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March 18, 2019

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Assistant Administrator
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US Environmental Protection Agency
Mail Code 6101A
Attention: Docket ID No. EPA-HQ-OAR-2013-0495
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Proposed Amendments to the NSPS for GHGs from New, Modified, or Reconstructed EGUs

Honorable Assistant Administrator Wehrum:

The National Tribal Air Association (NTAA) is pleased to submit these comments on EPA’s proposal, “NSPS for GHG Emissions from New, Modified, and Reconstructed EGUs,” as well as the specific request for comment on the interpretation and application of the phrase in the endangerment finding, “causes, or contributes significantly to,” regarding source categories and greenhouse gases (GHGs).

The NTAA is a member-based organization with 139 principal member Tribes. The organization’s mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

General Comments Related To Underlying Assumptions and Considerations

The EPA maintains that, despite the substantial proposed changes in Best System of Emission Reduction (BSER) and the increase in emission rates, there will be “at most, few new, reconstructed, or modified sources that will trigger the provisions the EPA is proposing.” The conclusion from EPA is that “this proposed rule will not result in any significant carbon dioxide (CO2) emission changes or costs.” If this assumption is based on any recent realistic analysis, the EPA does not point to it, or disclose it. EPA’s own emphasis on the economic impact on new coal-fired power plants, and its apparent desire to make new coal plants more economically feasible, belies this assumption.

Furthermore, the EPA goes to great lengths to discuss the potential impact on coal-fired power plants as “base load” sources of power within the “competitive” power



market. This market consideration is important, but the analysis overweighs coal plant market participation¹ in the EPA's purported effort to weigh the benefits and costs of the proposed rule. This overweighting displaces the supposed point of the rule: to control GHG emissions for public health and welfare concerns, not to ensure the economic viability of coal plants.

Revising the Best System of Emission Reductions (BSER)

The NTAA is opposed to the proposed change in BSER for newly constructed and reconstructed fossil fuel power plants. First, the proposed BSER, which is the most efficient generation technology combined with best practices, results in an increase of emission rates from 1400 lbs. CO₂/MWh-gross limit to a minimum of 1900 lbs. CO₂/MWh-gross limit – a 36% increase in emission rates. The 2015 NSPS rule estimated that emission rates for super critical pulverized coal plants (SCPC) without carbon capture and sequestration (CCS) (basically the same as the proposed BSER) would be 1620 – 1740 lb. CO₂/MWh-gross limit. The EPA fails to adequately explain the further increase to 1900 lbs. CO₂/MWh-gross limit. This increase, on its face, is an unreasonable increase in the emission rates, and is unsupported by the record.

Second, the proposed BSER allows the use of dry cooling technologies, instead of wet cooling technologies. While this may make some sense in the arid west (where partial CCS is more feasible), it makes little to no sense where access to water resources is not an operational problem. The EPA admits that wet cooling technologies can reduce emissions by 6% – 10%, and yet explicitly excludes wet cooling from the proposed BSER.

The EPA should also reconsider its concerns about whether existing plants should retrofit with co-fired natural gas or co-fired biomass. (Comment C-14) The EPA admits that co-fired natural gas would reduce emissions by 6% – 10%. The underlying concern expressed by EPA is that there are infrastructure constraints for natural gas. Nothing could be further from the reality. There are over 300,000 miles of natural gas pipelines throughout the United States. In addition, while it is a challenge to store natural gas, access to natural gas – especially in the west where weather and potential natural disasters are less of an impediment to pipeline development – is not the obstacle the EPA makes it out to be. In fact, this concern is a repeated talking point that has permeated the discussion around the transition from coal to natural gas power plants.

