

May 8, 2014

**Regina McCarthy**  
**Administrator**  
**U.S. Environmental Protection Agency**  
**1200 Pennsylvania Avenue, N.W.**  
**Washington, DC 20460**

Dear Ms. McCarthy:

As EPA continues to develop guidelines for the States to use in regulating greenhouse gas (“GHG”) emissions from existing fossil fuel-fired electric generating units, we wish to offer our thoughts on how EPA should carry out its responsibilities and still respect the prerogatives granted to the States by the Clean Air Act (“CAA”). Our States have had a long and successful history of protecting the environment and our natural resources, while at the same time providing for economic development. We believe the following considerations will help us to continue environmentally responsible growth.

First, EPA should recognize that its role under the CAA is limited to establishing a procedure for State implementation of GHG performance standards. EPA’s role is not to set performance standards. CAA §111(d) allows EPA to establish only unit-specific guidelines that describe what control technologies have been adequately demonstrated as a general framework for States to develop and implement. States have the responsibility for developing plans that establish performance standards. We believe it is important to emphasize that EPA’s regulations allow States, under certain circumstances, to set less stringent performance standards or longer compliance schedules than EPA guidelines. Some States may be able to submit a plan that requires no reductions. EPA acknowledged in its 2010 report on Available and Emerging Technologies that determining unit-specific efficiency is dependent on a number of factors including, but not limited to, EGU thermodynamic cycle, coal rank and quality, plant size, pollution system, operating and maintenance practices, cooling system, geographic location, load generation characteristics, equipment manufacturer, and plant components.<sup>1</sup> It is not feasible for EPA to establish any assumed numeric efficiency to any existing unit, much less a numerical standard for the approximately 1,200 coal-fired EGUs in the country.

Second, the EPA should ensure that its guidelines allow States to set GHG performance standards that are based on measures that can be applied at each EGU rather than include activities beyond the unit itself (i.e. “outside the fence” approach).

Finally, given the almost certain litigation associated with a CAA §111(d) emission guideline, States are at risk if they move forward with developing and enacting State CAA §111(d) plans prior to the resolution of litigation. EPA can help States avoid expending their limited resources by simply including a timing provision in the CAA §111(d) guideline that requires State plans to

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<sup>1</sup> Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Coal-Fired Electric Generating Units, EPA Sector Policies and Programs Division, OAQPS, October 2010.  
<http://www.epa.gov/nsr/ghgdocs/electricgeneration.pdf>

be submitted after the conclusion of any legal challenges to the rule. Once the judicial review processes have run their course, each State can safely move forward developing plans that satisfy CAA §111(d).

EPA asked the States for input by November 2013 and stated that EPA's focus would then turn from soliciting feedback to developing the guidelines. Given the level of responsibility at the State level and the fact that EPA has not yet given any indication of its direction or options under consideration, we suggest that EPA's communications with the States continue to occur between now and June 2014 to give States adequate opportunity to provide input. We hope that as EPA develops the guidelines it will continue to openly communicate with the States to ensure that the States can provide substantive input on EPA's direction before the June 2014 proposal and have sufficient time and information to fulfill their obligations under the statute.

We look forward to working with EPA over the coming months to develop a program that meets the needs of our States.



John E. Skvarla, Secretary  
**North Carolina Department of Environment &  
Natural Resources**



Lance LeFleur, Director  
**Alabama Department of Environmental Management**



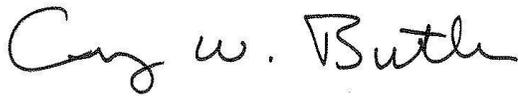
Randy C. Huffman, Secretary  
**West Virginia Department of Environmental  
Protection**



Thomas Easterly, Commissioner  
**Indiana Department of Environmental Management**



Trudy D. Fisher, Executive Director  
**Mississippi Department of Environmental Quality**



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**Wisconsin Department of Natural Resources**