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The American Coalition for Clean Coal Electricity is a coalition of leading companies from the electricity generation, transportation and coal production sectors, as well as other manufacturers and vendors. Below is a complete list of our members.

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EPA Administrator Gina McCarthy is having a Twitter Chat
August 2, 2013 - 8:16am

Governors on Both Sides See a Future for Coal
August 1, 2013 - 10:38am

It's Not About Politics, It's About

Scott Pruitt

November 6, 2013 ·

In Scottsdale, AZ today at a lunch with the American Coalition for Clean Coal Electricity (ACCCE). Regional Haze, the Clean Air Act, and Sue & Settle were on the menu of issues today. Great friends, great cause.

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COMMITTEE NAME & NUMBER Scott Pruitt For Attorney General 2014 114038 REPORTING PERIOD: FROM Oct 01, 2013 to Dec 31, 2013

SCHEDULE A1. MONETARY CONTRIBUTIONS from committees

SCHEDULE A1. CONTRIBUTIONS. Give the following information for the contributions of more than $50 in the aggregate from a committee [political action committee, political party committee, or candidate committee] during the reporting period.

Name, Ethics Commission number, and address of contributor	Principal interest or principal business activity	Date accepted	Amount of contribution [written instrument only]	Campaign-to-date
Arvest Oklahoma PAC (204024) PO Box 799 Lowell, AR 72745	Candidate Support.	Dec 19, 2013	$500.00	$500.00
ONEOK Inc Employee Political Action Committee (597256) 100 W Fifth St Tulsa, OK 74103	Special Interest For Natural Gas And Petroleum Industry & Other Business	Dec 19, 2013	$2,500.00	$2,500.00
Unit Corporation Political Action Committee (204009) 7130 S Lewis Ste 1000 Tulsa, OK 74136	Support Candidates Favoring Energy Industry.	Dec 04, 2013	$1,500.00	$1,500.00
OKCRNA - PAC (298417) PO Box 702 Norman, OK 73070	To Support Candidates For State Office.	Dec 04, 2013	$1,000.00	$1,000.00
Union Pacific Corp. Fund For Effective Government (597346) 700 13th Street NW, Suite 350 Washington, DC 20005	Financial Support To Candidates For Elective Office.	Dec 03, 2013	$2,500.00	$2,500.00
Motorola Solutions, Inc. Political Action Committee (504014) 1455 Pennsylvania Ave NW Ste 900 Washington, DC 20004	To Make Contributions To Political Committees As Permitted By Law.	Dec 03, 2013	$1,000.00	$1,000.00
Alliance Coal Pac (509007) 1717 S Boulder Ave, Ste 400 Tulsa, OK 74137	Multi-candidate Committee	Nov 20, 2013	$3,500.00	$3,500.00
Okla Independent Energy PAC (OKIE PAC) (297219) 500 N. E. 4th Street Oklahoma City, OK 73104	To Support Candidates For The Oklahoma State Legislature.	Nov 19, 2013	$5,000.00	$5,000.00
Chesapeake Oklahoma Pac (210032) P.o. Box 18496 Oklahoma City, OK 73154	To Support Oklahoma State And Local Candidates	Nov 15, 2013	$1,500.00	$2,500.00
Spectra Energy Corp Political Action Committee (spectra-dcp Pac) (507002) 5400 Westheimer Ct Houston, TX 77056	Make Contributions To OK Candidates And Committees	Nov 15, 2013	$1,500.00	$1,500.00
EXXON MOBIL CORPORATION POLITICAL ACTION COMMITTEE (511004) P O Box 20503 Indianapolis, IN 46220	Support Candidates	Nov 05, 2013	$1,000.00	$1,000.00
Phillips Murrah PAC (f/k/a Phillips McFall PAC) (200009) Corporate Tower, 101 N Robinson 13th Fl Oklahoma City, OK 73102	Support Or Oppose Candidates.	Nov 05, 2013	$4,000.00	$5,000.00
Qc Holdings Pac (508004) 9401 Indian Creek Pkwy, Suite 1500 Overland Park, KS 66210	Provide Funding For Candidates	Nov 05, 2013	$200.00	$200.00
Trinity Industries Employee PAC (TRN) Inc (297334) 2525 Stemmons Freeway Dallas, TX 75207	Support Political Candidates With Platforms Or Voting Records Supporting Manufacturing, Tax, Environmental Or Other Related Issues.	Nov 05, 2013	$2,000.00	$2,000.00
Advance America Cash Advance Centers Inc Political Action Committee (506028) 135 North Church Street Spartanburg, SC 29306	To Support State Candidates And Committees	Nov 05, 0013	$1,800.00	$250.00