The EPA doubts the viability of biomass energy because of the perceived limitations of biomass: smaller in size power plants, generally located near the biomass resource. The EPA's own 2015 analysis shows no emissions for biomass, which is supported by the newly adopted EPA position on carbon emissions from biomass. The EPA should reconsider its analysis to include biomass as either a control technology in BSER (Comment C-3) for smaller plants, or to analyze biomass as a potential input for all plant sizes to reduce emissions (Comment C-14). Geography should be of no concern, since most coal-fired power plants are not near coal resources either. Biomass can be

¹ The EPA also unreasonably limits the “market analysis” to deregulated wholesale markets, which assumes coal plants will be merchant plants. Most coal plants are not merchant plants, for the very reason EPA points to – they cannot compete with natural gas, and now renewable energy power plants. If any coal plants will be built, reconstructed, or modified, they will most likely be owned by rural electric generation cooperatives or regulated utilities so that there is more certainty in recovering the costs from ratepayers.



shipped to plants the same way coal is shipped to power plants – and likely with less environmental impact.

Lastly, the EPA analysis that changes its underlying assumptions about the cost of partial CCS does not appear to be supported by the underlying record. The EPA does not cite any studies to support its increased infrastructure costs. The ability to store carbon has not changed. There appears to be no underlying change in the record that partial CCS is not technically feasible; the same facts and inputs are being used but with different conclusions. Thus, the conclusion that partial CCS should be repealed is not supported by the record, as presented by the EPA.

The EPA should reconsider the proposal to remove partial CCS, and that the proposed BSER should apply to all new or reconstructed power plants – regardless of where they are located. Instead, the EPA should consider a tailored approach to BSER based on location, access to water, and access to partial CCS infrastructure (Comment C-15).

Deterioration in the Standards of Performance

The EPA's proposal to remove partial CCS from the BSER results in a proposed standard of performance for new and reconstructed coal-fired power plants with emissions limits of 1,900 lb. CO₂/MWh-gross limit for large units, 2,000 lb. CO₂/MWh-gross limit for small units, and 2,200 lb. CO₂/MWh-gross limit for coal refuse-fired units. This is a significant increase of at least 36% for allowable emission rates for new or reconstructed EGUs. Beyond the 36% increase, the EPA estimates that EGUs will likely run longer (because they are more efficient and because the proposed BSER results in a lower cost of energy) and thus emit more co-pollutants.

In addition, the EPA proposes to increase emission rates across the board for existing steam generation units that have large modifications. This too will result in higher emission rates for existing power plants from the 2015 standards.

The EPA justifies these increases in two ways: 1) the EPA states that “utility forecast models continue to project that few, if any, new coal-fired power plants will be built in the U.S. in the subsequent decade,” and 2) existing EGUs that use the current BSER technologies have average emission rates of 1900-2000 lb. CO₂/MWh-gross limit and thus the new standards will actually require lower emission rates. Both of these rationales have dubious support in the record.

If emissions limits are raised by 36% from 1400 to 1900 lb. CO₂/MWh-gross limit, it is possible that even if new EGUs are not built, more existing EGUs will be reconstructed or modified, since the new emission standard would change the economic formula and potentially make these actions economically feasible. EPA cannot assume otherwise.

Furthermore, the emission standard should be set to actually reduce emissions – and not just barely. As stated in the NTAA's comment letter to EPA on Docket ID No. EPA-HQ-OAR-2017-0355 and dated October 31, 2018, over 200 federally recognized Tribes have reservation lands within a 50 mile radius of a coal or natural gas EGU². A newly relaxed standard will directly affect Tribes living near existing EGUs that are modified or reconstructed. If the EPA adopts the relaxed BSER,

² http://www7.nau.edu/itep/main/ntaa/PRKPDF/ACE_CL



then the emission rate should remain consistent with the 2015 rule and current experience – no more than 1700 lbs. CO₂/MWh gross, regardless of power plant size (Comments C-16, 17, 18).

Additionally, any increase in GHG emissions will have a deleterious effect on the climate system. As this administration's Fourth National Climate Assessment³ (NCA) finds, unless there is significant GHG mitigation, climate change will negatively impact infrastructure and property, slow economic growth, threaten water supplies and air quality, increasingly threaten Americans' health and well-being, disrupt agricultural productivity, and much more. Significantly for American Indians and Alaskan Native Villagers, the NCA finds that climate change poses an even greater risk for Indigenous communities' "livelihoods, economies, health, and cultural identities," due to their greater reliance on land, water, and other natural resources. Therefore, increases in GHG emissions as a result of these proposed changes will have disproportionate impacts on Tribes.

