NACAA
national association of clean air agencies

February 26, 2018

U.S. Environmental Protection Agency
EPA Docket Center
Mail Code: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Attention Docket ID No. EPA-HQ-OAR-2017-0545

To Whom It May Concern:

On behalf of the National Association of Clean Air Agencies (NACAA), we are submitting the following comments on U.S. Environmental Protection Agency's (EPA's) advance notice of proposed rulemaking (ANPRM) regarding *State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units*, which was published in the *Federal Register* on December 28, 2017 (81 Fed. Reg. 61,507). NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. These comments are based on that experience. The views expressed do not represent the positions of every state and local air pollution control agency in the country.

This letter is organized according to the issue areas defined by EPA in the ANPRM. Each comment area heading is accompanied with a parenthetical label corresponding to EPA's comment categories.

I. The Roles and Responsibilities of the States and EPA

a. General Comments – (1)

The ANPRM requests comment on the roles and responsibilities of EPA and of state agencies regarding the regulation of greenhouse gas emissions from the power sector under Section 111(d) of the Clean Air Act. NACAA submits the following general comments on those roles.

State and local air agencies play a special role under Section 111(d), which is reflected in EPA's implementing regulations for Section 111(d). Based on this longstanding framework, EPA develops emission guidelines that define a best system of emission reduction (BSER) for a designated air pollutant from a designated category of existing stationary sources. States then submit implementation plans within the framework created

by the guidelines to EPA for approval. The agency reviews state plans for consistency with the emission guidelines, a determination that is based on stringency and not on procedural compliance. If a state plan is found to be non-compliant, EPA is required to develop a substitute federal plan to meet the emission guidelines. This approach contrasts with that of section 111(b), which is more prescriptive and requires EPA to set direct emission limits based on a BSER determination for new, modified and reconstructed sources, but aligns with aspects of EPA's Section 110 National Ambient Air Quality Standards program, which sets federal air quality standards but also grants states flexibility to develop implementation plans to meet the standards. Section 111(d) incorporates elements of cooperative federalism by asking states and EPA to work in partnership and by affording states additional and very important flexibility to chart compliance pathways, which can include emission limitations more stringent than the federal guidelines. EPA should retain its longstanding reliance on mandatory federal minimums coupled with state implementation flexibility to meet or exceed those environmental goals.

In order to achieve the cooperative potential of the Section 111(d) program, it is essential that EPA consult with state and local air agencies as it continues to review replacement options for the Clean Power Plan. While the Clean Power Plan's scope implicates a wide range of stakeholders, state and local air agencies have unique regulatory expertise and will be charged with implementing the rule. EPA should work closely with state and local agencies as it moves forward on a Clean Power Plan replacement.

b. Development of Sample State Plan Text – (1b)

The ANPRM specifically requests comment on whether, as a supplement to the emission guidelines, EPA should provide sample state plan text. NACAA supports the development of an example state plan and especially model rule language that can be incorporated by reference to meet the emission guidelines. The opportunity to adopt pre-approved rule language, in addition to the option to develop a unique state plan in accordance with the guidelines, is consistent with a cooperative federalism approach and will expand state compliance options while conserving state resources.

c. Interactions with State Greenhouse Gas Programs – (1b)

The ANPRM acknowledges that many states have already developed or are in the process of developing programs to reduce greenhouse gas emissions from the power sector and solicits comment on the potential interactions between those programs and a Clean Power Plan replacement rule. EPA specifically asks for comment on whether these non-federal programs could be used to meet Clean Air Act obligations under Section 111(d).

While there is widespread support from air agencies for an approach that awards federal credit for state programs designed to reduce greenhouse gas emissions from the power sector, the agency should exercise care when establishing crediting guidance. If EPA adopts the legal interpretation for BSER in the proposed Clean Power Plan repeal rule, it becomes particularly important that any state-level measures credited toward federal compliance be at least as stringent as the CPP replacement rule. In that case, creditable

state programs must be able to demonstrate measurable CO_2 emission reductions from affected facilities and be based on emission limitations enforceable at the sources. However EPA ultimately resolves these issues, the agency must provide clear guidance so that state and local programs can pursue crediting opportunities with a high degree of certainty.