REFUNDS ONLY: Name, EC number and address of contributor	Principal Interest or principal business activity	Date refunded	Refunded amount	Reason for refund	Campaign-to-date
(a) Total contributions over $50 in the aggregate (itemized above) during reporting period			$29,500.00		

TIMOTHY P. RICH 13801 E. 93rd Ct. N. OWASSO, OK 74055	OWNER TOP ACT, INC.	Nov 26, 2013	$1,000.00	Credit	$1,000.00
ROBERT PADUCHIK 4916 Waple Ln. Alexandria, VA 22304	EXECUTIVE ACCCE	Nov 26, 2013	$500.00	Written Instrument	$500.00
NICK CARTER 1518 Kentucky Ave. Ashland, KY 41102	EXECUTIVE NRPLP COAL CO.	Nov 20, 2013	$500.00	Written Instrument	$500.00
MARIAN C. LARSEN 1492 S. University Blvd. Denver, CO 80210	ATTORNEY SEBY LARSON LLP	Nov 20, 2013	$500.00	Written Instrument	$500.00
BARBARA Ann WALZ 4260 S. Yarrow Ct. Lakewood, CO 80235	SVP POLICY & COMPLIANCE TRI-STATE G & T ASSOC.	Nov 20, 2013	$500.00	Written Instrument	$500.00
JOSEPH CRAFT 3610 S. Terwilleger Blvd. Tulsa, OK 74105	EXECUTIVE ALLIANCE COAL	Nov 20, 2013	$5,000.00	Written Instrument	$5,000.00
MARK N OURADA 1110 Innsbrook Lane Buffalo, MN 55313	GOVERNMENT RELATIONS ACCCE	Nov 20, 2013	$250.00	Written Instrument	$500.00
DOUGLAS M. GOODYEAR 11401 N. Blackheath Rd. Scottsdale, AZ 85254	MANAGING PARTNER & CEO DCI GROUP	Nov 20, 2013	$500.00	Written Instrument	$500.00
ANDREW C. O'BRIEN 5301 Marlyn Dr. Bethesda, MD 20816	CONSULTANT DCI GROUP	Nov 20, 2013	$500.00	Written Instrument	$500.00
PAUL M. SEBY 408 Jasmine St. Denver, CO 80220	ATTORNEY SEBY LARSEN LLP	Nov 20, 2013	$700.00	Written Instrument	$700.00
RANDY EMINGER 240 Highland Ave., Apt. 2110 Atlanta, GA 30307	VICE PRESIDENT ACCCE	Nov 20, 2013	$250.00	Written Instrument	$250.00
ROBERT M. DUNCAN 1152 15th St. NW, Suite 400 Washington, DC 20005	PRESIDENT & CEO ACCCE	Nov 20, 2013	$2,000.00	Written Instrument	$2,000.00
DENNIS E. WELCH 7714 Ogden Woods Blvd. New Albany, OH 43054	EXEC VP & CHIEF EXTERNAL OFFICER AEP	Nov 20, 2013	$250.00	Written Instrument	$250.00
KELLY MADER 11773 Durrand St. College Station, TX 77845	EXECUTIVE PEABODY ENERGY	Nov 20, 2013	$250.00	Written Instrument	$250.00
KENNETH J. ANDERSON 8955 W. 80th Dr. Arvada, CO 80005	GENERAL MANAGER TRI-STATE G & T ASSOC.	Nov 20, 2013	$500.00	Written Instrument	$500.00
BRIAN S. MCCABE 157 Shaker Rd. Canterbury, NH 03224	MANAGING PARTNER DCI GROUP	Nov 20, 2013	$500.00	Written Instrument	$500.00
GREGORY J. KACH 6716 S. Evanston Ave. Tulsa, OK 74136-4509	AUTO DEALER JACKIE COOPER IMPORTS	Nov 19, 2013	$500.00	Written Instrument	$500.00
ALVIN C. HARRELL 3301 S. Western Oklahoma City, OK 73109	PROFESSOR OF LAW OKLAHOMA CITY UNIVERSITY	Nov 15, 2013	$100.00	Written Instrument	$100.00
DAVID D. MORGAN 6800 N. Country Club Dr. Oklahoma City, OK 73116	ATTORNEY MIDFIRST BANK	Nov 15, 2013	$500.00	Written Instrument	$500.00
MARLIN IKE GLASS, JR. P. O. Box 447 Newkirk, OK 74647-0447	CEO GLASS TRUCKING	Nov 15, 2013	$1,500.00	Written Instrument	$2,000.00
ROBERT G. MCCAMPBELL 6616 N. Hillcrest Ave. Oklahoma City, OK 73116	ATTORNEY FELLERS SNIDER LAW FIRM	Nov 15, 2013	$1,000.00	Written Instrument	$1,500.00
TERRY L. HAWKINS 1520 Classen Dr. Oklahoma City, OK 73106-6616	ATTORNEY PHILLIPS MURRAH	Nov 05, 2013	$250.00	Written Instrument	$250.00
THOMAS WOLFE 1602 Camden Way Oklahoma City, OK 73116	ATTORNEY PHILLIPS MURRAH	Nov 05, 2013	$100.00	Written Instrument	$100.00
ROBERT E. JONES 1819 Rolling Hills Norman, OK 73072	EXECUTIVE DIRECTOR OKLAHOMA FIREFIGHTERS PENSION SYSTEM	Nov 05, 2013	$100.00	Written Instrument	$100.00