Interpretation of the Endangerment Finding

EPA has specifically requested comments on the correctness of the interpretation and determination of the endangerment finding as it applies to GHG emissions. EPA chose to include this request for comments on the endangerment finding in the footnotes (footnote 25) which the NTAA finds to be disingenuous, inappropriate, and confusing. Burying the request in the footnotes detracts from its importance. The EPA should not ask open-ended questions without posing the EPA's position first. This important question needs a formal rule making process, not a footnote.

The NTAA believes that the historical interpretation of the law is well supported by past and ongoing research, and that any amount of GHGs released into the atmosphere – regardless of the source from which they are emitted – poses a risk to human health and welfare, and therefore must be regulated. Additionally, if the EPA were to change the interpretation by requiring a separate endangerment finding for each GHG (such as methane), this additional step will effectively slow down the regulatory process while emissions continue to mount.

The NTAA is also alarmed by the mention in footnote 25 of EPA's potential reconsideration of its "rational basis for regulating CO₂ emissions from new coal fired electric utility steam generating units and whether it would have a rational basis for declining to do so at this time, in light of, among other things, the following: (i) ongoing and projected power sector trends that have reduced CO₂ emissions from the power sector due to reduced coal-fired generation . . . and (ii) . . . no more than a few new coal-fired EGUs can be expected to be built, which raises questions about whether new coal-fired EGUs contribute significantly to atmospheric CO₂ levels." As we have noted above, the EPA's estimates that there will be no new coal fired power plants built belies the whole understood point of this new proposal – to make it more economically feasible (and thus more likely) for the construction or reconstruction of coal-fired power plants.

Tribal Consultation and Environmental Justice

Pursuant to the *1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations*, Executive Order 13175 (Nov. 6, 2000), and the EPA Policy on Consultation and

³ USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.



Coordination with Indian Tribes (May 4, 2011), Tribal concerns and interests must be considered whenever EPA's actions and/or decisions may affect Tribes. Furthermore, in EPA's *Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples* it is stated, "This Policy provides early meaningful involvement opportunities for federally recognized tribes, indigenous peoples, and others living in Indian country, at all stages of Agency activity, including the development of public participation activities, the administrative review process, and any analysis conducted to evaluate environmental justice issues." Because this rulemaking process may increase pollution in or on Tribal lands, it is incumbent on the EPA to provide analysis of these potential impacts, confer with Tribes on environmental justice issues, and pursue environmental justice through EPA's Office of Environmental Justice. EPA has failed to meet these responsibilities.

Conclusions

The NTAA is opposed to the change in BSER for new or reconstructed EGUs. Furthermore, the NTAA is opposed to the 36% increase in allowable emission rates, and to the increase in emission rates for both new and existing coal-fired power plants. The EPA should require wet cooling technology where water is not scarce and partial CCS instead of dry cooling in the arid west. The NTAA supports the historical interpretation that the endangerment finding is reasonable, and that there is a rational basis for regulating all GHGs across all sources, including (but not limited to) EGUs and oil and gas sources. The EPA should have an official rulemaking process on this matter rather than burying the request as a footnote. Lastly, the NTAA reminds the EPA of its Policy on Consultation and Coordination with Indian Tribes and the need for analyzing the environmental justice impacts of this proposal.

The NTAA appreciates this opportunity to comment on the Proposed Amendments to the NSPS for GHGs from New, Modified, or Reconstructed EGUs. If you have any questions or require clarification from the NTAA, please do not hesitate to contact the NTAA's Project Director, Andy Bessler, at 928-523-0526 or andy.bessler@nau.edu.

On Behalf of the NTAA Executive Committee,

Wilfred J. Nabahe
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