



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

December 19, 2014

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mail code 28221T
Attn: Docket ID No. EPA-HQ-OAR-2013-0602
1200 Pennsylvania Ave. NW.
Washington, DC 20460

RE: Ohio EPA Comments on U.S. EPA's November 4, 2014 "Carbon Pollution Emission Guidelines for Existing Stationary Sources: EGUs in Indian Country and U.S. Territories; Multi-Jurisdictional Partnerships; Proposed Rule" [79 FR 65482]

Dear Administrator Gina McCarthy:

The Ohio Environmental Protection Agency (Ohio EPA) is providing comment on the above referenced U.S. EPA proposed rule regarding emission under Clean Air Act (CAA) Section 111(d) to address greenhouse gas (GHG) emissions from existing fossil fuel-fired electric generating units (EGUs). Predominantly, this proposal addresses similar requirements for Indian Country and U.S. Territories as the June 18, 2014 proposal applicable to states. [79 FR 34960] In addition, this proposal solicits comment on additional considerations regarding areas without affected electric generating units (EGU) that impacts states subject to the June 18, 2014 proposal. Ohio EPA appreciates the opportunity to comment on this proposal.

Ohio EPA is not attempting to comment on specific aspects of this rule that directly affect Indian Country and U.S. Territories or their ability to meet the proposed goals or regulatory requirements. With respect to the concepts behind these goals and requirements, Ohio EPA wishes to reiterate our comments submitted regarding the

June 18, 2014 proposal. Consistent with the statements in the Federal Register notice, Ohio EPA requests U.S. EPA to fully consider all of the Ohio EPA comments submitted into the record as part of the Section 111(d) proposal from June 18, 2014 as also being submitted in response to this proposal.

In this proposal, U.S. EPA is only establishing goals and requirements for a limited number of U.S. Territories (Puerto Rico and Guam) and for four sources located in three Indian Countries. [79 FR 65488] All U.S. Territories and Indian Country are not being regulated under this Section 111(d) proposal because there are not affected EGUs in all of the areas or territories.

In this proposal U.S. EPA identifies issues with Building Blocks 1 and 2 for these areas. For example, some areas have no coal-fired EGUs and therefore, no reductions would be achieved under Building Block 1 from heat rate improvements (HRIs) and/or re-dispatch to combined cycle natural gas (NGCC) sources could not occur. Similarly, some areas have no combined cycle natural gas (NGCC) sources. [79 FR 65490]

Because the areas that will be subjected to this proposal had no utility-scale, non-hydroelectric renewable energy (RE) in 2012, U.S. EPA is proposing multiple options to address RE generation under Building Block 3. [79 FR 65491] The first option follows the methodology of the June 18, 2014 proposal which results in goals with zero RE requirements under Building Block 3. Option two assumes there is RE potential in U.S. Territories. [79 FR 65491] For U.S. Territories, U.S. EPA assumes RE in 2017 to be 0.37% which is consistent with the lowest amount among the 50 states in 2012 (Kentucky). U.S. EPA did not make this same assumption for Indian Country because it would have resulted in a significant portion of the area's electricity demand being met by renewables only. U.S. EPA is also proposing an alternative for Puerto Rico based on a similar methodology from the June 18, 2014 proposal for the alternative RE approach that relies on technical potential within the states. However, U.S. EPA acknowledges they have very limited information on Puerto Rico's technical potential. U.S. EPA did not provide this alternative for Guam because U.S. EPA does not have any technical potential data for Guam.

When using a methodology similar to the June 18, 2014 proposal, U.S. EPA found similar problems when applying Building Block 4 in these areas. [79 FR 65492] There is no projected retail electric sales growth available from the 2012 Annual Energy Outlook (AEO) for U.S. Territories and therefore, is using 0%. In Indian Country, sales of electricity is small compared to the total generation and therefore, application of Building Block 4 yields very little emission reductions. This is forcing U.S. EPA to seek comment on an alternative minimum starting value for demand-side energy efficiency (EE) for Indian Country.

In effect, U.S. EPA has found issues with application of their Clean Power Plan in all of the areas affected by this proposal because U.S. EPA has stepped away from a traditional Section 111(d) plan that regulates emissions in a cost-effective and technically feasible manner directly from individual affected units. As outlined in Ohio

EPA's December 1, 2014 comment submittal, U.S. EPA must completely abandon these proposals and the Clean Power Plan for existing units and develop a traditional and lawful Section 111(d) proposal.

Within this proposal, U.S. EPA addresses areas without affected EGUs, including Vermont and the District of Columbia. Those areas without affected EGUs have expressed interest in participating in multi-jurisdictional (or state) plans. These areas also may consume energy produced elsewhere and could contribute to meeting a multi-jurisdictional (or state) CO2 goal with its RE or EE capabilities. U.S. EPA is requesting methodologies for including the RE and EE potential from these areas in crediting goals in other areas. [79 FR 65496] It is inappropriate for U.S. EPA to propose a rule that clearly does not identify that portions of the proposal will also impact states covered under the June 18, 2014 proposal. Ohio EPA believes any proposal that requests comments on alternatives for any state subject to the June 18, 2014 proposal should have been clearly identified as such.

Some stakeholders have also expressed interest in how to treat RE and EE potential across international boundaries. [79 FR 65496] For example, allowing resources in Canada to be used in meeting an area's goal. Even this proposal, which on the surface does not have any bearing on Ohio, contains concepts that U.S. EPA may alternately choose for states not included within this proposal. This lack of notice and transparent rulemaking would clearly violate the Administrative Procedure Act. Due to the complexity of the undertaking, U.S. EPA cannot propose pieces of a rule without fully explaining the impacts on all affected parties.

We also request that U.S. EPA examine the U.S. Court of Appeals decision in *Electric Power Supply Association v. Federal Energy Regulatory Commission*, 753 F.3d 216 (D.C. Cir. 2014). The Federal Energy Regulatory Commission (FERC) issued Order 745 which establishes uniform compensation levels for suppliers of demand response resources who participate in the "day-ahead and real time energy markets." The order seeks to incentivize retail customers to reduce electricity consumption when economically efficient. The court decided that the order goes too far in encroaching on the states exclusive jurisdiction to regulate the retail market and vacated the order in its entirety. The court found that the rationale used by FERC had "no limiting principle" and without boundaries, FERC authority could encroach on any number of areas inappropriate for FERC regulation. *Id.* at 221. The U.S. EPA Section 111(d) rule proposal seeks to require federal regulation of even a greater portion of, and additional aspects of, the total electricity generation and distribution market. This decision clearly indicates that the federal government, whether through FERC or U.S. EPA, does not have unbounded authority to regulate electric markets that traditionally have been left to the states.

In closing, Ohio EPA requests that U.S. EPA consider these comments along with Ohio EPA's comments on the June 18, 2014 proposal. This proposal cannot be separated from the June 18, 2014 proposal. As a result, U.S. EPA must clearly identify specific

and implied impacts on all parties affected by this proposal and provide ample opportunity for comment prior to promulgation.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler". The signature is fluid and cursive, with a large initial "C" and "B".

Craig W. Butler
Director

Cc: Robert Hodanbosi, Chief, Ohio EPA Division of Air Pollution Control