Nos. 12-9526, 12-9527

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF OKLAHOMA EX REL. SCOTT PRUITT, in his official capacity as Attorney General of Oklahoma, OKLAHOMA INDUSTRIAL ENERGY CONSUMERS, OKLAHOMA GAS AND ELECTRIC COMPANY,
Petitioners,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Respondent,

SIERRA CLUB,
Intervenor-Respondent.

Petition for Review of a Final Rule of the United States Environmental Protection Agency

PETITIONERS' MOTION TO STAY THE MANDATE PENDING FILING OF A PETITION FOR A WRIT OF CERTIORARI IN THE SUPREME COURT AND TO CLARIFY STATUS OF STAY OF FINAL RULE PENDING ISSUANCE OF MANDATE

E. Scott Pruitt, OBA #15828
Attorney General of Oklahoma
Patrick R. Wyrick, OBA #21874
Solicitor General
P. Clayton Eubanks, OBA #16648
Deputy Solicitor General
313 NE 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Facsimile: (405) 522-0669
Service Email: fc.docket@oag.ok.gov
scott.pruitt@oag.ok.gov
Patrick.wyrick@oag.ok.gov
clayton.eubanks@oag.ok.gov

ATTORNEYS FOR PETITIONER STATE OF OKLAHOMA

Brian J. Murray
Charles T. Wehland
JONES DAY
77 West Wacker Drive
Chicago, IL 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
Email: bjmurray@jonesday.com
ctwehland@jonesday.com

Michael L. Rice
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3640
Facsimile: (832) 239-3600
Email: mlrice@jonesday.com

ATTORNEYS FOR OKLAHOMA GAS AND ELECTRIC COMPANY

Michael Graves
Thomas P. Schroedter
Hall Estill, Attorneys at Law
320 South Boston Avenue
Suite 200
Tulsa, OK 74103-3706
Telephone: (918) 594-0443
Facsimile: (918) 594-0505
Email Address: mgraves@hallestill.com
tschroedter@hallestill.com

ATTORNEYS FOR PETITIONER OKLAHOMA INDUSTRIAL ENERGY CONSUMERS

PETITIONERS' MOTION TO STAY THE MANDATE PENDING FILING OF A PETITION FOR A WRIT OF CERTIORARI IN THE SUPREME COURT AND TO CLARIFY STATUS OF STAY OF FINAL RULE PENDING ISSUANCE OF MANDATE

Pursuant to Fed. R. App. P. 41(d)(2), Petitioners State of Oklahoma, Oklahoma Industrial Energy Consumers ("OIEC"), and Oklahoma Gas and Electric Company ("OG&E") hereby respectfully move this Court (i) to stay issuance of its mandate in these cases pending the filing by Petitioners of a petition for a writ of certiorari in the Supreme Court and (ii) irrespective of whether the mandate is stayed, to clarify that the Court's stay of the Final Rule remains in place until the issuance of the Court's mandate. For the reasons set forth below, the petition for certiorari will present substantial questions of great public importance. Particularly in light of the costs to be incurred in the absence of a further stay, there is good cause for this Court to stay its mandate at this time. Pursuant to Local Rule 27.3(C), Petitioners have notified opposing counsel of their intent to file this motion, and counsel for both Respondent and Intervenor have stated that they oppose both forms of relief sought in this motion.

