



State of New Jersey

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November 26, 2014

The Honorable Gina McCarthy, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34830 (proposed June 18, 2014) (to be codified at 40 C.F.R. pt. 60)

Dear Administrator McCarthy:

The State of New Jersey opposes adoption of the EPA's Proposed Rule on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 117 (June 18, 2014). The Department of Environmental Protection has undertaken an extensive analysis of this proposal, found it fundamentally flawed, and respectfully submits that it cannot be redeemed through mere revisions. These draft rules are incomplete, needlessly complex, and impossible to implement.

As a threshold matter, and as elaborated in the accompanying legal comments, EPA's Proposed Rule goes well beyond EPA's jurisdiction for the regulation of emissions from existing electric generating units and instead seeks oversight and control of essentially every aspect of energy generation, transmission and dispatch, and every aspect of energy usage by businesses and citizens throughout the nation. Simply put, the Proposed Rule is not authorized by the terms of the Clean Air Act.

Notably, New Jersey is a leader among the states in reducing emissions from the electric power sector, and our 2011 Energy Master Plan reflects New Jersey's continued commitment to leadership in this area.

- New Jersey is well-ahead of EPA's proposed standards for new power plants, with carbon emissions (CO₂) from our new power plants significantly below the proposed limits under Section 111(b).
- New Jersey's existing fossil-fueled power sector collectively meets EPA's proposed limits under Section 111(b), even though new source standards do not apply to existing sources.

- Complementing our low-emission fossil fuel-fired power sector is New Jersey's nuclear power fleet, which accounts for approximately 52% of our annual in-state generation, and has been producing emission-free, base load power for over 3 decades.
- The United States Energy Information Administration (USEIA) reports that in a comparison of state power sector CO₂ emission rates for 2012, only four states had lower CO₂ emission rates than New Jersey. In fact, New Jersey's emission rate was less than half that of most other states, and it was lower than seven of the nine Regional Greenhouse Gas Initiative (RGGI) states. (USEIA reports for 2012 that New Jersey's power sector emission rate was 543 lb/MWh and projections for 2013 are even lower at 476 lb/MWh).
- New Jersey is ahead of schedule in surpassing the Greenhouse Gas (GHG) emission reduction target established for 2020, under state law.
- New Jersey continues to meet its Renewable Portfolio Standard (RPS) goals, and ranks among the top three states in the country for total installed solar capacity. New Jersey ratepayers have invested an estimated \$3.27 billion in solar energy and energy efficiency programs over the past 14 years.
- From 2001-2012, New Jersey reduced CO₂ emissions from its power sector by 33%, more than the 30% reduction EPA has set as the 2030 goal for the entire nation.

New Jersey's enormous progress in cutting CO₂ emissions should be recognized by the federal government. Instead, this Proposed Rule would punish our state – and others who have been leaders – for its success. By failing to provide credit for past emission reduction measures, the Proposed Rule would provide a clear and enduring disincentive against early action in the future, absent a federal mandate. It would convey exactly the opposite message that the federal government should be sending to the states and to the private sector. Rather than encouraging progress, it would hinder it, as parties would hesitate to act knowing that their progress might be penalized in the future.

Although we believe that this Proposed Rule cannot be salvaged in its present form, we are providing and have attached a detailed legal and technical critique of the proposal that specifically identifies its many defects and failings. We also reluctantly make recommendations in the event EPA chooses to move forward with this broken rule. Some of the major shortcomings in the Proposed Rule are highlighted below.

Among the reasons this Proposed Rule should be withdrawn are:

- It goes well beyond EPA's jurisdiction for the regulation of emissions from existing electric generating units and invades the jurisdiction of the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), regional transmission organizations such as PJM, and the jurisdiction exclusively reserved to the states and, in doing so, introduces legal, economic, reliability and other unintended consequences;

- It unfairly and without justification sets wildly different CO₂ emission goals for each state;
- It punishes states, including New Jersey, which have already achieved significant reductions in CO₂ emissions, by setting even stricter goals for such states;
- It adds disproportionate costs to states like New Jersey that have already invested heavily in renewable energy and energy efficiency measures;
- It does not properly credit or encourage carbon-free nuclear power; and
- It sets goals that squander real opportunities for addressing both CO₂ emissions and pollutants that cause cross-state air pollution, presenting serious local health implications.

I would like to elaborate on these reasons to give you a fuller sense of our objections.

First, the Proposed Rule expands EPA’s jurisdiction for the regulation of emissions from existing electric generating units beyond what the Clean Air Act allows. EPA has long had statutory authority to regulate emissions from fossil fuel-fired power plants. Because New Jersey has already achieved dramatic reductions in carbon emissions from the power plants in our state, it will be unable to reach the targets set in the Proposed Rule through further power plant emission reductions. The Proposed Rule effectively regulates “outside the fence” of the fossil fuel-fired power plants by setting an emission rate that is unattainable without increasing energy efficiency, reducing demand, and/or bringing online new nuclear or renewable energy sources to produce electricity. None of these alternatives are within EPA’s authority to mandate. States like New Jersey should not be required to add a federal layer of “outside the fence” regulation through an extra-jurisdictional EPA mandate.

