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May 1, 2014

Docket ID No. EPA-HQ-OAR-2013-0495
EPA Docket Center
William Jefferson Clinton Building West, Room 3334
1301 Constitution Ave., N.W.
Washington, D.C. 20004

Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to comment on *Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units – Proposed Rule*, which was published in the *Federal Register* on January 8, 2014 (79 Fed. Reg. 1430). NACAA is a national, nonpartisan, non-profit association of air pollution control agencies in 42 states, the District of Columbia and four territories and 115 local air pollution control agencies. The air quality professionals in our member agencies have vast experience as air quality professionals to control air pollution across the U.S. These comments reflect that experience and a commitment to working with the Environmental Protection Agency to protect public health and welfare.

The comments that follow are intended to help EPA finalize New Source Performance Standards (NSPS) for greenhouse gas (GHG) emissions from electric generating units (EGUs). They do not comprehensively address all of the issues raised by the Agency's proposed rule, many of which are likely to be addressed in separate comments filed by individual NACAA member agencies, but they do highlight areas where broad agreement could be found in the experiences of our members and directed to create a stronger final rule. The views expressed in these comments do not necessarily represent the positions of every state and local air pollution control agency in the country.

1. Separation of Coal and Natural Gas Units

EPA Proposal

The proposed NSPS for EGUs are promulgated under Section 111 of the Clean Air Act,¹ which grants EPA wide discretion to set standards of performance

¹ 42 U.S.C. § 7411.

for different source categories.² The proposal would limit the amount of carbon dioxide (CO₂) emitted from new EGUs through separate emission standards for (a) fossil fuel-fired utility boilers and integrated gasification combined cycle units, which includes coal-fired EGUs, to be codified at 40 C.F.R. part 60, subpart Da; and (b) natural gas-fired stationary combustion turbines, to be codified at 40 CFR part 60, subpart KKKK.³ In an earlier proposed GHG NSPS rule for EGUs, EPA proposed including both coal-fired and natural gas-fired units within a single emission standard.⁴

NACAA Comment

NACAA supports EPA's revised treatment of stationary sources under two separate and more narrowly drawn performance standards. The proposed approach allows more regulatory flexibility to recognize differences between coal-fired and natural gas-fired EGUs. Both fuel types play a significant role in the U.S. energy mix but have different emissions profiles and are generally utilized in different types of EGUs. They also respond differently to emissions control technologies. As such, we strongly support EPA's proposal to set separate performance standards for coal-fired and natural gas-fired EGUs. This approach better allows EPA to craft standards of performance tailored to the unique characteristics of each fuel and generator type.

2. Two Separate Emission Standards for Natural Gas Units

EPA Proposal

In addition to offering separate emissions standards for new coal and natural gas-fired units, the proposal further subcategorizes the applicable standard for natural gas units based on heat input rating. Natural gas-fired stationary combustion turbines with an input heat rating above 850 MMBtu/h would be subject to an emission standard of 1,000 lbs CO₂/MWh. Those with an input heat rating below or equal to 850 MMBtu/h would be subject to a standard of 1,100 lbs CO₂/MWh.⁵

NACAA Comment

NACAA offers two comments on this feature of the proposed rule. First, we support EPA's general approach in setting separate standards for different classes of natural gas-fired units. EPA has appropriately recognized that smaller capacity natural-gas units are less efficient than larger units, and NACAA agrees that larger natural gas-fired units should be subject to a more stringent standard.

With respect to the numerical emission standards proposed, however, NACAA believes that the emission limit for large natural gas-fired units (those with a heat input threshold greater than 850 MMBtu/h) should be more stringent. Although EPA proposed an emission limit of 1,000 lbs CO₂/MWh for large units, it solicited comment on potential limits ranging from 950 to

² *Id.* § 7411(b)(1)(A).

³ 79 Fed. Reg. 1432 (Jan. 8, 2014).

⁴ 77 Fed. Reg. 22,392 (Apr. 13, 2012).

⁵ 79 Fed. Reg. at 1447.

1,100 lbs CO₂/MWh.⁶ NACAA recommends that EPA adopt an emission rate limit of 950 lbs CO₂/MWh, the lower bound of that range. NACAA members have pointed to examples of units at or below the 1,000 lb CO₂/MWh emission rate in their jurisdictions, and New York has already established a statewide new source performance standard capping emissions at 925 lbs CO₂/MWh. Further, EPA’s preamble to the proposed rule notes that 249 out of 293 units in its Clean Air Markets Division database, or 85 percent of the affected units, are already meeting the 950 lbs CO₂/MWh limit.⁷ As such, NACAA believes that a more stringent standard of 950 lbs CO₂/MWh would be appropriate for larger, more efficient plants.

3. Modifications and Reconstructions

EPA Proposal

EPA is not proposing standards of performance for modified or reconstructed EGUs “at this time.”⁸ The proposed NSPS would not apply to modified or reconstructed sources as those terms are defined under 40 C.F.R. Part 60.⁹

NACAA Comment

Modified and reconstructed EGUs should be subject to GHG standards, but the best system of emission reduction for these units may be different than for new sources. Thus, NACAA supports EPA’s plan to propose standards for modified and reconstructed sources under Section 111(b) in a separate proposal, in tandem with its forthcoming proposal to regulate GHGs from existing sources under Clean Air Act Section 111(d). As it finalizes the proposed standards for modified and reconstructed sources, we urge the Agency to solicit input from state and local air pollution control agencies as it has done with the forthcoming Section 111(d) proposal.