PROCEDURAL BACKGROUND

In Section 169A of the 1977 Amendments to the Clean Air Act (the "Act" or "CAA"), Congress created a visibility-based program with the goal of the "prevention of any future, and the remedying of any existing, impairment of

visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." 42 U.S.C. § 7491(a)(1). The program requires qualifying sources to install or implement the best available retrofit technology ("BART"), as determined by the States. Each State with qualifying sources was required to balance five factors, including cost-effectiveness measured either as dollars per ton of pollutants removed or dollars per deciview of visibility improvement for each technically feasible control. 42 U.S.C. § 7491(g)(2); 40 C.F.R. § 51.308(e)(1)(ii)(A). The Act further required EPA to issue rules for States to use in determining BART, and EPA's guidelines for determining cost-effectiveness were made mandatory for sources the size of those at issue here. § 7491(a)(4), (b)(2)(A). EPA's final regulations applicable to regional haze were issued after Court review and modification, 70 Fed. Reg. 39,104 (July 6, 2005), codified at 40 C.F.R. pt. 51, subpt. P ("Regional Haze Regulations" or "RHR").

As required by the RHR, Oklahoma submitted its BART determinations for the OG&E units at issue here to EPA on February 17, 2010 ("Oklahoma SIP"). After balancing the statutory factors, Oklahoma determined that an annual average emission rate of 0.55 lb/mmBtu consistent with the continued use of low sulfur coal constituted BART for sulfur dioxide ("SO_2") emissions from four qualifying electric generating units operated by OG&E. On December 28, 2011, EPA published a final rule with respect to the Oklahoma SIP, disapproving the State's

SO_2 BART determinations for the four OG&E units and for two units at another facility in the State based on EPA's own balancing of the five statutory factors. *See* Partial Approval of Oklahoma SIP and Promulgation of FIP, 76 Fed. Reg. 81,728 (Dec. 28, 2011) ("Final Rule"). EPA simultaneously finalized a Federal Implementation Plan or "FIP" that imposed a 30-day average SO_2 emission limit of 0.06 lbs/MMBtu for each of the four OG&E units. *Id.* at 81,729-30. The limit imposed by EPA in the Final Rule would require the installation of a scrubber at each affected OG&E unit within five years. *Id.*. Petitioners filed requests for reconsideration with EPA in February 2012, but no action has been taken on those requests.

On February 24, 2012, Oklahoma, OIEC, and OG&E filed petitions for review, challenging EPA's partial disapproval of the Oklahoma SIP and simultaneous promulgation of the FIP as arbitrary and capricious, contrary to law, and in violation of the Administrative Procedure Act's requirements for notice and an opportunity to comment. Petitioners also filed a motion to stay the Final Rule pursuant to Fed. R. App. P. 18, and this Court granted the stay on June 22, 2012.

On July 19, 2013, a divided panel of this Court upheld the Final Rule, concluding that EPA had not overstepped the authority granted to it by Congress and, while a close call, had not acted arbitrarily and capriciously in rejecting the State's cost-effectiveness analysis. Petitioners filed Petitions for Rehearing or

Rehearing *En Banc* on September 3, 2013. Petitioners State of Oklahoma and OIEC argued that the Court had applied the wrong standard of review to EPA's action and, as a result, had given EPA too much – and the State too little – deference in making the BART determination, contrary to the distribution of authority established by Congress in the CAA for regional haze. Petitioner OG&E argued in its Petition that, in addition to failing to give the State's implementation of the regional haze provisions appropriate deference, the Court misread the record, which lead it to conclude incorrectly either that EPA had not acted arbitrarily in its analysis or that Petitioners had not preserved certain issues for review. The Petitions for Rehearing or Rehearing *En Banc* were denied on October 31, 2013.

