



March 20, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Re: Standards of Performance for Greenhouse Gas Emissions from New
Stationary Sources: Electric Utility Generating Units; Docket I.D. No.
EPA-HQ-OAR-2013-0495

Dear Administrator McCarthy:

The West Virginia Chamber of Commerce joins Governor Tomblin and many West Virginians and others across the nation in expressing our concern and objection to your proposal to establish new source performance standards related to emissions of greenhouse gases from coal and natural gas electric generating units. 79 Fed. Reg. 1430 (January 8, 2014).

The West Virginia Chamber of Commerce is the largest trade association in West Virginia. Its members employ more than half of all of private sector workers in our state. Beyond our concern over the significant negative impact this rule, if adopted, would have on the citizens of the State, we believe your agency has failed to satisfy the legal requirements of the Clean Air Act.

The Clean Air Act provides that any such standards must reflect:

... the degree of emission limitations achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. Clean Air Act, §111(a)(1).

We share the concern that has been raised by many others that carbon capture and sequestration (CCS) does not qualify under the statutory test of a “best system of emission reduction” [“BSER”] that is both “achievable” and “adequately demonstrated”. Beyond the fact that CCS is not in operation anywhere in the world on a commercial scale electric generation unit and beyond the fact that the Energy Policy Act of 2005 expressly prohibits EPA from using Clean Coal Power Initiative (CCPI) financed projects in determining whether such technology has been adequately demonstrated, critical state-level issues remain unresolved in the vast majority of the states.

In an effort to assess the status of State-level efforts to facilitate implementation of CCS, members of the West Virginia Chamber’s Environmental Committee have recently conducted a survey of the law, rules and policies of all 50 states.

The Chamber's CCS survey of the 50 states specifically addresses the following questions:

1. Does the state have primacy to implement the Class VI UIC program related to the underground injection of CO₂?
2. Does the state specify what property rights must be secured for the geologic storage of CO₂?
3. Does the state have any streamlined procedures for the taking, unitization or use of property rights related to the geologic storage of CO₂?
4. Does the state provide for the mitigation of the long term post closure liabilities that are associated with facilities that store CO₂ in geologic formations?
5. Does the state have any streamlined procedures for the siting or construction of pipelines used to transport CO₂?

Out of the 50 states, no state has yet received delegation of the Class VI UIC program as raised by Question 1, although one state has an application pending for delegation of the program.

Remarkably, only 12 states have addressed any of the remaining 4 questions in a manner that would have applicability to a new coal burning Electric Generating Unit (EGU). Specifically,

- only 5 states have addressed what property right must be secured for the taking of pore space;
- only 7 states have developed any streamlined procedures for acquiring pore space;
- only 4 states have developed any additional programs to address long term care; and
- only 12 states have provided any streamlined process for acquiring rights-of-way for CO₂ pipelines

Attached to and incorporated into these comments is the report of the Chamber's Environmental Committee containing the results of this survey.

While it is apparent that the states are clearly trying to provide leadership on the application of CCS, the result has been an inconsistent effort in a small number of states. The absence of consistent state programs addressing issues of such critical importance to CCS implementation as property ownership and long term liability provides additional bases for concern that CCS is neither "achievable" nor is it "adequately demonstrated" as those terms are to be applied in this situation. See, *Essex Chem. V. Ruckelshaus*, 486 F.2d 429 (D.C. Cir. 1973).

Accordingly, the West Virginia Chamber of Commerce urges that the proposed rule not be finalized inasmuch as it fails to satisfy the legal mandates of the Clean Air Act.

Very truly yours,



Stephen G. Roberts
President

cc: EPA Docket Center
email: a-and-r-docket@epa.gov
Attention: Docket I.D. No. EPA-HQ-OAR-2013-0495

Dr. Nick Hutson
Energy Strategies Group
Sector Policies and Programs Division (D243-01)
U.S. EPA
Research Triangle Park, NC 27711
Email: hutson.nick@epa.gov

The Honorable Earl Ray Tomblin
Governor, State of West Virginia
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

The Honorable John D. Rockefeller IV
531 Hart Senate Office Building
Washington, DC 20510

The Honorable Joseph Manchin
306 Hart Senate Office Building
Washington DC, 20510

The Honorable Shelley Moore Capito
2366 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David B. McKinley
412 Cannon House Office Building
Washington, DC 20515

The Honorable Nick J. Rahall, II
2307 Rayburn House Office Building
Washington, DC 20515