# **NACAA Conference Call to Discuss Comments on**

**EPA’s Proposed Repeal of the Clean Power Plan**

**Wednesday, April 11, 2018**

**2:00 – 3:30pm Eastern**

**Call-In Number: 866-365-4406, Access Code: 7578536#**

Press \*6 to mute your line and \*7 to un-mute it

NACAA will host a discussion call to develop association comments on the proposed repeal of the Clean Power Plan rule on Wednesday April 11, 2018 and expects to meet the following schedule to develop and finalize comments:

* + Wednesday, April 11 – Discussion call to develop draft comment letter
  + Monday, April 16 – Draft comment letter circulated for review
  + Tuesday, April 24 – Internal NACAA review period closes
  + Thursday, April 26 – Final comment letter submitted to EPA

**BACKGROUND**

EPA published a [proposed rule](https://www.gpo.gov/fdsys/pkg/FR-2017-10-16/pdf/2017-22349.pdf) to repeal the Obama Administration’s Clean Power Plan on October 16, 2017. While the original *Federal Register* notice set a December 15, 2017 comment deadline, EPA extended the comment period until April 26, 2018 at the request of stakeholders.

The [Clean Power Plan rule](https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf) was published in the *Federal Register* on October 23, 2015 and set emission guidelines to limit CO2 emissions from existing power plants. The guidelines were based on the combined application of three “building blocks” – heat rate improvements at affected power plants, generation shifting from coal-fired to natural gas-fired power plants, and generation shifting from coal to renewables – as the “best system of emission reduction,” or “”BSER” under Section 111(d) of the Clean Air Act.

EPA’s proposed repeal rule changes the agency’s legal interpretation of BSER to include only measures that are “based on a physical or operational change to a building, structure, facility, or installation at that source.” 82 Fed. Reg. 48,039 (Oct 16, 2017). Accordingly, EPA argues that the proposed repeal rule disqualifies two of the three “building blocks” – generation shifting to natural gas-fired power plants and generation shifting to renewable resources – from EPA’s BSER analysis.

Though EPA acknowledges that the CPP’s heat rate building block is consistent with the new BSER interpretation, the proposed repeal adopts a finding from the 2015 Clean Power Plan record that the heat rate building block cannot stand on its own without at least one of the other two building blocks. According to the final Clean Power Plan rule, “absent other incentives to reduce generation and CO2 emissions from coal-fired EGUs, heat rate improvements and consequent variable cost reductions at those EGUs would cause them to become more competitive compared to other EGUs and increase their generation, leading to smaller overall reductions in CO2 emissions (depending on the CO2 emission rates of the displaced generating capacity).” 80 Fed. Reg. 64,745 (Oct. 23, 2015).

On December 28, 2017, EPA released an [advance notice of proposed rulemaking](https://www.gpo.gov/fdsys/pkg/FR-2017-12-28/pdf/2017-27793.pdf) (ANPRM) requesting comment on a potential CPP replacement rule under the assumption that EPA finalizes the revised BSER interpretation in the proposed repeal rule. The ANPRM singles out heat rate improvements at individual power plants as the key approach to reduce CO2 emissions from power plants under the new legal interpretation. NACAA submitted [comments](http://4cleanair.org/sites/default/files/Documents/NACAACPPANPRMComments-Final-02262018.pdf) to the ANPRM on February 26, 2018.

**DEVELOMENT OF POTENTIAL COMMENTS**

The April 11 call will be structured to discuss the following potential comment positions and will reserve time to address any additional comment areas suggested by call participants.

1. The Significance of the 2009 Endangerment Finding and Subsequent Scientific Research

Application of Section 111 of the Clean Air Act requires a finding that a source category “causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.” 42. U.S.C § 7411(b)(1)(A). While EPA’s 2015 Clean Power Plan rule includes a discussion of the agency’s 2009 Endangerment Finding, an assessment of the significance of CO2 emissions from the power sector, and a discussion of advances in climate science between 2009 and 2015, the proposed repeal rule neither examines nor updates the scientific basis or legal rational for regulating CO2 emissions from the power sector.

*The call will discuss the following potential comment positions:*

* EPA’s proposed repeal rule does not discuss the scientific basis and related legal obligation for EPA to regulate greenhouse gasses from the power sector. Any final Clean Power Plan repeal rule should address both issues as part of the record, including a summary of developments in climate science since the Clean Power Plan’s finalization in 2015.
* Subsequent scientific assessments have not contradicted EPA’s 2009 Endangerment Finding, in fact it has been strengthened by them, and it presents an ongoing legal obligation for EPA to address the emission of air pollutants that contribute to climate change.
* EPA’s 2009 Endangerment Finding, the agency’s review of climate science in the final Clean Power Plan rule, more recent scientific assessments, and state and local experiences provide confirming evidence that the climate is changing and will impose significant adverse impacts across the U.S. and the globe.

1. Broader Policy Issues Related to the CO2 Mitigation Measures Relied on by the Clean Power Plan

EPA’s proposed Clean Power Plan repeal requests comment on the policy implications of the agency’s proposed reinterpretation of BSER to eliminate both of the generation shifting building blocks. *See* 83 Fed. Reg. 48,042 (Oct. 16, 2017).

*The call will discuss the following potential comment positions:*

* EPA has an extensive and longstanding history of regulating air pollution from the power sector.
* Separate from the legal question of whether all of the Clean Power Plan building blocks may be included in BSER, all three closely align with recent power sector trends. The U.S. power sector has excelled at demonstrating significant, low cost reductions in CO2 emissions in recent years.
* The proposed repeal rule occurs against a backdrop of state efforts to address climate change, and the record should acknowledge the significant progress made by many states to reduce their greenhouse gas emissions from the power sector.
* Revisiting the Clean Power Plan rule increases uncertainty. Eliminating the Clean Power Plan’s regulatory framework will provide less certainty for power plant owners and operators who are investing in infrastructure and reducing CO2 emissions. This, in turn, will make it more challenging for state and local officials to anticipate emissions from the power sector in order to plan for the attainment and maintenance of federal air quality standards.

1. New Approaches in EPA’s RIA Analysis

EPA’s [Regulatory Impact Analysis](https://www.epa.gov/sites/production/files/2017-10/documents/ria_proposed-cpp-repeal_2017-10_0.pdf) for the proposed Clean Power Plan repeal includes new approaches to assess the foregone environmental and public health benefits if the Clean Power Plan is repealed. In particular, the RIA deviates from EPA’s traditional method for calculating PM2.5 co-benefits by including two new approaches that assume zero health benefits for reduced PM2.5 concentrations in areas meeting the PM2.5 National Ambient Air Quality Standard (NAAQS) and for PM2.5 concentrations below the “lowest measured level” threshold as defined in certain health studies.

*The call will discuss the following potential comment positions:*

* It is critically important that the RIA for EPA’s Clean Power Plan repeal rule assess the full range of health and environmental impacts and that its assessment reflects the best science.
* The RIA’s alternate assessments of PM2.5 benefits deviate from EPA practice and are presented without adequate justification. The assumption of zero health benefits at low PM2.5 thresholds is contradicted by scientific analysis cited within the RIA, which rejects the concept of a threshold below which health effects disappear, and by more recent studies confirming adverse health impacts at concentrations below the NAAQS. Without firmer reasoning and scientific foundation, EPA’s truncated approach to assessing PM2.5 benefits should not be included in the RIA for the Clean Power Plan repeal, nor should it be applied to other EPA rulemakings.