



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

**Written Testimony of
Vincent Brisini, Deputy Secretary
Office of Waste, Air, Radiation and Remediation
Pennsylvania Department of Environmental Protection
on EPA's Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources;
Electric Utility Generating Units
("Proposed Clean Power Plan")**

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

July 31, 2014

Good Morning. I am Vince Brisini, Deputy Secretary for the Office of Waste, Air, Radiation and Remediation in Pennsylvania's Department of Environmental Protection (PA DEP). Thank you for the opportunity to testify on EPA's proposed Clean Power Plan Rule. This proposed rule was published in the *Federal Register* on June 18, 2014, under Section 111(d) of the Clean Air Act (CAA) to reduce carbon dioxide emissions from fossil fuel-fired electric generating units (EGUs).

The overall national target is equivalent to a 30 percent reduction from 2005 emissions from existing fossil fuel-fired EGUs. However, the proposed emission reduction goals for each state are established based on the 2012 emission intensity expressed as pounds of carbon dioxide (CO₂) per megawatt-hour of fossil fuel-fired electric generation. In Pennsylvania significant CO₂ emission reductions from EGUs have been achieved prior to 2012.

EPA determined each individual state's emission reduction target using 2012 data for several "building blocks," including: 6 percent heat rate improvements at existing coal plants; redispatching existing natural gas combined-cycle plants to 70 percent capacity; increasing the use of renewable energy; ensuring the continued operation of nuclear plants; and enhancing energy efficiency programs. EPA's plan emphasizes that states will have flexibility in the means chosen to meet the carbon dioxide target goals, through these and other measures. However, with the exception of the heat rate improvements, the other measures only serve to shift generation away from existing coal-fired EGUs.

Pennsylvania recognizes EPA's limited authority to regulate carbon dioxide emissions under the CAA. Our concerns relate to establishing CO₂ reduction targets under Section 111(d) that force the development of a State Energy Plan rather than the regulation of affected fossil

fuel-fired EGUs. This is an unprecedented method of establishing control requirements for existing sources from a source category that is subject to New Source Performance Standards under Section 111(b) of the CAA. Simply stated, Pennsylvania believes the Section 111(d) state plan should not be **the** State Energy Plan; rather, the Section 111(d) plan should be **part** of a state's energy plan.

Pennsylvania has developed a White Paper entitled *Recommended Framework for the Section 111(d) Emissions Guidelines Addressing Carbon Dioxide Standards for Existing Fossil Fuel-Fired Power Plants*. This White Paper was sent to EPA Administrator Gina McCarthy on April 10, 2014, and has received a significant amount of attention in the national press. In that paper we recommend, and now urge, that EPA establish emission guideline targets based upon actions that can be taken directly by operators at existing sources that would actually be subject to the Section 111(d) emission guidelines. This approach is consistent with previous emissions guidelines promulgated under the CAA by EPA for other source categories.

We urge EPA to limit their definition of "Best System of Emission Reduction" (BSER) to actions that can be taken at the affected existing fossil fuel-fired EGUs, without redefining the source. That interpretation is consistent with how the U.S. Supreme Court recently viewed best available control technology in the *UARG v. EPA* case, which overturned EPA's Tailoring Rule. The court found that EPA guidance acknowledged that best available control technology may not be used to require reductions in a facility's demand for energy from the electric grid, which is the basis for the vast majority of the emissions reduction targets in the proposed emission guidelines. Historically, Section 111(d) emission guidelines mandated the BSER for each source. This approach would make each coal-fired EGU cleaner. However, under the proposed Clean Power Plan Rule EPA says it also means taking steps to replace coal-fired EGUs with other sources of electricity: more use of natural gas plants; more use of low carbon generators like hydro, nuclear, wind, and solar; and lowering electricity demand through energy efficiency from sources. Simply stated, EPA's interpretation of BSER is to force generation away from coal-fired power plants to other means of generating electricity and the elimination of some level of market demand for electricity.

Pennsylvania questions EPA's authority to interpret the terms "best available control technology" and "best system of emission reduction" differently for the purpose of regulating a source under the CAA to reduce carbon dioxide emissions. It seems that both of these terms need to be interpreted consistently to ensure conformance with the CAA. Pennsylvania believes that EPA needs to carefully weigh this interpretation as it would establish a precedent for environmental regulation that would allow environmental regulatory agencies to establish programs that are more related to achieving desired social and economic outcomes rather than developing and implementing performance standards to achieve emission reductions from existing units. Pennsylvania believes these types of social and economic decisions should be made by elected officials.

