** water streams under a robust monitoring protection. However, under recent federal interpretation, these once state-developed, extraordinarily heightened criteria have now become unrealistic and often unachievable minimum water-protection standards. The EPA executed the ultimate bait and switch.

Oklahoma Department of Environmental Quality’s (“ODEQ”) Executive Director Scott Thompson’s letter addressed:

- Resources and efforts necessary to comply with EPA regulations
- Clean Water Act
- Safe Drinking Water Act
- Clean Air Act
- Resource Conservation and Recovery Act
- Whether the current regulatory framework between EPA and the states upholds the principle of cooperative federalism
- Lack of cooperative federalism and overreach in EPA determinations of tribal jurisdiction in Oklahoma
- Lack of cooperative federalism and overreach by EPA in Oklahoma’s Brownfields program
- Lack of cooperative federalism in Superfund decision for site cleanup in Oklahoma
- Lack of cooperative federalism in Oklahoma’s RCRA program

Executive Director Gary Rikard’s letter on behalf of Mississippi Department of Environmental Quality (“MDEQ”) focused on EPA driven Clean Air Act regulatory actions and a “convergence of deadlines that we anticipate will be difficult for us to manage.” He cites as an example the Clean Power Plan (editor’s note - this letter was written prior to the U.S. Supreme Court stay of the EPA Clean Power Plan) and the Cross State Air Pollution Rule.

[Click here to download a copy of the ADEQ, ODEQ and MDEQ letters.](#)