

Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

September 21, 2017

Re: Clean Power Replacement Rule and NSR Reform

Dear Administrator Pruitt:

We are writing on behalf of our members representing workers from the electric utility, mining, rail, and construction sectors. We have participated for many years in EPA rulemaking proceedings, including the MATS rule and the Clean Power Plan. Our members have engaged the international climate debate through the UN FCCC process, and through domestic climate legislation and litigation.

We understand that EPA is considering options for replacing the Clean Power Plan (CPP) with an alternative regulatory approach. We wish to take this opportunity to outline elements of a replacement rule based on power plant efficiency improvements.

The proposed framework strictly adheres to the statutory requirements for regulating existing sources under section 111(d) of the Clean Air Act (CAA). These requirements give states the primary role in regulating CO₂ emissions from existing EGUs through the establishment of CO₂ performance standards.

Section 111(d) of the CAA limits EPA's role to establishing a "procedure" for states to submit a plan for the establishment of CO₂ performance standards for existing EGUs. Section 111(d) provides states with primary responsibility for developing performance standards for EGUs in accordance with the "procedure" established by EPA.

Each state should have wide latitude to develop a plan that fits its individual circumstances and priorities. While EPA is responsible for determining the Best System of Emission Reduction (BSER) for source categories, EPA cannot dictate what a state must include or how a state must regulate sources within its jurisdiction. States should have authority to establish source-specific standards based on a variety of factors, including the remaining useful life of the unit, unreasonable cost of control, and physical impossibility of installing emissions control equipment.

EPA should establish a federal-state regulatory process establishing general procedures for states to follow in regulating CO₂ emissions from affected EGUs. These procedures would require each state to set CO₂ performance standards for each affected EGU based on site-specific factors. The form of the performance standards could be set, for example, as a range of CO₂ emissions rate limits for units subcategorized by boiler and coal type, as an “operational standard” that describes the efficiency and maintenance measures (either physical or operational) that should be performed to limit CO₂ emissions from the affected unit, or some combination of these approaches.

To assist states in setting such unit-specific performance standards, EPA should develop guidance on how states should account for variability in plant efficiency reflecting factors such as boiler design, coal type, unit age and size, load level, cooling system, and existing pollution controls. The CO₂ performance standard states establish for each unit would be deemed to meet the requirements of section 111(d).

We also believe that the CPP rulemaking provides EPA with an opportunity to revise current New Source Review (NSR) regulations through a parallel rulemaking. NSR reform would enhance the prospects for investments that would create jobs while modernizing the aging coal fleet. DOE's recent Baseload Power Study¹ highlighted the adverse impacts of current NSR regulations:

The uncertainty stemming from NSR creates an unnecessary burden that discourages rather than encourages installation of CO₂ emission control equipment and investments in efficiency because of the additional expenditures and delays associated with the permitting process. Ironically, the uncertainty surrounding NSR requirements has led to a significant lack of investment in plant and efficiency upgrades, which would otherwise lead to more efficient power generation, benefits to grid management, and reduced environmental impacts. EPA has acknowledged these burdens and has made attempts to reform the rules to improve and streamline NSR.²

The recently announced formation of an NSR Task Force within the agency is a positive step toward constructive NSR reforms.

We hope that these suggestions will be helpful to you and your staff as the agency moves forward in its consideration of a CPP replacement rule.

¹ U.S. Department of Energy, Staff Report to the Secretary on Electricity Markets and Reliability (August 2017).

² *Id.*, at 44 (footnotes omitted.)

Sincerely,



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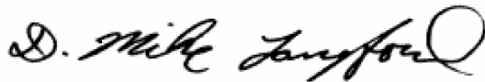
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