

ROGER MANNO
Legislative District 19
Montgomery County

Budget and Taxation Committee

Health and Human Services Subcommittee

Pensions Subcommittee

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Joint Committee on Administrative,
Executive, and Legislative Review

Chair

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Montgomery County Delegation



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November 2, 2015

The Honorable Benjamin H. Grumbles
Secretary of the Maryland Department of the Environment
1800 Washington Blvd
Baltimore, MD 21230

Re: Proposed Regulations
DLS Control No. 15-177
Control of NOx Emissions from Coal-Fired Electric Generating Units: COMAR
26.11.38.01-.07

Dear Secretary Grumbles:

As Senate Chair of the Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee), I have reviewed proposed regulations (DLS Control No. 15-177, COMAR 26.11.38.01-.07) regarding the control of nitrogen oxides (NOx) emissions from coal-fired electric generating units.

Please note that my position on these proposed regulations has not changed since January. As you are aware, the Maryland Department of the Environment submitted NOx regulations to the AELR Committee on November 3, 2014 (DLS Control No. 14-327), that were then published in the Maryland Register on December 1, 2014 (41:24 Md. R. 1449-54). After waiting the requisite 45 days from this publication date¹, former Secretary of the Department Robert Summers adopted the NOx regulations on January 16, 2015, and subsequently submitted a notice of adoption to the Division of State Documents, as required under § 10-114(a) of the State Government Article. While Governor Hogan withdrew the notice of adoption on January 21, 2015, thus preventing the

¹ Section 10-111(a)(1) of the State Government Article prohibits a unit from adopting a proposed regulation until after submission of the proposed regulation to AELR and at least 45 days after its first publication in the Maryland Register.

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notice from being published in the Maryland Register, the NOx regulations were already adopted by the Department and remain in effect.

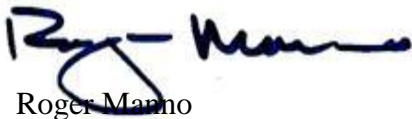
The Administrative Procedure Act (APA) defines a “regulation” as “...a statement...that...is *adopted* by a unit...” (§ 10-101(g) of the State Government Article) (emphasis added). A regulation is not defined by its date of publication, but rather by its date of adoption. Therefore, adoption occurs when a regulation becomes effective, not when the regulation is published, and thus the regulations published on December 1, 2014, went into effect when adopted by Secretary Summers on January 16, 2015.

This matter is the subject of pending litigation, which, if resolved in a manner consistent with my and others position, would render the adoption of these proposed regulations duplicative in nature and technically inaccurate. Therefore, I would strongly encourage the Department to avoid any legal or procedural challenges, and instead, withdraw these proposed regulations.

I am happy to discuss these concerns in more detail should that become necessary. I look forward to assisting the Department in this process, and I appreciate our ongoing work together.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Manno". The signature is stylized and written in a cursive-like font.

Roger Manno