Pennsylvania is concerned that the Clean Power Plan Rule has moved EPA away from its traditional mission of environmental protection; the Agency is instead developing energy and social policy. For example, EPA's attempt to mandate a level of CO₂ emission reduction that is unachievable by existing power plants under Section 111(d) will force states to pursue "outside-the-fence" emission reductions from non-affected sources and measures, such as renewable

energy and demand-side energy efficiency mandates as the key compliance options. Using these options from sources and activities that are not affected by Section 111(d) indicates a move away from traditional environmental regulations to the establishment of an overarching energy policy that picks winners and losers in the marketplace. Pennsylvania would ask EPA to consider if it is appropriate to use its regulatory authority in a manner that manipulates the free market that has reduced and continues to reduce CO₂ emissions.

One of the principles of Pennsylvania's White Paper is the need for EPA to recognize state leadership and authority to regulate pollutants within their borders. This would ensure the preservation of the states' discretion in the development and implementation of flexible emission control programs that are consistent with the Congressional intent of Section 111(d) of the CAA.

EPA has stated repeatedly that there is flexibility in the proposed Clean Power Plan Rule in that it allows states to develop their own compliance plans. Those compliance plans may, but are not required to, utilize any combination of the four "building blocks" identified in the proposed Clean Power Plan. However, Pennsylvania is concerned that any purported flexibility is illusory, and asks how flexibility can be achieved when EPA has already demonstrated that Pennsylvania will need to use all four building blocks to achieve an overall 31 percent reduction from the 2012 emission intensity to 1,052 pounds of CO₂ per megawatt-hour. It must be recognized that the proposed emission reduction goals for Pennsylvania cannot be achieved solely by inside-the-fence-line improvements at existing fossil fuel-fired EGUs, which is the only legal method to achieve these CO₂ emission reductions.

From a practical standpoint, when EPA used all available measures to establish CO₂ emission reduction targets that are so far beyond the reductions that can be achieved by fossil fuel-fired power plants, the states have no other option than to use those same measures in the development of *the* State Energy Plan that would be required under the proposed Section 111(d) program.

The Pennsylvania White Paper relates the importance of recognizing the inherent differences in rate-based versus competitive energy markets and the need to provide for electric grid reliability. The proposed Clean Power Plan Rule's natural gas redispatch, energy efficiency, and renewable energy "building blocks" are areas traditionally reserved to the sovereign authority of the states. To date, Congress has been unwilling to develop national renewable energy standards, recognizing the wide diversity of state laws in existence, and the disparate capabilities to deploy renewable resources among states. EGUs in states like Pennsylvania operate in a competitive energy market while EGUs in states like West Virginia operate in a rate-based market. This is one of many issues that need to be considered by EPA in a balanced way. For example, how will the Clean Power Plan Rule achieve economic and regulatory parity based on the expanding zone of influence that Regional Transmission Organizations have today? As an agency constrained by its statutory authority, how does EPA extend its regulatory reach to influence the decisions made by Regional Transmission Organizations? How does EPA expect state administrative agencies, like the PA DEP, to influence or regulate the decisions of these organizations?

Importantly, Pennsylvania does not believe that environmental agencies should regulate or influence energy markets and that energy markets should not be in the business of environmental regulation.

Pennsylvania appreciates the opportunity to testify on the Clean Power Plan Rule. While the White Paper demonstrates that Pennsylvania does support efforts to reduce CO₂ emissions, we believe it must be done in a lawful manner that results in cleaner air, more jobs, and lower prices for consumers. If done in that fashion, the program could result in benefits to the entire economy – and the market then decides who will continue to operate, as only the most efficient and lowest emitting sources will be competitive. By unleashing efficiency improvements, emission reductions at existing power plants and other industrial sources will continue so long as a competitive marketplace continues to exist.

I request that you include this detailed written testimony in the record along with a copy of the Pennsylvania White Paper, the Fact Sheet, and the PowerPoint slides for my testimony before the Pennsylvania Senate Environmental Resources and Energy Committee on June 27, 2014.

Once again, thank you for providing the opportunity for Pennsylvania to testify on the proposed Clean Power Plan Rule. We will submit detailed comments on the proposed rule to EPA in October 2014.