



Bill Wehrum
Assistant Administrator
United States Environmental Protection Agency
Office of Air and Radiation, Mail Code 6101A
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

Re: Docket ID No. EPA-HQ-OAR-2017-0355

Dear Mr. Wehrum:

The Ohio Chamber of Commerce submits these comments in response to the Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking regarding Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units, also known as the Affordable Clean Energy (ACE) Rule (Docket ID: EPA-HQ-OAR-2017-0355).

We welcome EPA's efforts to repeal and replace the costly and unlawful Clean Power Plan (CPP) with the ACE rule. The ACE rule provides a dramatic improvement over the CPP. This rulemaking was accomplished from a truly collaborative effort between the federal government and stakeholders. The ACE rule promises to result in a more durable and achievable approach to addressing carbon emissions in a manner that prioritizes economic growth while respecting the clear boundaries of the Clean Air Act(CAA).

The foundation of this collaborative effort was an improved regulatory process that began with EPA seeking substantive feedback *prior* to development of the formal ACE proposal. This outreach resulted in more than 270,000 public comments that allowed citizens and stakeholders a chance to identify key priorities and concerns before EPA put "pen to paper" on the actual rule. This improved process will result in a better outcome and help EPA avoid a repeat of the CPP process that resulted in over 150 entities and 27 states, including Ohio, challenging the rule in court.

Beyond these foundational legal and process improvements, we want to call attention to the following key aspects of ACE, and several recommendations for further improvements:

State-driven

The proposed rule appropriately recognizes that states, not the federal government, have the primary responsibility for establishing and implementing standards of performance for power plants under Section 111(d) of the CAA. States are not only better equipped to understand their own energy resources and constraints, they have a long history of implementing laws and regulations pertaining to environmental and electricity matters across a diversity of state agencies and in cooperation with neighboring states and regional authorities. Accordingly, we commend EPA for its emphasis on this foundational principle and encourage the agency to ensure it remains a priority when the rulemaking is finalized and implemented. However, in light of limited state resources and the need to address numerous complex issues related to ACE implementation, we encourage EPA to provide additional guidance regarding the methodology and approach states should follow as they develop standards and associated implementation plans.

"Inside-the-fence"

The ACE proposal correctly recognizes that EPA's authority to set emissions standards for power plants under Section 111 of the CAA is limited to measures that can be applied at or to an existing stationary source (defined by the CAA as a "building, structure, facility, or installation"). Prior to the CPP, every regulation promulgated using this authority (more than 100 in total) respected the law's clear "inside-the-fence" requirement. By unlawfully expanding the statutory definitions of "best system of emission reduction" and "stationary source," the CPP would have required a fundamental restructuring of the power sector and compelled states, utilities, and other power suppliers to redesign their electricity infrastructure to adopt EPA's preferred sources of power. The guidelines set forth in the ACE proposal allow states and regulated entities to develop statewide emissions reductions plans that are demonstrated to be achievable and cost-effective *at each regulated facility*. We therefore strongly support the restoration of these "inside-the-fence" statutory requirements.

Consideration of remaining useful life and unit-specific factors

We commend EPA for allowing states to set their own standards based on the unique characteristics of each electric generation facility. For example, features such as the age and design of a unit, fuel type, historical upgrades, capacity factor, and market conditions vary widely across facilities. The CAA grants states significant flexibility to account for these factors in establishing performance standards. ACE sets forth a fair framework that will ensure development of standards that are truly achievable at individual sources. In particular, we applaud EPA's recognition of the CAA's requirement that states be allowed to consider the remaining useful life of facilities in making planning and compliance decisions. Decisions regarding units nearing retirement clearly require a different approach, and restoring the ability to consider these circumstances is a common-sense method.

Flexible and tailored compliance

In addition to ensuring any new guidance is based on state-driven, unit-specific performance standards, the ACE rule offers several improved compliance options. These include guidelines to evaluate potential for energy efficiency measures, and allowing three years to develop and submit implementation plans to EPA. However, we encourage EPA to consider additional compliance flexibilities that could enhance states' ability to pursue cost-effective emissions reductions, such as trading and averaging mechanisms, and recognition of efficiency investments at affected units before the ACE rule was finalized.

New Source Review

It has long been recognized that the New Source Review (NSR) pre-construction permitting program serves as an unnecessary impediment to investment and modernization at power plants and other industrial and manufacturing facilities. In some cases, this has even resulted in perverse incentives to continue operating older, less efficient facilities instead of investing in pollution-reducing upgrades and expansions that improve reliability, efficiency, and safety.

Appropriately, the ACE proposal identifies NSR permitting reform as key to enabling the technology investments and efficiency upgrades necessary to reduce power plant emissions rates. Specifically, the Ohio Chamber supports the use, as proposed by EPA, of an hourly emissions rate test to determine NSR applicability, which would provide a simpler, more straightforward method of determining whether a specific project will result in an applicable emissions increase.

This common sense approach is consistent with EPA's longstanding approach under the New Source Performance Standards and will help to provide much-needed regulatory certainty to businesses seeking to make improvements to existing facilities.

However, because the burden of NSR as currently implemented does not fall on the electricity sector alone, the Ohio Chamber strongly recommends that EPA broaden its proposal to reform the NSR program to adopt the hourly emissions test for all applicable industrial and manufacturing sectors. By doing so, EPA's rulemaking will create a level playing field, providing all regulated sources relief from the current onerous requirements of the NSR program when making efficiency improvements and other changes that do not affect maximum hourly emission rates.

Consideration of energy costs

The CPP was a bad deal for Ohio. It would have driven up electricity costs for businesses, consumers and families, imposed billions in compliance costs, and reduced our state's competitiveness — without significantly reducing global greenhouse gas emissions. By contrast, the ACE rule recognizes that affordable and reliable energy provides Ohio businesses a competitive advantage in the global economy and will preserve that advantage by avoiding unnecessary and excessive requirements that would unduly raise the cost of energy for consumers and businesses.

Environmental progress

Between 2005 and 2017, carbon dioxide emissions from the power sector have fallen by 28%, while the U.S. economy and population grew by 21% and 10%, respectively. The ACE rule will continue this trend of environmental progress by requiring investments to make coal plants cleaner and more efficient, resulting in estimated power sector CO₂ emissions reductions of around 34% below 2005 levels. This progress includes reductions of up to 30 million short tons more than would occur without the rule. Importantly, these reductions will be achieved lawfully, and without imposing unreasonable costs or harming the energy advantage that is so important to the United States economy.

Ohio is committed to continued environmental progress while preserving access to diverse energy resources that lower costs for businesses while spurring economic growth and job creation. EPA has a unique opportunity to achieve this through a collaborative approach, working with states, the business community, and other affected entities. The ACE proposal sets forth a positive foundation upon which to accomplish this goal. We look forward to working with EPA to further improve the rule as it advances through the regulatory process.

Sincerely,



Zachary L. Frymier
Director, Energy and Environment