**NACAA Discussion on Proposed Section 111 Rulemaking for GHG Emissions from Power Plants**

**June 14, 2023**

EPA is seeking comment on its May 10, 2023 proposed emission guidelines and new source performance standards for electric generating units. NACAA is considering a letter providing comments before the deadline of July 24, 2023 (and we have asked for a comment period extension). *State and local agencies are strongly urged to submit their own comments as well.*

**Need a refresher on what’s in the proposed rule?**

* EPA’s main Power Plant GHG Proposal [website](https://www.epa.gov/stationary-sources-air-pollution/nsps-ghg-emissions-new-modified-and-reconstructed-electric-utility).
* NACAA’s Miles Keogh provided an overview of the proposal in “plain English” with Columbia School of Law in this one hour recorded webcast [here](https://c40.zoom.us/rec/play/CKJCgsU4KdMTyxb01wfhh94Z3zPDKtrMyj1gNodEJqgHpnYejYC0lzCm7S79sQwk3TnBd5uIeEKyUfcE.r-I-0MJ1bDI96y4Y?canPlayFromShare=true&from=share_recording_detail&continueMode=true&componentName=rec-play&originRequestUrl=https%3A%2F%2Fc40.zoom.us%2Frec%2Fshare%2FWbgE7q5fA7Ntqdgt1YB_TX3lDcUVzeKlbos47yOAvv7mSImOjR8ehVchmBNjes7y.GWQFp6WI3anwzAYh%2520%2520Passcode%3A%2520LWeUa44%24).
* You can find a useful one-page chart of performance standards described in the rule [here](https://www.4cleanair.org/wp-content/uploads/111RuleProposal-OverviewChart_05122023.pdf).

**Questions to guide discussion:**

1. EPA’s rule applies to existing coal, oil, and gas fired units, and to new gas fired units. Do members want to comment on whether the proposed rule applies to the right kinds of plants?
2. Is the 300MW threshold too low/high? Are the described capacity factors too lenient/strict?  Should other units be captured in this rule? EPA said it seeks comment for a potential future rule about non-baseload or smaller plants.
3. EPA has “no backsliding” requirements for plants that plan to shut down and will comply in the interim with operational best practices. Are there any concerns about EPA’s baseline rate methodology (which could allow 0-2 standard deviations / 0-10% increase in emissions)? Should plants comply with the baseline rate as soon as it’s in an approved state plan? What happens if a plan isn’t approved?
4. Compliance begins in 2030 with additional increments occurring until 2040. Are there aspects or additions that could be timed differently (especially things that could get reductions earlier than 2030-2032)? Do steps need to be articulated for after 2040?
5. Compliance with the proposed emissions rates for coal units would be determined on an annual basis for this rule (dividing total mass emitted by production for the period, to get the rate). Should it be continuously demonstrated on a 30-day rolling average basis, as occurs with other rules? Should SSM events be included?
6. Compliance for new NGCCTs is measured on a 12 month rolling average. Should the rule require CEMs, or do fuel use and carbon content calculations used for the existing [GHG Reporting Rule](https://www.epa.gov/ghgreporting) suffice, as EPA proposes?
7. For gas co-firing, is 40% co-firing the right number?
8. A 20% capacity restriction for near term retiring plants yields more stringent emission limits than the 40% gas co-firing pathway for medium term retirements. Should those be better aligned?
9. Does the association want to comment on whether CCS is adequately demonstrated?
10. Does the association want to comment on whether hydrogen co-firing is adequately demonstrated, both technically and in terms of achievable emissions reductions?
11. If Hydrogen co-firing is not adequately demonstrated, should the BSER be set only using CCS?
12. Does the rule satisfactorily address increases in NOx emissions that can be caused by hydrogen co-firing?
13. Does the rule adequately explore emissions from hydrogen production in its “well to gate” methodology? The rule calls for clean hydrogen production to align with a U.S. Department of Treasury definition being developed for compliance with IRA Sect. 45V tax incentives, which has not yet begun being drafted and will go through notice and comment. Should EPA plan to finalize the rule given that it depends on that definition, only after Treasury issues its definition of how low-GHG hydrogen can be produced to qualify for a 45v tax incentive?
14. Are there areas the agency hasn’t modeled or considered (pipeline implications, environmental justice factors, etc.)?
15. EPA says it will find presumptively approvable unit-specific limitations that use its methods but that it will allow variations based on RULOF procedures and says it encourages flexibilities like trading and averaging. Is there interest in more detail about getting existing trading programs like RGGI to be eligible, hypothetically? Would NACAA members want guidance on their inclusion?
16. Are there aspects of the proposal that would interfere with state GHG reduction programs or other regulations or laws?
17. Is 24 months enough time to develop a state plan? In comments on proposed 111 Implementing Regs ([here](https://www.4cleanair.org/wp-content/uploads/NACAA_111d_Implementing_Regs_Comments-_-02272023.pdf)) we called for 3 years, NACAA said “Responding to the court’s mandate in *ALA v. EPA* to consider public health outcomes is delivered more effectively by allowing for more state engagement with affected constituencies - bringing their insights and needs into the plan - than by curtailing the time available for our agencies to engage with these constituencies.” What factors affect your ability to meet that timeframe?
18. In our comments on the proposed 111 Implementing Regulations, NACAA said that if more time was needed, “An alternative to this mechanism could be an extension request process that allows an agency to identify progress made, impacts of their specific state process on timing, and a commitment to alternative timing with progress checkpoints”. Do we still support these flexibilities?
19. Does the association support being able to use either mass- or rate-based approaches?
20. For meaningful engagement, EPA has pointed to requirements in its Section 111 Implementing Regs proposal. Has EPA been sufficiently descriptive? NACAA said in our [comment letter](https://www.4cleanair.org/wp-content/uploads/NACAA_111d_Implementing_Regs_Comments-_-02272023.pdf) about that (as yet unfinalized) proposal: “EPA should, as it promulgates information about an EG, be specific about what will be approvable and up-front about providing guidance to states that identifies communication objectives and outlines the process and methods of engagement.”
21. EPA proposes that units can keep their options open with a “dual path performance standard” in state plans until 2030 without needing to re-file a plan. The dual performance standard would require tracking progress against both compliance pathways. Is this overly complicated, or worth the flexibility?
22. What institutional gaps might need to be filled at your agency to implement this proposal? Is there a federal action that would get you what you need?
23. Can we get retirement commitments enforced?
24. Does our association want to comment on offramps for reliability?
25. Do we need to comment on legislative limitations on studying greenhouse gas implications of power plant actions that exist in some states?
26. What other issue areas or suggestions do members have?