



December 1, 2014

VIA ELECTRONIC MAIL: [A-and-R-Docket@epa.gov](mailto:A-and-R-Docket@epa.gov)

Docket ID No. EPA-HQ-OAR-2013-0602

Air Docket  
Environmental Protection Agency  
Mail Code 28221T  
1200 Pennsylvania Ave NW  
Washington D.C. 20460

RE: Comments on EPA's June 18, 2014 Proposed Carbon Pollution Emission Guidelines for Existing Utility Generating Units, *79 Fed. Reg. 34830*

Ladies and Gentleman:

The Kentucky Chamber of Commerce ("Chamber"), founded in 1946, is an association of Kentucky businesses, and is the largest, broad-based business association in Kentucky. The Chamber represents the interests of more than 90,000 business locations in the Commonwealth that employ Kentucky's private workforce. The Chamber's powerful grassroots network, through a partnership with more than 90 local chambers in the state, consists of over 25,000 business professionals. The business and industry members of the Chamber have operations throughout the state that are subject to water quality regulations and requirements. The Chamber also promotes economic development, including bringing new business operations to the Commonwealth. The Chamber welcomes the opportunity to provide the following comments on the above-referenced Proposed Rule.

**A. There are significant legal issues with EPA's Proposed Rule**

1. EPA does not have the authority to issue existing source standards as proposed because these sources are already subject to regulation under Section 112 of the Clean Air Act. The statutory language of Section 111(d) is the result of differing House and Senate versions of the language that were never reconciled in conference, but instead, were both signed into law. The House version prohibits existing sources from being regulated under Section 111(d) if those sources are already regulated under Section 112. The Senate version provides that unless a particular air pollutant emitted by an existing source is regulated by one of the other listed Clean Air Act provisions (e.g., Section 112), existing sources emitting that pollutant could be regulated

under Section 111(d). Because the Senate version was classified as a conforming amendment and conforming amendments are considered procedural in nature, the House amendment controls.

2. In order to regulate CO<sub>2</sub> emissions from existing sources, EPA must first have in place a valid standard regulating new sources of this category. EPA's proposed New Source Performance Standard ("NSPS") is flawed for a number of reasons. The Proposed NSPS relies on the utilization of unproven Carbon Capture and Storage (CCS) technology as its standard of performance. CAA Section 111(a)(1) requires that any "standard of performance" be based on technology that has been "adequately demonstrated." CCS is not currently in operation at any commercial EGU in the United States. Although a few small experimental sites exist, CCS certainly has not been "adequately demonstrated." This, along with a number of other fatal flaws, makes the Proposed NSPS invalid and ripe for post-finalization challenge. Since an invalid rule cannot serve as the required Section 111(d) predicate rule, the proposed rule is likewise invalid. Therefore, it is inappropriate for EPA to move forward with the proposed existing source guidelines.

3. The proposal exceeds EPA's authority under the statute. Section 111(d) calls for establishment of performance standards for any "existing source." The Act and its regulations define "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant." 40 CFR 60.2. The proposal purports to impose requirements beyond the fence line, which is not supported by the language of Section 111(d) or its implementing regulations. EPA's interpretation of the term "system of emission reduction" in the proposal extends far beyond any prior interpretation or action by the agency. No other emission guideline issued by the agency since adoption of the regulations in 1975 has asserted such a broad interpretation of EPA's authority under Section 111(d). As the Supreme Court recently stated in Utility Air Regulatory Group v. EPA, No. 12-1146, 2014 U.S. LEXIS 4377, \*12 (June 23, 2014): "When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' . . . we typically greet its announcements with a measure of skepticism." Rather, the Court "expect[s] Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." EPA's proposal is exactly the type of broad action affecting the energy sector that the Court would expect Congress to address.

Section 111(d) provides for standards to address a particular existing source category. EPA's proposal includes four building blocks – only Building Block 1 directly addresses actions by sources within the existing source category. Building Blocks 2 and 3 purport to control dispatch decisions to require natural gas-fired generation to take precedence over coal-fired generation or for renewable or nuclear energy sources to take precedence over fossil-fuel sources. Dispatch decisions are better left to other regulatory authorities under other federal statutes, such as the Federal Power Act. Building Block 4 would require regulation of activities and persons that are not within the existing source category and over which EPA lacks regulatory authority.

4. EPA's proposed rule does not adequately address statutory requirements allowing less stringent standards or longer compliance times due to plant age, location, process design as physical impossibilities.

## **B. Concerns about Reliability and Impact on Electricity Rates**

The Chamber is concerned about increased electricity costs and risks to reliability from EPA's proposed approach. The congressionally chartered North American Electric Reliability Corporation ("NERC") has commented that EPA has made unrealistic assumptions in setting its targets and that the result could be major adverse reliability impacts. The Chamber urges EPA to seriously consider NERC's concerns and to include a reliability off-ramp for states under the proposal. In addition, the proposal seeks to force a move from coal to natural gas-fired electric generation. It is critical that there be sufficient gas distribution infrastructure to supply that gas to generation facilities while still supply consumers with natural gas for heating.

## **C. Timing Concerns**

The Chamber has several concerns regarding the timing of implementation of the guidelines and the schedule for state action. The Chamber agrees with other commenters that interim goals should not be required. The guidelines must specifically provide for states to adjust compliance dates for individual generating units based on the remaining useful life of the facilities. The timelines contemplated by the proposal should be extended in order to provide sufficient time for development of additional natural gas distribution infrastructure (e.g., pipelines). For states that may need to seek changes to state statutes to implement EPA's final rule, the Chamber encourages EPA to simplify the requirements of the states' initial submittals and to allow additional time for final plan submittal.

## **D. Specific Building Block Comments**

1. With respect to building block one, the Kentucky Chamber is concerned that a 6% heat rate improvement is not realistic and not achievable. Heat rate improvements made pursuant to the rule should not trigger New Source Review under the Clean Air Act.

2. The evaluation of compliance should be based upon a 2005 baseline. Facilities that have made improvements should receive the benefit of those investments even if the improvements occurred prior to 2014.

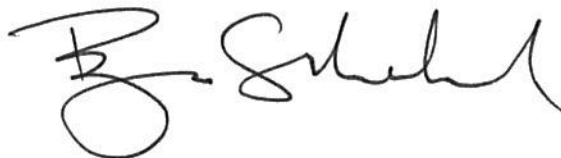
3. The rule needs to be clarified with respect to which state receives credit for renewable energy – the state where the renewable generation is located or the state purchasing the energy. The proposal fails to properly recognize that most renewable generation is not built by the sources that will be regulated by this proposal, and states themselves do not have legal authority to force additional investment in renewable generation.

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The Chamber also supports the comments submitted by the Kentucky Energy and Environment Cabinet.

The Chamber appreciates the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Sunderland". The signature is fluid and cursive, with a large initial "B" and a long, sweeping tail.

Bryan Sunderland  
Senior Vice President, Public Affairs

cc: Len Peters, Secretary, Kentucky Energy and Environment Cabinet

John Lyons, Assistant Secretary for Climate Policy

Sean Alteri, Director, Division of Air Quality