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TESTIMONY

Subcommittee on the Interior, Energy, and Environment
and Intergovernmental Affairs of the Committee
on Oversight and Government Reform

EPA's recent proposal regarding classification and implementation of NAAQS for Sheboygan

I am President and General Counsel of the Wisconsin Institute for Law & Liberty, a litigation center and think tank based in Milwaukee dedicated to individual liberty, free markets, constitutionally limited government, and the encouragement of a robust civil society. Our Center for Competitive Federalism is dedicated to restoring a proper understanding of our federal system and the separation of powers between the branches of government, the federal government, and among the states.

Far too often, the government – often the federal government – acts as an unwarranted brake on economic growth. A case in point is the manner in which the federal Environmental Protection Agency has applied the Clean Air Act's ambient air quality standards on Sheboygan County. This past July, my organization released a policy report called *Wisconsin's No Growth Zone: The Impact of the Clean Air Act on Sheboygan County*. Some copies of the report are available to the committee.

Briefly, the problem is this. EPA proposed a rule designating Sheboygan as a “moderate” nonattainment area. That designation puts additional restrictions on businesses and citizens in Sheboygan in an effort to improve air quality. But those efforts are hard to justify – and unlikely to be effective – if the measurements of air quality underlying the nonattainment designation do not accurately reflect air quality in the county and if the pollutants that are being detected have been generated elsewhere. At the end of last year, following objections and additional information submitted by the State of Wisconsin, EPA confirmed its intent to designate portions of Sheboygan, Door, and Manitowoc Counties, as well as all of Ozaukee, Milwaukee, Racine, Washington, and Waukesha, as nonattainment areas.

Modeling has shown that pollutants are emitted in Illinois and Indiana, are “cooked” into ozone over Lake Michigan, and then blown westerly into Wisconsin. The Lake Michigan Air Directors

Consortium has suggested that all sources in the state of Wisconsin generate less than 10% of the ozone detected in places like Sheboygan.

In Sheboygan this problem has been exacerbated by EPA's decision to rely exclusively on an air quality monitor located at Kohler-Andrae State Park. Not only is that monitor placed along the shoreline and, therefore, particularly susceptible to the "lake effect" I've just referenced, it is upwind from the key sources of ozone in Sheboygan County. In other words, the air it measures is generally blowing into the county from sources to the south.

EPA would not have to do this. A better placed monitor is located in the town of Haven. It is downwind from major sources of pollution in Sheboygan County and a bit further from the lake. Its ozone measurements are significantly lower than those at Kohler-Andrae. If EPA relied on the Haven monitor, air quality in the county would be within attainment and, in fact, would be seen to be significantly improving.

Which monitor to use might seem to be a technical issue, but it matters greatly to the people of Sheboygan. The nonattainment classification imposes substantial and costly remediation obligations on those living and doing business in the county. Businesses are placed at a competitive disadvantage because they are required to invest in expensive technology that they would otherwise not be obligated to deploy and that their competitors in, say, Fond du Lac or Minnesota need not deploy. They are precluded from expanding or building a new facility without obtaining "offsets" – reduction in emissions at another facility within the county – making efforts to create jobs, in many instances, a zero sum game. Other restrictions are placed on citizens of Sheboygan, and the county is saddled with a reputation for poor air quality that it does not deserve. We created a video demonstrating some of the resulting economic harm and human costs, which can be found on You Tube. It is not unfair to say that such burdens risk turning Sheboygan into a "no growth zone" for manufacturing.

All of this might be excused if it was necessary or reasonably related to improving air quality in Sheboygan. But it's not. It does no good to say that those living in proximity to the Kohler-Andrae air quality monitor are experiencing poor air quality. That cannot justify placing extra restrictions on the entire county. There is a more fundamental point. It is not simply that Sheboygan should not be made to pay for the sins of Chicago and Gary. It is that it cannot reduce pollutants that it does not produce.

This failure to accurately assess countywide air quality and to link air quality with the source of pollutants may have broader implications. Other counties along the western shore of Lake Michigan – including places like Manitowoc and Door – may also become nonattainment areas.

There are two larger points here.

First, we all want clean air and to protect the environment. But it is simply not the case that, if some regulation is good, more regulation – any regulation – must be better. We cannot allow our debates over environmental policy to degenerate into simple minded assessments of who is "for" or "against" "the environment" based on an unthinking determination of who wants more or less regulation. More restrictions are better only when they are smart restrictions.

Second, bad policy for Wisconsin is being made in Washington. This creates a teachable moment. States are not administrative units of the federal government. They are sovereigns with a prescribed role in our federal structure. It is imperative that we insist on that role. It is imperative not because we want to empower state bureaucrats, but because competitive federalism enhances liberty. The role of the states as laboratories of democracy and checks on the prerogatives of the federal government and each other is essential to the ordered liberty that our founders sought.

To be sure, polluted air moves across state boundaries and there is a role for the federal government to play. But EPA has it backwards here. Rather than protecting Wisconsin from pollutants generated elsewhere, it's penalizing us for the crime of living in the path of ozone generated by activity in other places.

Sincerely,

Richard M. Esenberg, President and General Counsel