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U.S. Environmental Protection Agency
Air and Radiation Docket and Information Center
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1301 Constitution Ave. N.W.
Washington, DC 20460

RE: Comments on Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations

The Virginia Department of Environmental Quality (Virginia DEQ) appreciates the opportunity to submit written comments[1] regarding the October 23, 2015, U.S. Environmental Protection Agency (EPA) proposed rule, "Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations" (80 FR 64662). In general, the Commonwealth of Virginia supports the promulgation of rate- and mass-based model trading rules that would be presumptively approvable (but customizable) and provide a streamlined pathway for states to become "trading ready," while maintaining its ability to achieve significant nationwide reductions in carbon dioxide (CO_2) emissions and reduced compliance costs. In our comments, Virginia DEQ hopes to assist EPA in fashioning appropriately-timed final model trading rules, a nationally applicable and rate-based trading infrastructure, and improvements to state Clean Power Plan (CPP) implementation plan submittal procedures.

1. Virginia Recommends EPA Expedite Promulgation of the Model Rules

On August 3, 2015, the EPA finalized CO_2 emission guidelines for two categories of existing power plants under § 111(d) of the federal Clean Air Act. The final rule, referred to as the Clean Power Plan (CPP), requires each state to develop its own plan

[1] Emailed to A-and-R Docket@epa.gov.

that applies equivalent standards of performance to affected electric generating units. If a state fails to submit an adequate plan, the Act authorizes EPA to develop and implement a federal plan for a state. EPA proposed mass- and rate-based versions of a federal plan as well as mass- and rate-based model trading rules on August 3, 2016, which states could elect to adopt or to adapt by submitting their own provisions subject to EPA approval. A key benefit of the model rules is that they would be presumptively approvable as a state plan, and a state can choose mass or rate. However, states are required to submit CPP compliance plans or initial submittals by September 6, 2016, but EPA intends to finalize both mass- and rate-based trading rules in summer 2016.[2] To be of best value to states in evaluating compliance options in advance of the September 6, 2016 deadline, Virginia DEQ recommends that EPA expedite finalizing the final model trading rules.

2. Virginia Recommends EPA Facilitate Development of Nationally Applicable Rate-Based Interstate Trading Infrastructure

EPA, most states, and other entities have considerable experience implementing mass-based emission budget trading programs, and adequate trading infrastructure and markets exist to accommodate allowance trading under a mass-based trading program. Mass-based trading programs provide flexibility to covered sources to determine the best means of achieving the mass emission standard, which may include renewable energy and demand-side energy efficiency measures that don't require quantification and verification of MWh of generation or savings. As a result, a mass-based emission budget trading program is relatively straightforward and cost effective for states to implement and administer.

Unlike a mass-based trading compliance approach, however, adoption of extensive evaluation, verification, measurement, monitoring and reporting measures will be necessary in order to create tradable emission reduction credits under a rate-based approach.[3] The infrastructure essential to implement state administered rate-based interstate trading currently is insufficient to meet these requirements. Virginia DEQ recommends that EPA facilitate the development of a nationally applicable, comprehensive infrastructure to foster the interstate trading of rate-based emission reduction credits. A nationally applicable rate-based interstate trading infrastructure could include, among other items, a secure and transparent national registry for verifying, issuing, tracking, trading, and retiring emission reduction credits under a rate-

[2] Proposed Federal Plan and Model Rules, at 64968.

[3] Under a rate-based compliance approach, covered sources subject to emission performance requirements for GHGs will either needed to emit at or below their rate-based emission standard, or they will need to acquire emission reduction credits (ERCs) to achieve compliance. An ERC is a tradable compliance unit representing one MWh or electric generation (or savings) with zero associated CO_2 emissions. ERCs may be used to adjust the measured and reported CO_2 emission rate of an affected source when demonstrating compliance. Evaluation, measurement, verification, monitoring and verification methods are required to quantify and verify the MWh from renewable energy, demand-side energy efficiency, and other eligible measures to ensure that the resulting generation or savings are quantifiable and verifiable.

based compliance approach. EPA's development of such a nationally applicable rate-based interstate trading infrastructure would enhance state flexibility by levelizing to some degree the burden of a state's obligations when choosing between a mass-based or rate-based compliance approach to the CPP.

3. Virginia Recommends EPA Improve the Procedures States Must Follow When Submitting Their Clean Power Plans

§ 111(d) of the federal Clean Air Act requires that the Administrator prescribe regulations which shall establish a procedure similar to that provided by § 110 of the Act that governs state implementation plans (SIPs) for criteria pollutants. While DEQ generally agree with formalizing certain procedural requirements of 40 CFR Part 51 (regulations implementing § 110 SIPs) into 40 CFR Part 60 (regulations implementing § 111 plans), certain issues described in greater detail below must be resolved.

