



528 Garland Drive, Carlisle, PA 17013

Comments by Thomas Y. Au, President of the Clean Air Board, Dec. 9, 2013

My name is Thomas Au. I am here today on behalf of the Clean Air Board of Central Pennsylvania, 528 Garland Drive, Carlisle, PA 17013. The Clean Air Board was formed in the fall of 2005 after over 100 Cumberland County physicians signed and published in the local newspapers an open letter informing the community of the growing danger of air pollution. Initially a small group of people of faith gathered to support the physicians in educating our community and advocating for cleaner air. We have grown to include not only that faith community, but also people in business people, teachers, lawyers, parents, and the medical community.

The increasing evidence of the sensitivity of climate to rising levels of greenhouse gases, such as Superstorm Sandy and more rapid disappearance of Arctic sea ice, underscores the need for the states to reduce greenhouse gas emissions and create a market for carbon allowances. Many legal scholars have recognized that the Clean Air Act offers an avenue for address greenhouse gases and carbon pollution.

Section 111, 42 U.S.C. §7411, of the Clean Air Act requires EPA to develop regulations for categories of sources which cause or significantly contribute to air pollution which may endanger public health or welfare. I understand the subject of this meeting is greenhouse gases from electric generating units.

Congress intended EPA to use Section 111(d) only for pollutants that are neither hazardous air pollutants regulated by Section 112 nor criteria pollutants regulated under Sections 109 and 110. It is undisputed that this is the meaning of the Senate amendment. Greenhouse gases fall into this characterization.

This is how the Supreme Court interpreted the provision in *American Electric Power v. Connecticut*. 131 S.Ct. 2527, 2537 (2011):

Section 111 of the Act directs the EPA Administrator to list “categories of stationary sources” that “in [her] judgment . . . caus[e], or contribut[e] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” §7411(b)(1)(A). Once EPA lists a category, the agency must establish standards of performance for emission of pollutants from new or modified sources within that category. §7411(b)(1)(B); see also §7411(a)(2). And, most relevant here, §7411(d) then requires regulation of existing sources within the same category. For existing sources, EPA issues emissions guidelines, see 40 C. F. R. §60.22, .23 (2009); in compliance with those guidelines and subject to federal oversight, the States then issue performance standards for stationary sources within their jurisdiction, §7411(d)(1). [footnote omitted]

In 2012, U.S. Environmental Protection Agency (EPA) proposed performance standards for carbon dioxide (CO₂) emissions from new fossil fuel–fired power plants. In September 2013, EPA re-proposed these standards, seeking additional comments. Once finalized, the new-source standards will trigger section 111(d) of the Clean Air Act, which will require the EPA and the states to limit CO₂ emissions from existing power plants. Regulation of greenhouse gases would apply to each source within a category without regard to source location or existing air quality.

When EPA promulgates a final standard for these new fossil fuel–fired power plants, EPA must also issue guidance to the states for implement the best system of emission reduction for existing sources. Section 111(d) of the Act requires states to develop plans, similar to state implementation plans for criteria pollutants, for *existing* sources of noncriteria pollutants (in this case, greenhouse gases). Section 111(d) plans are subject to EPA review and approval. We believe that Section 111(d) offers an opportunity for DEP to tailor a plan specific for Pennsylvania.

On December 2, 2013, the commissioners, secretaries and directors of environmental and energy agencies from states within the Regional Greenhouse Gas Initiative(RGGI) filed comments to EPA on the agency’s forthcoming regulations for greenhouse gases from existing power plants. We recognize that Pennsylvania is not a member of RGGI, but we believe that Pennsylvania can draw on RGGI’s experience. RGGI is rightfully anxious that the work participating states have put into developing the emissions reduction program not be lost once EPA issues its new regulations. RGGI’s comments encourages the EPA to design its

regulations in a way that allows RGGI's program to continue, to count for compliance, and to maximize greenhouse gas reductions within a large region.

RGGI holds its program up as an example of the *magnitude* of cuts that EPA should demand from existing sources elsewhere in the country.