The potential interactions between a federal replacement rule and separate state programs are complex and raise many additional issues. It is critical that any Clean Power Plan replacement rule be designed to avoid interfering with existing and mature state programs and that the rule not preclude the development of new state programs. States should continue to have the discretion to pursue greenhouse gas mitigation opportunities that go beyond federal standards in scope and stringency. Relatedly, a Clean Power Plan replacement rule should not impose additional costs on the administration or development of state programs.

II. The Best System of Emission Reduction for Existing EGUs – (3)

a. Consideration of State Program Data – (3)

EPA requests comment on how state programs may affect the benefits and costs of a Clean Power Plan replacement rule. States with existing climate programs have accumulated significant data on the costs and benefits of polices that mitigate greenhouse gas emissions from the power sector, and these data would serve as a natural starting point for EPA's analysis of a new rule. EPA should collect and review information related to state experiences as it develops a record for a Clean Power Plan replacement. As emphasized above, it is important that a federal standard designed to lower power sector greenhouse gas emissions avoid harming state and local programs. Considering state and local program data as part of the replacement rule record would assist EPA in that goal.

b. Technologies to Improve Heat Rate – (3a)

EPA solicits comment on the technologies and practices that are available to improve power plant heat rates. In response, NACAA is submitting Chapter 1 of NACAA's *Implementing EPA's Clean Power Plan: A Menu of Options*, which discusses opportunities to improve the heat rates of coal-fired power plants. The *Menu*, which was developed to comprehensively identify a full suite of technology, policy and program options available to reduce greenhouse gas emissions from the power sector, identifies technologies and processes to improve power plant thermal efficiency. The *Menu* also notes that their availability at individual units will vary based on design or operational requirements, the level of improvements already undertaken and the capital costs of improvement. EPA should address these issues and carefully weigh comments from individual air agencies explaining how these variations and others are manifest across the affected units under their jurisdiction and could impact EPA's BSER analysis. The *Menu* also includes additional information that may be helpful to the agency, including state and local implementation experiences, potential greenhouse gas emission reductions and co-benefits related to other state and local obligations under the Clean Air Act. As it develops a new

administrative record within the confines of its revised BSER interpretation, Chapter 1 of NACAA's Menu of Options will be invaluable as a resource to EPA.

c. Implications of a Potential "Rebound Effect" – (3a)

EPA requests comment on whether and how to address a potential "rebound effect" from a Clean Power Plan replacement rule that relies solely on heat rate improvements for the BSER. According to the ANPRM, the rebound effect refers to the prediction that unit-level heat rate improvements will lower operating costs at coal-fired power plants and increase their utilization, thereby offsetting potential greenhouse gas reductions. Potential solutions to the rebound effect are offered in the sections below commenting on potential interactions with the NSR program as well as the comprehensive BSER analysis that should accompany any replacement rule.

Beyond the rebound effect described in the ANPRM, we also note that a replacement rule based solely on heat rate improvements may have long-term, negative criteria pollutant and greenhouse gas emissions implications if plant upgrades used to comply with a replacement rule also extend the useful life of affected facilities. Such an upgrade may trigger 111(b). Any emissions increase due to additional years of operation would likely dwarf increases due to additional operating hours within a facility's existing useful life. These potential increases have implications for public health, the environment and states' ability to meet their Clean Air Act obligations. Further, as many of the non-CO_2 air pollutants that would be released from additional hours or years of operation have more localized health impacts, there may be environmental justice implications for EPA to weigh carefully as it develops a Clean Power Plan replacement rule, particularly for areas near facilities with shorter stack heights.

d. Presumptively Approvable Emission Limits – (3b)

The ANPRM requests comment on whether EPA should provide presumptively approvable emission limitations as part of the emission guidelines for a Clean Power Plan replacement rule. NACAA supports the development of presumptively approvable emission limits that reflect variations across different subcategories of affected units. States would then be authorized to review their inventory of affected units to determine which presumptively approvable emission limitation applies. This approach, coupled with the flexibility for states to develop their own emission limitations based on the guidelines, is consistent with cooperative federalism principles, will expand state compliance options, and could help agencies minimize implementation costs.