ARGUMENT I – STAY OF THE MANDATE

This Court may stay issuance of a mandate pending the filing of a petition for a writ of certiorari in the Supreme Court when "the certiorari petition would present a substantial question and … there is good cause for a stay." Fed. R. App. P. 41(d)(2)(A). Those prerequisites are plainly satisfied here, as discussed below.

I. Petitioners' Petition for Certiorari Will Raise Substantial Questions for Supreme Court Review.

Petitioners' petition for certiorari will present substantial federalism and jurisprudential questions on matters of great public importance, making a grant of

certiorari reasonably likely. The prospect of a grant of review is heightened by the fact that the panel's analysis and holding in this case regarding the deference due to EPA in the context of the unique CAA provision granting exclusive authority to States to determine BART are, at the very least, in considerable tension with the opinions of the Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) ("*Chevron*") and *Alaska Department of Environmental Conservation v. EPA*, 540 U.S. 461 (2004) ("*Alaska DEC*"), and the decision of the D.C. Circuit in *American Corn Growers Association v. EPA*, 291 F.3d 1 (D.C. Cir. 2002) ("*Corn Growers*").

Chevron mandates that a court must first determine "whether Congress has directly spoken to the precise question at issue." 467 U.S. at 842. The court does not reach the second step of deference to reasonable agency interpretation unless the statute is silent or ambiguous. *Id*. at 843. With respect to regional haze, Congress made it plain that BART is "as determined by the State" after balancing the five statutory factors. 42 U.S.C. § 7491(b)(2)(A), (g)(2); *accord Corn Growers*, 291 F.3d at 8. The D.C. Circuit relied solely on *Chevron* Step I when it found that Congress afforded the States "broad authority over BART determinations." *Id*.

In *Alaska DEC*, EPA disapproved Alaska's best available control technology ("BACT") determination under a regime that gives EPA even more authority than

in the BART determination. 540 U.S. at 477-78. With respect to the BACT scheme, the Supreme Court held that the state identifies BACT consistent with the CAA's terms and that EPA then reviews whether the BACT determination is reasonably moored to the CAA and faithful to the statute's definition of BACT. *Id*. at 484. The Supreme Court further found that EPA had an oversight role limited to a determination of whether the state's BACT determination "is not based on a reasoned analysis." *Id*. at 490. EPA itself even recognized that it must accord appropriate deference to a state's BACT determination and that it may not "second guess" a state's decision. *Id*. EPA's authority to reject a state's BACT determination arises "[o]nly when a state agency's BACT determination is not based on a reasoned analysis" and is "arbitrary." *Id*. at 490-91. Thus, in reviewing EPA's purely supervisory role, the Supreme Court held that "the production and persuasion burdens remain with EPA and the underlying question a reviewing court resolves remains the same: Whether the state agency's BACT determination was reasonable, in light of the statutory guides and the state administrative record." *Id*. at 494.

Plainly EPA did not give even this level of deference to the State of Oklahoma in the review of the Oklahoma SIP. And rather than require EPA to demonstrate that the State's determination was unreasonable, the Court of Appeals looked at whether EPA's after-the-fact, second guessing of Oklahoma's analysis

was itself reasonable. Indeed, Judge Kelly's dissent emphasized that in a case in which the State is granted the authority to make—and does make—a first, reasonable, detailed technical conclusion, EPA's actions deserve no deference. "[EPA] has no authority to condition approval of a SIP based simply on a preference for a particular control measure." Slip. Op. at 54. Further, Judge Kelly noted that "[m]any of the same reasons for rejecting the SIP were used to justify the FIP[,]" although both measures were taken in the same rulemaking action. Slip Op. at 52. Consequently, Judge Kelly would have found EPA's actions arbitrary and capricious and would not have deferred to EPA's substituted technical judgments and experts. Slip Op. at 52-53.

The approach taken by EPA and countenanced by the Court is contrary to the unprecedented State-Federal partnership roles established by Congress for regional haze. The important federalism principles underlying the division of authority for making BART determinations – as previously recognized by *Corn Growers* – provides substantial incentive for the Supreme Court to take this case and consider the issue. This is particularly true here where the framework for a program designed to run for decades is at its inception.

In sum, a petition for certiorari will present substantial questions that warrant Supreme Court review.

