Environmental Protection Network

(202) 656-6229
environmentalprotectionnetwork.org
info@environmentalprotectionnetwork.org

EPN Oral Comments on
EPA's Proposed Repeal of Greenhouse Gas Standards for
Electric Generating Units
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Introduction

My name is Larry Weinstock and I am a 37-year EPA veteran and an Adjunct Professor teaching Air Pollution Control at George Washington Law School. I am presenting these comments on behalf of the Environmental Protection Network, an organization of over 650 of former EPA staff and confirmation-level appointees that provide the unique perspective of former federal regulators and scientists. These comments are the combined efforts of former employees from EPA's Office of Air and Radiation and Office of General Counsel who combined have hundreds of years of experience in the regulation of air pollution. This testimony is a short summary of more detailed comments that we will be submitting in writing as part of the public commenting period.

As a preliminary matter, we wish to acknowledge the professionalism and dedication of the EPA career staff, who were faced with a challenging assignment in developing this proposed action. Despite their best efforts, we have serious concerns about this proposal from both policy and legal perspectives and request that EPA reconsider this course of action and, instead, focus on actions that are truly protective of public health and the environment.

Overview

- **The Proposal is a threat to public health.** Repealing the Carbon Pollution Standards as EPA now proposes to do would do drastic harm to public health and the environment by depriving Americans of air pollution reductions that would provide significant public health benefit to Americans across the country. In a single year, the Carbon Pollution Standards would: avoid up to 1,200 premature deaths, 870 hospital and emergency room visits, 1,900 cases of asthma onset, 360,000 cases of asthma symptoms, 48,000 school absence days, and 57,000 lost workdays.
- **The Proposal's main justification–that power plants are not contributing significantly to the pollution fueling climate change–defies common sense and the real world facts. It is arbitrary and capricious – both as a matter of common sense and of law.** In the proposal, EPA claims that it need not propose objective criteria for its assertion that U.S. power sector GHG emissions do not make a significant contribution to climate change, ignoring the fact that the global power sector is the largest source of global GHG emissions and the U.S. power sector by itself emits 11% of the global sector's GHG.

EPA's own analysis shows the cost to Americans from the proposed action will harm the public. It predicts that the rule will result in large net public health costs of between $76 to $130 billion. These huge public health and climate costs overwhelm the compliance cost savings of between $9.6-$19 billion. (Note, the costs would be even larger if foregone climate benefits were considered.)

EPA proposes that EPA must make a substantial contribution/endangerment finding for GHGs (or any other pollutant added after the initial source category listing) under Section 111 of the Clean Air Act. EPA

also proposes a new interpretation of what "significant" contribution means and applying that proposes that EGUs do not significantly contribute to GHG air pollution.

Both positions are deeply flawed legally. They are inconsistent with the text and structure of Section 111 and many other provisions of the Act. The proposed interpretation of "significant" relies on legally irrelevant "policy" considerations that fly in the face of definitive Supreme Court and D.C. Circuit case law. EPN's written comments will explain in detail the fatal legal errors underlying EPA's proposal.

The facts are clear – fossil fueled EGUs are significant contributors to GHG air pollution.

- The U.S. is still the second largest emitter of GHGs in the world.
- EGUs are still a very large percentage of total U.S. GHG emissions - 25%. EGU emissions are the second largest source of emissions in the U.S., just behind transportation at 28%.
- Globally, the power sector is the largest source of GHG emissions, outranking industry, transport, buildings, agriculture, and other sectors. Global emissions of CO_2 from the power sector were 14,650 million metric tons of CO_2, with the U.S. power sector emitting 11% of the global power sector's emissions.
- U.S. EGUs emit more GHGs than all of the countries in the world, with the exception of three – China, India, and Russia. Again – only three countries in the world emit more GHGs than the U.S. EGUs.
- If we were to follow EPA's logic that the second largest source of emissions from the country with the second largest emissions were not significant, virtually all regulations dealing with regulating emissions should be scrapped as they regulate sources that also are only a small percentage of the problem. EPA's argument that the U.S. power sector contributes only a small percentage of the total GHG ignores the impact of this administration's efforts to greatly increase those emissions. Half of EPA's proposed deregulatory actions would likely increase emissions from EGUs. It also ignores the expectation that world annual GHGs have or are expected to soon peak, which would increase and not decrease the significance of the U.S. electricity sector's increased emissions.
- In light of this, the agency gives away its utter inability to justify the proposed repeal by claiming that it need not adopt or apply objective criteria in defining 'significant contribution.' With that claim, the proposal all but confesses that the agency's action is arbitrary and capricious -- both as a matter of common sense and as a matter of law.

<u>A few final points</u>:

Even if one accepts the agency's position that the proposed 90% CO_2 capture rate from the application of CCS has not been adequately demonstrated and associated costs are not reasonable, the evidence referred to by the agency shows that significant reductions may have been adequately demonstrated and costs may be reasonable. EPN believes that 0% is arbitrary and capricious, since it ignores consideration of the range of CO_2 capture rates that exist between 0 and 90. *EPN therefore recommends EPA investigate and consider the full range of capture rates for CCS in determining BSER, and that public comment be taken on a revised proposal.* EPA's failure to include any consideration of alternatives between 0 and 90 calls for a new round of comments on these alternatives.

EPA says that this action is consistent with "this Administration's priority is to promote the public health or welfare through energy dominance and independence secured by using fossil fuels to generate power." However, EPA does not show how increased fossil fuel use will improve either public health or welfare.

- According to the U.S. Energy Information Administration, the U.S. is a net energy exporter with record high energy exports in 2023 (latest year available). So, by any reasonable definition, the U.S. is energy independent.
- To the extent that there are any benefits to increased fossil fuel energy production, they come from the value of an increased energy supply. But increasing the U.S. energy supply is inconsistent with this administration's actions to decrease energy production from the renewable energy sector. This shows that increasing U.S. energy supply is NOT the actual objective. It is not clear what the administration's actual objective is, but EPA is acting like the actual objective is to increase pollution.
- Rulemakings require a record that supports the decision made. EPA cannot blindly rely on administration policy statements without producing evidence to support those statements and the connection between those statements and legitimate Clean Air Act objectives. For example, the Executive Orders refer to Clean Coal while eliminating the requirements that might make energy production from coal actually clean.

In summary, this proposal is based on faulty legal reasoning, unsupportable based on the facts and will result in increased pollution, which in the end will cause increased death and disease for the American people. It should be rescinded, and the existing rules should be left in place.