III. Potential Interactions with New Source Review – (4)

EPA requests comment on potential interactions between the New Source Review (NSR) preconstruction permitting program[1] and Section 111(d) emission guidelines. In

[1] NSR protects the public from harmful increases in air pollution by requiring major sources to obtain a permit with emission limits based on Best Available Control Technology (under the Prevention of Significant Deterioration program) or the Lowest Achievable Emission Rate (under the Nonattainment New Source

particular, EPA seeks input on potential NSR "rule or policy changes" that would allow EGUs to undertake efficiency improvement projects as part of a Section 111(d) compliance strategy without triggering NSR permitting requirements.

In NACAA's view, the Section 111(d) emission guidelines and NSR permitting programs should remain distinct and separate. Each program serves a specific and important regulatory purpose and offers air quality protections that do not overlap. NACAA does not support development of any "rule or policy change" regarding NSR should EPA proceed with finalizing a replacement rule.

Specifically, the NSR program should not be relaxed, and no exemptions should be created, to allow facilities to undertake efficiency-improvement projects that significantly increase emissions without undergoing NSR permitting. While it is true that heat rate improvement projects can result in greater unit availability and increase in dispatching, it is also true that energy efficiency projects generally *decrease* a unit's hourly emissions rate – thus, the facility's total *amount* of emissions need not increase. There are already flexible permitting tools available to sources under the Clean Air Act to avoid NSR permitting, and these tools are effective and sufficient to accommodate efficiency projects undertaken as part of a Section 111(d) compliance strategy. Sources can, for example, accept an enforceable limit on annual hours of operation that would keep emissions below a level that would trigger NSR. Plantwide Applicability Limit permits allow a source to undertake a modification at an individual unit and avoid NSR if the plant continues to operate under a source-wide emissions cap.

But if a facility elects to modify an EGU and operate in a manner that would significantly increase annual emissions – potentially exposing the public to harmful levels of pollutants such as sulfur dioxide, nitrogen oxides, particulate matter, mercury and other air toxics – a robust NSR program must serve as the backstop to protect public health and the environment through the installation of appropriate emission controls. This is the very issue the NSR program was designed to address, and it does so effectively. NSR also provides a mechanism to help address the rebound effect identified by EPA in the ANPRM. A Section 111(d) rule that would allow sources to significantly increase their emissions would contradict the Clean Air Act and cannot be considered the best system of emission reduction.

IV. Other Issues – (5)

In addition to the above comments, which fall under EPA's prescribed comment categories, NACAA submits two additional comments to assist EPA's development of emission guidelines for greenhouse gas emission from existing power plants.

Review program) before undertaking a physical or operational change that results in a significant emissions increase.

a. Federal Funding for State and Local Agencies

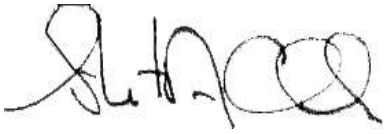
One common theme of NACAA's ANPRM comments is to encourage Clean Power Plan replacement rule design choices that enhance state flexibility and minimize state implementation resource requirements. Nonetheless, a replacement rule will almost certainly impose additional costs on state and local air pollution control agencies. NACAA urges EPA to ensure that these costs are paired with supplemental federal support and that they not come at the expense of resources already allocated for existing air programs.

b. Comprehensive BSER Analysis

Any regulatory process to consider replacement options for the Clean Power Plan requires a full technology review to identify BSER. Though EPA has already identified power plant heat rate improvements as an approach that would fall within BSER under the proposed Clean Power Plan repeal rule, there are additional technology and process options to reduce greenhouse emissions from the power sector. NACAA's *Menu of Options*, in addition to the chapter on heat rate improvements already mentioned, includes an additional 24 chapters identifying technologies, polices and existing state programs that are already reducing greenhouse gas emissions from the power sector. The *Menu* is included as an attachment to this comment letter. While some chapters will be inapplicable under the legal interpretation offered in EPA's proposed repeal rule, others describe reduction approaches that may be applied "to or at" affected sources. As EPA considers Clean Power Plan replacement options, the additional strategies within the *Menu* may be a helpful resource to determine which, if any, are consistent with the Agency's proposed reinterpretation of BSER. The inclusion of additional non-heat rate technologies and approaches with the BSER may also provide an opportunity to mitigate potential greenhouse gas emission increases from the rebound effect.

We appreciate this opportunity to submit comments as the EPA considers options for a replacement Clean Power Plan rule. Please feel free to contact either of us or Phil Assmus, NACAA Senior Staff Associate, if you have any questions.

Sincerely,



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