II. Good Cause Exists to Stay This Court's Mandate

Given the strong possibility that Petitioners' petition for certiorari will be granted by the Supreme Court, no purpose would be served by proceeding at this time on the mandate of this Court's July 19, 2013 decision. As noted above, in June 2012, this Court granted a stay of the Final Rule upon Petitioners' motion under Fed. R. App. 18, pending appellate review. The effect of that stay was to delay the five-year compliance period established by the Final Rule. In the Motion to Stay, Petitioners' provided evidence that – in real dollars – the installation of the four scrubbers will cost OG&E as much as $1.2 billion. Petitioners also demonstrated that, in order to install scrubbers on the four OG&E units while also maintaining the ability to meet customer demand for electricity, OG&E would be required to begin spending more than $200 million in the first two years of the project.

Particularly because the regional haze provisions are aesthetic-based and not health-based, a further delay to permit Petitioners to seek certiorari is plainly warranted in this case. Accordingly, there is good cause to stay issuance of the mandate as authorized by Rule 41(d)(2), to be extended, pursuant to that rule, upon the timely filing of the petition.

Conclusion – Stay of the Mandate

For the foregoing reasons, the Court should stay issuance of its mandate pending the filing of Petitioners' petition for a writ of certiorari in the Supreme Court.

ARGUMENT II – STATUS OF STAY OF FINAL RULE

In the Court's July 19 decision upholding EPA's action, the Court indicated that the stay "is hereby lifted." In correspondence from EPA dated August 27, 2013 (attached hereto as Exhibit 1), and received by OG&E on August 30, 2013 (the Friday before Labor Day and before Petitions for Rehearing were due to be filed on Tuesday, September 3), Respondent took the position that the Court's July 19 decision was sufficient to end immediately the stay and start OG&E's compliance clock. In discussions subsequent to the filing of the Petitions for Rehearing, Respondent has cited no legal authority for its position, but has pointed only to a purported conversation with an unidentified person in the Clerk's office – a conversation to which none of the Petitioners were parties. (*See* Exhibit 2.)[1]

Despite Respondent's assertion, however, it is fundamental that it is the mandate by which the Court of Appeals acts, and until the mandate issues, the

[1] Exhibit 2 contains the correspondence between Respondent and OG&E subsequent to Respondent's August 27 letter. It consists of a September 6, 2013 letter from OG&E to Respondent; a September 30, 2013 email from counsel for OG&E to counsel for Respondent; an October 17, 2013 email from counsel for Respondent to counsel for OG&E; an October 30, 2013 letter from Respondent to OG&E; and an October 31, 2013 email from counsel for Respondent to counsel for OG&E. As noted above, the August 27, 2013 letter from Respondent (Exhibit 1) was the only communication received by OG&E on this issue prior to the filing of the Petitions for Rehearing, and even that was received only one business day before the filings.

Court's decision, including the lifting of the stay, is not final, and the Court retains jurisdiction to take further action. *See Burton v. Johnson*, 975 F.2d 690, 693 (10th Cir. 1992) (noting that jurisdiction returns to district court only upon issuance of mandate). For example, in *Costello v.Wainwright*, the district court had entered an injunction, and a panel of the Court of Appeals granted a motion for stay pending appeal. 539 F.2d 547, 548-49 & n.4 (5th Cir. 1976), *rev'd on other grounds*, 430 U.S. 325 (1977). The panel hearing the merits vacated the stay as part of its opinion affirming the district court's ruling, *id.* at 549 n.4, just as the Panel did here. After rehearing was granted, however, the *en banc* Court described the status of the stay as follows:

> The panel which first heard this appeal on the merits vacated the stay. The mandate has never been issued since rehearing was granted. F.R.A.P. 41. The stay entered July 25, 1975, therefore remains in effect pending disposition of the appeal by the en banc court.

Id.; *see also United States v. McVeigh*, 157 F.3d 809, 815 (10th Cir. 1998) (where district court order removing restrictions on federal prosecutors' cooperation with state officials was stayed pending appeal and the district court's decision was ultimately affirmed, Court concluded that the stay "will dissolve on the date the mandate issues in this appeal"); *South Dakota v. Ubbelohde*, 337 F.3d 1022. 1023 (8th Cir. 2003) (denying emergency motion to continue stay of injunction pending

appeal because "[t]here is no need for it. The stay of injunction remains in effect until the mandate of this Court issues, which has not yet occurred.").

