



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

December 1, 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 June 18, 2014 "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule" [79 FR 34830]**

Dear Ms. McCarthy:

The Ohio Environmental Protection Agency (Ohio EPA) is providing comment on the above referenced U.S. EPA proposed rule regarding emission guidelines for states to follow in developing plans under Clean Air Act (CAA) Section 111(d) to address greenhouse gas emissions from existing fossil fuel-fired electric generating units (EGUs). Ohio EPA appreciates the opportunity to comment on this very significant proposal.

The U.S. EPA proposal calls for the massive and unprecedented overhaul of the power generation, transmission and distribution system to limit carbon dioxide emissions under the stationary source control program of Section 111(d) of the Clean Air Act. U.S. EPA requested comments on 497 different aspects of the rule in the federal register notice which reflects the widespread impacts and complexity of the undertaking by U.S. EPA. Although U.S. EPA extended the original comment period and Ohio EPA is supplying extensive comments, this proposal requires additional scrutiny that could not be completed in the allotted time, particularly when U.S. EPA issued additional modifications to the proposal toward the end of the comment period. These additional modifications occurred on October 30, 2014 [79 FR 64543] and November 13, 2014 [79 FR 67406] without any extension to the comment period or revision of the expected date for release of the final rule.

Ohio utilities have significantly reduced carbon dioxide emissions from electric generation from 2005. Since 2005, Ohio has reduced carbon dioxide emissions from 138 million tons to 107 million tons in 2013. Further reductions due to shut downs resulting from the Mercury Air Toxics Standard could result in as much as an additional 33.8 million tons of carbon dioxide reductions between 2015 and 2016. These reductions were accomplished without a federal mandate to reduce emissions of carbon dioxide or a multistate agreement. Even after this dramatic reduction, U.S. EPA demands additional reductions that will unnecessarily threaten electric reliability, reduce manufacturing and coal mining employment, and increase electric rates.

In Ohio and other states, the reliability of the power generation, transmission and distribution system is of utmost importance and failures in the grid can cause immediate detrimental health and economic consequences. Some of the organizations that have actual responsibility for maintaining grid stability and reliability have warned of “cascading outages” and “voltage collapse” if this plan is implemented as proposed, yet it appears from the public record U.S. EPA has failed to consult with these organizations in a meaningful way on the formulation of this plan.

Ohio EPA has analyzed the proposal and found it lacking in legal authority. Because U.S. EPA has promulgated a Maximum Achievable Control Technology standard under Section 112 for power plants, U.S. EPA is prohibited from regulating carbon emissions from these same power plants under the plain language of Section 111(d). U.S. EPA is also limited in Section 111(d) to regulate sources which would be regulated under Section 111(b) if the source had been “new”. This proposal inappropriately requires states to exert regulatory authority and impose obligations on “affected entities” which potentially include countless generators and users of energy throughout the state. Many of these “affected entities” lie “outside-the-fence” of an EGU and may not even own any air pollution sources. U.S. EPA has taken a rarely-used section of the CAA that has always been applied on a source-oriented “inside-the-fence” basis as justification to expand their regulatory reach and exert authority over the national power generation, transmission and distribution system. U.S. EPA has misinterpreted Congressional silence to imply that Congress would agree to the broad new authority proposed in this rule.

Ohio EPA’s review also finds this proposal to be technically infeasible and the timeframe being demanded by U.S. EPA is unachievable. The following highlights the major issues of the proposal that are discussed in detail in the comments presented below:

- A. While U.S. EPA publicly referenced a baseline of 2005 for reduction of carbon dioxide emissions, 2012 is used throughout the proposed rule to establish state goals. Ohio EPA reinforces the need for states to independently select an appropriate baseline period that best represents their individual states circumstances.
- B. The reductions of either 4% or 6% from EGUs required from Building Block 1 are technically infeasible. The company that authored the primary study that

U.S. EPA relies on for this element has raised issue with the application of the study in the manner that it is being used.

- C. The conversion of the current economic electricity dispatch model to an emission dispatch model to the level proposed by U.S. EPA in Building Block 2 is infeasible and counterproductive by attempting to turn base load coal-fired power plants into peaking units and natural gas-fired peaking units into base load plants. This works directly against the heat rate improvements demanded in Building Block 1 by reducing the efficiency of coal-fired electric generating units.
- D. The required reductions from renewable sources under Building Block 3 (13.8 million MW-h by 2029) were derived from erroneous assumptions on current state law and developed by grouping Ohio with dissimilar states.
- E. The required reductions from energy efficiency measures under Building Block 4 (16.3 million MW-h by 2029) are not realistic over the long term and require a continuing obligation by states and local governments beyond 2030.
- F. The proposal by U.S. EPA conflicts with or interferes with; the CAA, the Federal Power Act, the Administrative Procedures Act, the Unfunded Reform Mandates Act, and the U.S. Constitution.
- G. The timing allowed for states to develop and submit plans for the complete overhaul of the power generation, transmission and distribution system is entirely inadequate from both a technical and procedural standpoint. Most states will require additional legislation and this proposed plan does not allow time for states to perform the detailed technical analysis, for legislation to be enacted, nor for the appropriate administrative agencies to propose rules. The demands placed on states to obtain a one-year extension are enormous and require unreasonable commitments that prevent states from altering existing programs.
- H. The claimed flexibility for states to choose among compliance options in the proposal is not evident. As proposed, each of the building blocks that U.S. EPA uses to develop the state goal will be extremely difficult to achieve. As a result, very little practical flexibility exists for the states. Other alternative methodologies suggested by U.S. EPA to obtain carbon dioxide reductions are equally unworkable. This lack of flexibility is discussed throughout Ohio EPA's comments.

In closing, Ohio EPA requests that U.S. EPA conduct a comprehensive review and assessment of our comments. Ohio EPA believes the entire proposal should be reconsidered. Ohio EPA has an obligation to be good stewards of the environment, and

we support having a robust energy policy that is protective of public health and air quality. However, U.S. EPA's proposed Clean Power Plan is technically flawed, not legal and unworkable in its current form.

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 a distinct "B".

Craig W. Butler  
Director

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