The experience in the RGGI states shows the magnitude of emission reductions possible from the power sector: a projected 50% decline in tons of carbon dioxide (CO₂) emissions and a fossil fuel-fired generation fleet that is projected to achieve emission rates on par with the recently proposed new source performance standard for new electric generating units.

Between 2005 and 2012, CO₂ emissions from the power sector in the nine participating RGGI states dropped more than 40%, from 162.5 million tons in 2005 to 92 million tons in 2012. The RGGI states are locking in this reduction by reducing the regional cap to 91 million tons in 2014, and reducing it an additional 2.5% each year thereafter to 78 million tons in 2020. In 2020, the RGGI emissions cap will ensure that regional emissions are 50% below 2005 emission levels. [RGGI comments at 2]

Some of this reduction is attributable to the successful energy efficiency programs implemented by each of the RGGI participating states. For example, New York's energy efficiency programs have reduced electricity use in New York by a cumulative total of 6.5% in 2012. Also, much of the reduction in power sector emissions is attributable to better utilization of a cleaner power system, resulting in a substantially reduced system-wide emission rate. There has been no significant changes in the power flows from PJM into the RGGI region as a result of the program.¹

RGGI state that this regional approach to emissions reduction has several benefits:

- It is extremely cost-effective because it uses market mechanisms that seek out the least expensive emission reductions across the region.
- It provides economic benefits - creating thousands of jobs in 3 years, reducing energy bills by over \$1 billion, and adding a net of \$1.6 billion to the economies in the RGGI states.

¹ See the report "An Empirical Test for Inter-State Carbon-Dioxide Emissions Leakage Resulting from the Regional Greenhouse Gas Initiative" (2011)
http://www.nyiso.com/public/webdocs/media_room/publications_presentations/Other_Reports/Other_Reports/ARCHIVE/Report_on_Empirical_Test_for_Interstate_CO2_Emissions_Leakage_04202011_FINAL.pdf

- It aligns with the regional nature of the electricity grid. The RGGI cap ensures that emissions decrease across the region, even as it allows increases in some locations in order to reap the benefits of more efficient sources in those locations.

Although Pennsylvania is not officially part of RGGI, Pennsylvania utilities work in RGGI states and Pennsylvania can design a state plan which could dovetail with the RGGI initiative and which would have many of the same benefits.

Legal scholars who have looked closely at Section 111(d) conclude:

“There is agreement ... that EPA has the tools under § 111 of the CAA to implement relatively flexible and efficient GHG regulation. The agency could use a range of compliance flexibility options itself, or facilitate state implementation plans that adopt such measures at the state or regional level.” Prevailing Academic View on Compliance Flexibility under § 111 of the Clean Air Act (July 2011)²

Flexibility revolves around the definition of “best system of emission reduction. For existing facilities, as defined under § 111, a standard of performance is based on “the best system of emission reduction . . . taking into account the cost.” This language almost certainly is broad enough to enable both EPA and states to incorporate compliance flexibility: using their statutory discretion, those authorities can define many flexible approaches as the most efficient (and therefore the “best”) systems for reducing emissions at the sector level. Prevailing Academic View at 4.

In designing a Section 111(d) plan, Pennsylvania should adopt some of the guiding principles pioneered by RGGI. The plan should encourage real reductions in greenhouse gases through low and zero carbon generation, energy efficiency, and energy conservation.

The plan should set allowance price targets sufficiently high and consistent to provide an adequate return to those investing in low and zero carbon electricity, as well as energy efficiency and conservation.

The allowance auctions should generate a reliable revenue stream for state energy efficiency and adaptation programs.

² <http://www.rff.org/RFF/Documents/RFF-DP-11-29.pdf> p.13

We await a second climate report outlining ways to lower greenhouse gas emissions from the Corbett administration. This new report should look at ways to reduce emissions on the scale which EPA final rules contemplate. Beyond the moral imperative to reduce the industrial emissions that contribute to climate change, there are sound economic reasons to adopt a low carbon diet.