



May 23, 2014

Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Attention: Desk Officer for EPA

Dear Sir or Madam:

On April 16 and 17, 2014, 15 states convened in Bismarck, N.D. to discuss the recently proposed Section 111(b) and soon-to-be-proposed Section 111(d) carbon dioxide regulations for fossil fuel-fired electric generating units. This emerging coalition of energy-producing states insists the U.S. Environmental Protection Agency (EPA) pursue a common-sense approach to addressing greenhouse gas emissions, which directly includes states in a decision-making role.

In January 2014, the U.S. Energy Information Administration reported that energy sources from fossil fuels provided approximately 69 percent of the electricity in the nation (coal - 43 percent; natural gas - 24 percent; oil - 2 percent). In light of these statistics, the necessity of maintaining energy affordability, accessibility and reliability into the future cannot be understated.

The primary goals of the April meeting were to:

- > Determine areas of common ground among states in relation to the Section 111(b) and 111(d) proposals.
- > Outline a common-sense path forward to ensure compliance with applicable laws, while maintaining energy affordability, accessibility and reliability.

This letter is a result of those discussions and is intended to identify the fundamental issues that should be considered when evaluating the implementation of the proposed Section 111(d) rules. The participating states note that this letter is not to be interpreted as endorsing the applicability or legality of Section 111(b) or Section 111(d) proposed regulations.

The convening states have identified the following general issues for your consideration:

STATES IN THE LEAD ROLE

As intended by Congress and as specified in Section 111(d) of the federal Clean Air Act, states have primary responsibility for implementing federal rules or guidelines. This is consistent with the long history of regulatory implementation under the principle of "cooperative federalism."

States are becoming increasingly concerned that this relationship is being threatened through implementation of federal rules that allow the EPA to not only establish emission standards but also determine specific control technologies and implementation processes. This is contrary to past practices. States have historically identified control technologies through implementation plans, addressing control and cost effectiveness, economic viability and availability/applicability at the state level.

Without a meaningful role for states in customizing implementation rules to the specific circumstances of each state, the net result has been a lack of federal acknowledgement of local impacts, litigation and rule implementation delays. Although EPA has conducted several meetings with various organizations, states remain skeptical that a true “cooperative federalism” relationship will be pursued. Because of regional as well as state-to-state differences, the states must assume a robust and lead role to ensure rule implementation success.

IMPLEMENTATION TIMELINE

The current timeline that has been specified for the Section 111(d) rule implementation is unrealistic and unachievable. Due to the anticipated complexity of the rule, the states have the following concerns about the specified implementation timeline:

- Any rules addressing greenhouse gases will require extensive participation and approval from several in-state agencies and organizations. The rules may require official approval from not only the state environmental protection agencies but also public utilities commissions, as well as state executive and state legislative branches of government. This widespread involvement will require considerably more time than the one-year timeline proposed for plan development.
- If states choose to pursue regional plans, extensive state-to-state collaboration and coordination will be needed. Such regional plans may take additional time and effort to complete but may result in a better overall result for the states involved.
- Legislative action is required in some states to allow state plans to move forward. Some state legislatures meet on a biennial basis, prohibiting the completion of a state plan within the timeline proposed.
- Due to the types of technologies that may be required to comply with the guidelines, it may take utilities several years to implement compliance requirements. This must be acknowledged by allowing utilities sufficient time to implement plans while not risking the affordability, accessibility and reliability of electricity.
- Experience has shown that state plans for less complex federal regulations often take up to three or more years to complete. While the states note that there has been discussion of phasing in the Section 111(d) rule over a longer period of time, they are unsure of the effectiveness of this approach without understanding the requirements and desired final goal of the “total” plan.

ANY RULE MUST NOT ADVERSELY IMPACT ELECTRICAL SYSTEM AFFORDABILITY, ACCESSIBILITY AND RELIABILITY

States have expressed concern that the impending rules could adversely impact electrical supply resulting in:

- Increased costs
- Limited accessibility
- Reduced system reliability

These adverse impacts pose an immediate threat to public health and welfare in areas of the country where electricity is needed to mitigate weather conditions (e.g., air conditioning for high heat/humidity or electric heat for sub-zero temperatures).

UTILIZE APPLICABLE AND AVAILABLE TECHNOLOGY

Concern has been expressed that the proposed rule will mandate technology that EPA deems applicable. We believe:

- States must have the lead role in determining appropriate, applicable and available technology based upon site-specific circumstances. The federal government cannot adequately fulfill this role. Site-specific issues, social and economic considerations, and environmental benefit must be evaluated by individual states at the source.
- In general, states continue to be concerned that carbon capture technologies identified as being available for new or retrofit applications have not been proven and successfully operated on a full commercial scale for an appropriate evaluation period. Such an evaluation is required to determine the total capture-to-storage operational costs, which are germane to appropriate technology selection.
- Emission reduction guidelines, goals or targets established by a Section 111(d) program should only consider the emission reductions that are currently achievable by the sources that are actually affected by Section 111(d).

We appreciate your consideration of our concerns about the proposed regulations. If you would like to discuss these concerns in more detail, a representative group of the signatory states is available to meet with you and your staff in the near future.

Sincerely,




Scott Thompson, Executive Director
Oklahoma Dept. of Environmental Quality



E. Christopher Abruzzo, Secretary
Pennsylvania Dept. of Environmental Protection



Jasmine Mehta, Bureau Chief, Air Quality Planning
Nevada Division of Environmental Protection



Bryan Shaw, Chairman
Texas Commission on Environmental Quality



Randy Huffman, Secretary
West Virginia Dept. of Environmental Protection



John S. Lyons, Assistant Secretary for Climate Policy
Kentucky Dept. for Environmental Protection



Trudy Fisher, Executive Director
Mississippi Dept. of Environmental Quality



L. David Glatt, Chief, Environmental Health Section
North Dakota Dept. of Health



Thomas W. Easterly, Commissioner
Indiana Dept. of Environmental Management



Todd Parfitt, Director
Wyoming Dept. of Environmental Quality



Lance LeFleur, Director
Alabama Dept. of Environmental Management



Cathy Stepp, Secretary
Wisconsin Dept. of Natural Resources