40 CFR 60.27(g)(2), Administrative criteria.

EPA proposes to amend the procedural requirements for § 111(d) plans found in Subpart B of 40 CFR Part 60 by adding 40 CFR 60.27(g)(2). These new provisions essentially copy the procedural SIP requirements of 40 CFR Part 51, Appendix V §§ 2.0 and 2.1. This is appropriate; generally, Virginia DEQ has looked to Part 51 for procedures when absent from Part 60. With a few minor issues Virginia DEQ agrees that adding this provision would be helpful. In particular, this new section should not conflict with the existing Subpart B provisions of 40 CFR 60.23. An example of such a conflict is the following: the proposed 40 CFR 60.27(g)(2)(viii) requires that the state provide a compilation of public comments and the state's response thereto, while the existing 40 CFR 60.23(f)(2) requires that the state provide a list of witnesses and their organizational affiliations, if any, appearing at the hearing and a brief written summary of each presentation or written submission. States now have to refer to two separate provisions to address a single issue. It would be more logical and simple for EPA to reconcile these (and other related) provisions by moving the complete requirement to one section or another and then deleting any resulting redundancies. In other words, if EPA now wants states to respond to comments, why not simply amend the original requirement?

In a related matter, simply copying text from Part 51 to Part 60 will not always work. For example, electronic submittal of the CPP is mandatory, and electronic submittal of SIPs is now available through eSIP. Neither Part 51 nor 60 have yet to catch up with this reality; however, the proposed new processing elements act as if paper copies and CDs were the only available means of plan transmission. Virginia DEQ does not ask that submittal of all § 111(d) plans come under the same overly extensive requirements as the CPP under Subpart UUUU of 40 CFR Part 60, but EPA needs to recognize that plan transmittals are continuing to evolve. A more general requirement to the effect that plans need to be submitted in a manner and format agreed upon by EPA its processing rules, which will always be a step behind technology.

Virginia DEQ believes that this is likely better addressed in a separate administrative rulemaking (covering Parts 51, 52, and 60) than at this time because this issue has numerous components not directly linked to the overall technical rulemaking. For example, on December 29, 2015, EPA issued proposed "Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs under 40 CFR Part 52" (80 FR 81234). Virginia DEQ intends to comment on this revision for a number of reasons, but in particular that EPA must move from making such administrative changes in piecemeal fashion to undertaking a single, separate rulemaking for the sole purpose of addressing procedural issues. Such as single mechanism could include the current proposal for permit notices, reconciling 40 CFR Part 60 submittals with 40 CFR Part 51 (as currently proposed under the Federal Plan and Model Trading Rules and discussed in these comments), updating the notice requirements under 40 CFR 51.103 and Appendix V, and other similar revisions as appropriate.

At a minimum, at this time, the conflicts and redundancies discussed above need to be resolved.

<u>40 CFR 60.27(g)(3), Technical criteria.</u>

It appears that the proposed addition of 40 CFR 60.27(g)(3) has been derived from the Clean Power Plan Emissions Guidelines of 40 CFR 60.5740, 5745, and 5775 (Subpart UUUU). Adding these elements is confusing and redundant, conflicts with other requirements, and is simply inappropriate for the other classes of § 111(d) sources. Virginia DEQ strongly recommends that Subpart B continue to be the basis for general plan provisions and that the proposed elements not be added.

As shown in the table below, most of the proposed 60.27(g)(3) requirements are already addressed in Part 51 and Part 60.

Plan Requirement	Part 51, Appendix V	Part 60, Subpart B (current)	40 CFR 60.27, Subpart B (proposed)
Inventory	2.2(b)	60.25(a)	60.27(3)(i) and (ii)
Emission standards		60.27(3)(ii)	60.24(a)
Monitoring		60.27(3)(ii)	60.25(b)
Recordkeeping and reporting	2.2(g)	60.27(3)(ii) and (v)	60.25(b)
Compliance	2.2(h)	60.27(3)(ii) and (iii)	60.24(a)

Additionally, although there are no corresponding items in Subpart B for the proposed 60.27(g)(3)(iv) (demonstration that the State plan submittal is projected to achieve emissions performance under the applicable emission guidelines) and (vi) (demonstration that each emission standard is quantifiable, non-duplicative, permanent, verifiable, and enforceable), these provisions are irrelevant to a non-CPP rule and should not be included in the general provisions of Subpart B.

Again, the reconciliation of SIP and § 111(d) procedural requirements is likely better addressed in a separate administrative rulemaking than at this time. In the interests of accuracy and simplicity, Virginia DEQ recommends EPA undertake a single, separate rulemaking for the sole purpose of addressing procedural issues which affect programs beyond § 111(d) and the CPP. At a minimum, however, these provisions should not be added at this time.

4. Conclusion

Virginia DEQ appreciates this opportunity to comment on the proposed Federal Plan and Model Trading Rules. As discussed above, while Virginia is supportive of model trading rules that achieve meaningful reductions in CO_2 emissions and compliance cost, we are concerned about EPA's intended timeframe for finalizing both mass- and rate-based model rules, believe a nationally applicable and rate-based trading infrastructure is desirable, and make suggestions to improve EPA's proposed procedures for plan submittals. Virginia DEQ looks forward to continue working with EPA through the finalization of model trading rules and the implementation of a state CPP compliance plan.

Sincerely,

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Director
Air Division

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