



November 26, 2014

Ms. Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**Re: Proposed Carbon Pollution Standards for Existing Stationary Sources: Electric Utility Generating Units – 79 Fed. Reg. 34,960 (June 18, 2014), Docket ID No. EPA-HQ-OAR-2013-0602**

Dear Administrator McCarthy:

The States of North Dakota, Indiana, Pennsylvania, Alabama, Oklahoma, South Dakota, Wyoming, Ohio, Louisiana, Wisconsin and Texas working together as a coalition of energy producing states along with North Carolina, a state with concerns similar to the energy producing states, provide the following comments. A major focus of our coordinated efforts involves the desire to work constructively with EPA on the above-noted Proposed Rule. We believe EPA should engage with us in constructive dialogue on the following issues:

1. CAA § 111(d) prohibits EPA from issuing regulations governing a pollutant that is “emitted from a source category which is regulated under Section 7412 of this title.” Because CO<sub>2</sub> is emitted from coal-fueled EGUs, and because coal-fueled EGUs are regulated by EPA under Section 112 through EPA’s Mercury Air Toxics (MATS) regulation, EPA may not regulate CO<sub>2</sub> emissions from coal-fueled EGUs under CAA § 111(d).

2. Even if EPA continues to insist it does have authority to issue CAA § 111(d) regulations governing CO<sub>2</sub> emissions from coal-fueled EGUs, EPA’s proposed regulations impermissibly intrude on the energy producing states’ express authority under CAA § 111(d) to “establish” standards of performance. Under CAA § 111(d), EPA’s authority is limited to adopting a “procedure” under which “each State shall submit to the Administrator a plan which (A) establishes standards of performance....” The Proposed Rule is far more than procedural. Rather, the Proposed Rule would usurp the energy producing states’ authority to “establish” performance standards by dictating what the standards must be. Additionally, EPA has structured the Proposed Rule in a way that would prevent the energy producing states from, as provided in CAA § 111(d)(1)(B), considering “the remaining useful life of the existing source” to which a state-established performance standard applies.

3. The Proposed Rule is not consistent with the language, context, legislative history, and consistent past administrative interpretation of CAA § 111(d). Instead, the Proposed Rule is built on new and redefined terminology never before used in the CAA § 111(d) program. For the first time,

EPA has set state-by-state “goals,” (which are really attempted mandates) for the energy producing states. However, neither CAA § 111(d) nor EPA’s CAA § 111(d) regulations authorize EPA to set binding statewide “goals.” Notably, the term “goal” is not even used in the CAA or EPA’s implementing regulations. Similarly, for the first time, EPA defines a “system” of emission reduction to be mandated reductions in the amount of time facilities within the regulated source category are allowed to operate. Forcing coal-fueled plants to reduce operation is not a “system” of emission reduction under CAA § 111(d).

4. The new “interpretation” of CAA § 111(d) set forth in the Proposed Rule encourages the states to submit a plan that contain what EPA calls “portfolio” measures. The measures would be undertaken by states or third parties and, upon EPA approval, would become enforceable against those entities. CAA § 111(d), however, does not provide EPA the authority to create federally enforceable obligations on entities that do not own or operate facilities within the regulated source category. Rather, CAA § 111 authorizes standards to be set for facilities within EPA-listed source categories. It does not apply to any other facilities or entities that are not part of the listed source category.

5. EPA does not possess lawful authority to regulate the electric grid in the states. That authority rests with FERC as to wholesale transactions and the states’ Public Service Commissions as to retail transactions. Determining the proper balancing of electric resources to meet the needs of electric consumers in the energy producing states consistent with the public interest is a state function held by the energy producing states’ Public Service Commissions.

6. EPA’s “building blocks” analysis of the “best system of emission reduction” is not based on accurate or reasonably demonstrated assumptions in the states and is not consistent with the realities of the electric grid.

7. EPA’s recent Notice of Data Availability (NODA) comes very late in the public comment period and raises substantial new issues that may dramatically expand the potential scope and stringency of the Proposed Rule. As such, we believe that thirty (30) days (with an intervening Thanksgiving holiday period) is wholly inadequate to allow meaningful state review and consideration of the many substantial new issues raised in the NODA.

For the reasons outlined above and based upon other comments submitted by the states, EPA should 1) withdraw the Proposed Rule, and 2) if the Administration insists on pursuing carbon dioxide emissions regulations, initiate an atmosphere of cooperation by working with the states to develop a plan that follows the law and acknowledges state differences and energy make up, state infrastructure, available technology for existing sources and legal limitations. If EPA is unwilling to withdraw the Proposed Rule, it should, at a minimum, grant an extension of the public comment period for an additional forty-five (45) days. This additional time is critical to allow for meaningful dialogue on the issues noted above and to allow meaningful consideration of EPA’s NODA.

Sincerely,



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Scott Thompson, Executive Director  
Oklahoma Dept. of Environmental Quality



Lance LeFleur, Director  
Alabama Dept. of Environmental Management



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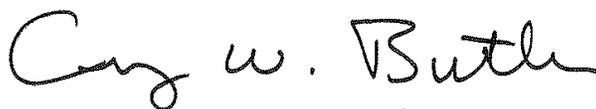
Bryan Shaw, Chairman  
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