ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

February 26, 2018

To: Docket ID No. EPA–HQ–OAR–2017–0545

RE: Advanced Notice of Proposed Rulemaking re Clean Power Plan Replacement

To whom it may concern:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to comment on EPA's Advanced Notice of Proposed Rulemaking (ANPRM) regarding the possible replacement of the Clean Power Plan (CPP).[1] The following are ADEQ's comments organized by and including the numeric identifiers presented at page 61510 of the ANPRM.

(1) Roles and Responsibilities of States and EPA in Regulating Existing EGUs for GHGs

(a) Suitability of Implementing Regulations as Applied in the Context of Regulating GHG emissions from EGUs

ADEQ recommends that EPA *not* apply the deadlines in 40 CFR 60.23(a)(2), 60.27(b) and 60.27(d) to state plans to be submitted under a CPP replacement. Those rules require submission of a state plan within nine months after publication of final section 111(d) guidelines, final action to approve or disapprove the plan by EPA within four months after submission, and promulgation of a federal plan satisfying the guidelines within six months after the due date for a state plan, if a state fails to submit a plan or has its plan disapproved.

Nine months is not a realistic timeframe for states to develop and submit a plan under section 111(d). Virtually any plan required under section 111(d) will have to include rules to make the state standards adopted pursuant to the 111(d) guidelines enforceable. In Arizona, a rulemaking ordinarily takes one year at a minimum, and before a rulemaking can even be initiated, the requisite technical work and outreach to stakeholders has to be completed. The timeframes allotted for EPA's review and action also appear unreasonable.

The deadlines in the current implementing regulations were adopted in 1975[2] and appear to have been based on the deadlines then in effect for submission of and action on a state implementation plan (SIP) under section 110(a)(1) of the 1970 Clean Air Act.[3] They therefore do not reflect the increased complexity and procedural demands of emission standard development and rulemaking under current state and federal law. The 1990 Clean Air Act Amendments extended the time periods for submission of and action on what have come to be known as infrastructure SIPs as follows:

[1] 82 FR 61507 (Dec. 28, 2017).
[2] 40 FR 53340, 5334 (Nov. 17, 1975).
[3] See Pub. L. No. 91-604, § 4, 84 Stat. 1676, 1680-82 (1970).

Action	1970 CAA Deadline	1990 CAAA Deadline
SIP submission	4 months after NAAQS promulgation	3 years after NAAQS promulgation
EPA approval or disapproval	4 months after date required for submission	12 months after submission found or deemed complete
Promulgation of FIP	6 months after date required for submission	2 years after finding of failure to submit or after disapproval

ADEQ recommends that EPA consider updating the deadlines in the 111(d) implementing regulations by replacing them with the current deadlines for SIP actions. Alternatively, EPA could, as it did with the original CPP, develop custom deadlines for plans to be submitted under the replacement guidelines.

(b) The Extent of Involvement and Roles of the EPA and the States in Developing Emission Guidelines

In the ANPRM, EPA appears to be focused on heat rate improvement (HRI) as the primary best system of emissions reduction (BSER) on which to base the replacement CPP guidelines. The potential HRI for any particular EGU will vary depending on location, ambient temperature, boiler type, equipment configuration, other pollution control equipment installed, and age. It would therefore be difficult to establish conventional emission standards reflecting BSER for HRI in terms such as emissions per heat input or per unit of generation.

In light of this difficulty, EPA notes in the ANPRM that it seems likely that the guidelines will end up consisting of:

> an approach where the EPA determines what systems may constitute BSER without defining presumptive emission limits and then allows the States to set unit-by-unit or broader emission standards based on the identified BSER while considering the unique circumstances of the State and the EGU.[4]

If in fact EPA adopts this approach, the implementation burden on states will be substantially greater than in the case of conventional emission standards. States will be required to undertake a case-by-case analysis for each existing EGU within their jurisdiction and to adopt the resulting standards by rule. This burden can be reduced if EPA includes in the guidelines a clear *methodology* (as opposed to, for example, a list of "criteria") for determining on a unit-by-unit basis what level of HRI constitutes BSER.

The guidelines should also include specific procedures for determining compliance with the standard. In particular, if a standard based on BSER is to consist of a percent reduction from baseline heat rate, the guidelines should specify the methodology for determining the baseline.

(4) Potential Interactions of CPP Replacement with NSR[5]

The New Source Review (NSR) pre-construction permitting program 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

[4] 82 FR 61511.

[5] Taken from draft comments of National Association of Clean Air Agencies (NACAA).

Achievable Emission Rate (under the Nonattainment New Source Review program) before undertaking a physical or operational change that results in a significant emissions increase. EPA seeks input on potential "rule or policy changes" to the NSR program that would allow EGUs to undertake efficiency improvement projects as part of a Section 111(d) compliance strategy without triggering NSR permitting requirements.

The existing NSR program should not be relaxed to allow facilities to undertake efficiency-improvement projects that significantly increase emissions without undergoing NSR permitting, regardless of whether those projects are undertaken under a state's Section 111(d) plan. EPA observes that such projects can result in greater unit availability and increase in dispatching, and while that is true, it is only part of the picture. Generally, energy efficiency projects decrease a unit's hourly emissions rate, and annual emissions can be controlled by limiting a unit's hours of operation.

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. Sources can, for example, take an enforceable limit on annual hours of operation that would keep emissions below a level that would trigger NSR. Plantwide Applicability Limit permits allows 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 the public through the installation of appropriate emission controls. This is particularly important in non-attainment areas as well as attainment areas that are teetering on the edge of non-attainment.

NSR also provides a mechanism to 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.

Sincerely,

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