Second, the Proposed Rule creates an uneven playing field across the nation by setting different CO₂ emissions goals for each state. Airborne emissions do not recognize political boundaries. Here in New Jersey, we have, for decades, been breathing emissions generated by power plants located out of state. As a result, and even though we have made considerable progress in reducing emissions generated by sources in New Jersey, our air quality continues to be adversely affected by emissions generated from sources outside the state. This Proposed Rule would allow continued high CO₂ and other pollutant emissions in many states. Nearly half of all states were assigned emission reduction goals by EPA for the year 2030 that are significantly higher than New Jersey’s actual 2012 emission rate.

Third, the Proposed Rule punishes states, including New Jersey, which have already taken significant steps to reduce their CO₂ emissions. By using 2012 emission rates as the baseline to calculate each state’s required CO₂ reduction, states that achieved major reductions before 2012 are penalized, while states that have done little or nothing are rewarded with far less stringent – and more easily attainable – goals. Based upon an evaluation of EPA’s proposed percentage reduction for each state, it is clear that those states that have done the most are expected to continue to do the most, and those states that have done the least are allowed to continue to do the least. This reflects a lack of analysis of and understanding by the EPA in preparing the Proposed Rule of the progress individual states have, and have not made, in reducing CO₂ emission.

From 2001 – 2012, New Jersey achieved a 33 percent reduction in CO₂ emissions from the fossil fuel sector – more than EPA projects its Clean Power Plan will achieve for the entire nation as a whole by 2030 – while decreasing our reliance on coal by more than 80 percent. During that same period, we invested an estimated \$3.27 billion in renewables and energy efficiency measures. These significant accomplishments are given little to no credit under the Proposed Rule. This has the perverse result of punishing responsible states, while creating a disincentive for other states to take action on any number of other environmental challenges without a federal mandate.

Fourth, the Proposed Rule does not sufficiently credit pre-existing carbon-free nuclear power. Nuclear power remains one of the only carbon-free base load power sources currently available. It represents 63 percent of our nation’s carbon-free power, far exceeding all renewables combined. In New Jersey, about 52 percent of our in-state power is generated by nuclear. The Proposed Rule fails to give New Jersey sufficient credit for this substantial source of carbon-free electricity. While states that install new nuclear power will receive full credit for their new carbon-free generation, New Jersey is effectively penalized for being a leader in nuclear generation because its past investments are not credited toward its emission rate target.

Fifth, the Proposed Rule provides no analysis of the critical costs of compliance on a state-by-state basis. Although EPA has performed a national cost-benefit analysis, it arbitrarily chose not to do so on a state-by-state basis. This is a significant deficiency, especially when the proposed limits are vastly different from state to state and impose disproportionate costs upon states that have taken early action. Without a state-by-state analysis, there is no way any state can determine whether the costs of compliance are reasonable.

Sixth, the Proposed Rule would severely limit fuel diversity, presenting significant reliability and cost concerns. The extreme cold experienced in the northeast during the winter of 2013-2014, known as the Polar Vortex, underscored the need for fuel diversity. Natural gas was in short supply as competition rose for this fuel since it was needed for both heating and electric generation. Prices increased precipitously and regional transmission organizations warned of potential brownouts and blackouts, which were only avoided through use of coal and oil-fired generating units. Under EPA’s Proposed Rule, New Jersey estimates that all coal and oil units and 80% of our existing natural gas plants may need to be shut down in order to accommodate EPA’s presumptive requirements for additional renewable energy and energy efficiency. Also, shutting down 80% of New Jersey’s natural gas combined cycle (NGCC) units, many of them recently constructed, while other states with higher CO₂ emission rate goals are encouraged to build more NGCC units, just does not make sense. Such a result is indefensible in consideration that New Jersey’s few remaining coal plants have invested \$2 billion in air pollution controls and are among some of the cleanest in the nation.

Finally, the Proposed Rule provides only incidental benefit and ignores the effect of cross-state air pollution. Targeting all air pollutant emissions – which is within the scope of the Clean Air Act – would produce much greater environmental and public health benefits than a focus on CO₂ emissions alone. EPA has failed to adequately address nitrogen oxide emissions from other states, resulting in violations of the ozone health standard in New Jersey. This Proposed Rule continues the inequity by approving less stringent CO₂ goals for some of the very states that remain the source of high nitrogen oxide emissions, and, consequently, the source of serious health issues, both in New Jersey and within their own state.

The State of New Jersey shares EPA's goal of improving the quality of the air every American breathes. New Jersey is proud to have achieved significant improvements in air quality, both to improve the health of our environment and the health of our people. These improvements reflect forward-thinking policy and significant investments over the course of several decades.

Unfortunately, this Proposed Rule will not advance that shared goal. Instead, it would, if promulgated as written, merely burden the citizens of our state with unjustifiable increases in electricity costs. Consistent with our 2011 Energy Master Plan, New Jersey has already promoted cleaner and more efficient energy. Adding a cumbersome and poorly designed federal regulation is the wrong approach. On behalf of the State of New Jersey, I urge EPA to withdraw this Proposed Rule in its entirety, set a proper foundation that is squarely within EPA's jurisdictional authority, and avoid the inequities and unintended consequences of the current proposal.

Sincerely,

Bob Martin
Commissioner

Enclosures: Detailed Legal and Technical Comments on the Proposed 111(d) Rule