4. Exclusion of Simple Cycle “Peaking” Units

EPA Proposal

The proposed rule would not apply to any EGUs that supply one-third or less of their electric output to the grid. As noted in the rule’s preamble, the “proposed definition does not explicitly exclude simple cycle combustion turbines, but as a practical matter, it would exclude most of them because the vast majority of simple cycle turbines sell less than one-third of their potential electric output.”¹⁰ Nonetheless, EPA also requested comment on whether it should instead provide an explicit exclusion for simple cycle combustion turbines.

NACAA Comment

⁶ *Id.* at 1487.

⁷ *See id.*

⁸ *Id.* at 1433.

⁹ *Id.* at 1489.

¹⁰ 79 Fed. Reg. at 1459.

Simple cycle units can present a more acute air pollution challenge than combined cycle units because they operate at a higher heat rate. NACAA recognizes that the “one-third” approach proposed in the current rule is an attempt to address comments offered in response to the 2012 proposed GHG NSPS for EGUs, which included a blanket exemption for simple cycle units. NACAA is concerned that both approaches carve out an exemption and could, in different ways, create perverse incentives to push electricity supply towards less efficient, simple cycle energy generation. One possible solution is for EPA to consider separate emissions standards for simple cycle units. We urge EPA to address these concerns in the final rule so that its treatment of simple cycle units does not provide an opportunity to evade the standard.

5. Transitional Units

EPA Proposal

EPA is not proposing standards for “transitional units,” *i.e.*, fossil fuel-fired EGU projects presently under development that were fully permitted but had not yet commenced construction at the time of the proposal. If and when any such transitional project proceeds, EPA may propose an NSPS specifically for that source.¹¹

NACAA Comment

NACAA agrees with EPA’s proposal, especially given the sparse universe of potential “transitional” sources. In the unlikely event that any transitional EGU commences construction, EPA should develop a GHG NSPS specifically for that source.

6. Title V Fees

EPA Proposal

EPA is proposing to exempt GHGs from the presumptive Title V fee calculation, yet account for the costs of GHG permitting through a cost adjustment to ensure that fees will be collected that are sufficient to cover the program costs.¹² Specifically, the proposed rule would exempt GHGs from the definition of “regulated pollutant (for presumptive fee calculation)” in 40 C.F.R. § 70.2 in order to exclude GHGs from being subject to the statutory fee rate set for the presumptive minimum fee calculation of 40 C.F.R. § 70.9(b)(2)(i). EPA proposes two alternative cost adjustment options: (a) a modest additional cost for each GHG-related activity of certain specified types that a permitting authority would process over the period covered by the presumptive minimum fee calculation, or (b) a modest additional increase in the per-ton rate used in the presumptive minimum fee calculation.¹³ Permitting agencies that do not use the presumptive fee approach may continue to demonstrate that their fee structures are adequate to implement their title V programs.¹⁴

¹¹ *Id.* at 1461.

¹² *Id.* at 1490.

¹³ *Id.* at 1493-95.

¹⁴ *Id.* at 1490.

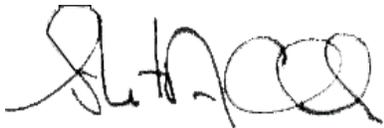
NACAA Comment

State and local permitting authorities must retain as much flexibility as possible in setting their Title V fee structures, and exempting GHGs from the regulatory definition of “regulated pollutant for presumptive fee calculation” may potentially limit the ability of some permitting authorities to account for GHGs in their Title V fees. Basing the cost adjustment on activities performed by permitting authorities is more appropriate than a cost-per-ton metric. The latter approach has proved inadequate, because as emissions decline with the addition of air pollution controls, permitting authorities’ workload increases.

NACAA is concerned, however, that the list of three activities that EPA proposes to include in its alternative “(a)” fee calculation is under-inclusive. All three activities—“GHG completeness determination (for initial permits or for updated applications),” “GHG evaluation for a modification or related permit action” and “GHG evaluation at permit renewal”—are associated with the writing of Title V permits. But Title V fees must also cover the costs of managing and enforcing the Title V program. This is reflected in Section 502(b)(3)(A) of the Clean Air Act and EPA regulations at 40 C.F.R. § 70.9(b)(1), both of which list specific costs that Title V fees are supposed to cover. They include, for example, the costs of implementing and enforcing the terms of Title V permits, and the costs of tracking emissions. These types of costs do not appear to be adequately accounted for in EPA’s proposed calculation process. The presumptive minimum fee calculation should be based on the existing statutory list rather than the less-comprehensive list of activities associated only with the writing of Title V permits.

Again, thank you for this opportunity to comment on EPA’s proposed CO₂ emissions standards for new power plants. Please do not hesitate to contact us or Phil Assmus of NACAA if you have any questions or require further information.

Sincerely,



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