The question of whether the lifting of the stay was effective in July when the Court's decision was announced or whether it is effective when the Court's mandate issues is of great significance to OG&E. As noted above, the installation of scrubbers on each of the four OG&E units will require significant capital investment and coordination to both engage in the construction projects and continue to supply OG&E's customers with electricity. If Respondent were correct that the Court's July opinion immediately lifted the stay, then OG&E would have had to commence its compliance efforts even while this Court considered the Petitions for Rehearing and even if the Court grants Petitioners' motion to stay the mandate. Such a result makes no practical sense and is contrary to the legal significance attached to the issuance of the mandate.

OG&E has attempted to resolve this issue with Respondent since first receiving notice on August 30 of EPA's position on the effect of the Court's opinion, including providing Respondent with some of the case authority referenced above. (*See* Exhibits 1 and 2.) A ruling at this time that the lifting of the stay of the Final Rule was effective in July would mean the loss of nearly four months with respect to OG&E's time to comply with the Final Rule and would increase the complexity in meeting that compliance deadline on the four affected

units. To avoid later disputes on this issue, Petitioners respectfully ask the Court to clarify that the stay of the Final Rule remains in effect until the mandate issues.

Conclusion – Status of Stay of Final Rule

For the foregoing reasons, the Court should confirm that, irrespective of the Court's decision with respect to a stay of the mandate, the June 2012 stay of the Final Rule remains in effect until this Court's mandate issues.

Dated: November 6, 2013.

Respectfully Submitted,

/s/ Brian J. Murray

Brian J. Murray (IL SBN 6272767)
Charles T. Wehland (IL SBN 6215582)
JONES DAY
77 West Wacker Drive
Chicago, IL 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
Email: bjmurray@jonesday.com
ctwehland@jonesday.com

Michael L. Rice (TX SBN 16832465)
JONES DAY
717 Texas, Suite 3300
Houston, TX 77002
Telephone: (832) 239-3640
Facsimile: (832) 239-3600
Email: mlrice@jonesday.com

ATTORNEYS FOR OKLAHOMA GAS AND ELECTRIC COMPANY

/s/ E. Scott Pruitt
E. SCOTT PRUITT, OBA #15828
Oklahoma Attorney General
Patrick Wyrick, OBA #21874
Solicitor General of Oklahoma
P. Clayton Eubanks, OBA #16648
Deputy Solicitor General
Office of the Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921
(405) 522-0669 Fax
Email: fc.docket@oag.ok.gov
scott.pruitt@oag.ok.gov
tom.bates@oag.ok.gov
patrick.Wyrick@oag.ok.gov
clayton.eubanks@oag.ok.gov

ATTORNEYS FOR PETITIONER STATE OF OKLAHOMA, EX REL., E. SCOTT PRUITT

/s/ Michael Graves
Michael Graves, OBA #3539
Thomas P. Schroedter, OBA #7988
Hall Estill, Attorneys at Law
320 South Boston Avenue, Suite 200
Tulsa, OK 74103-3706
Telephone: (918) 594-0443
Facsimile: (918) 594-0505
mgraves@hallestill.com
tschroedter@hallestill.com

ATTORNEYS FOR PETITIONER OKLAHOMA INDUSTRIAL ENERGY CONSUMERS

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2013, a copy of the Petitioners' Motion to Stay the Mandate Pending Filing of a Petition for a Writ of Certiorari in the Supreme Court and to Clarify Status of Stay of Final Rule Pending Issuance of Mandate was served electronically on all parties to this matter via the Court's CM/ECF system.

/s/ Brian J. Murray
Brian J. Murray

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTIONS

The undersigned certifies that:

(1) All required privacy redactions have been made;

(2) This digital submission was scanned for viruses with McAfee VirusScan Enterprise v8.8.0, which was last updated on November 5, 2013. According to this program, this submission is free of viruses.

/s/ Brian J. Murray
Brian J. Murray


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Mining Operations

We produce a diverse range of steam coals with varying sulfur and heat contents, which enables us to satisfy the broad range of specifications required by our customers. The following chart summarizes our coal production by region for the last five years.

Regions and Complexes	Year Ended December 31				
	2011	2010	2009	2008	2007
	(tons in millions)				
Illinois Basin:					
Dotiki, Warrior, Pattiki, Hopkins, River View and Gibson complexes	25.5	23.7	20.7	20.3	17.9
Central Appalachian:					
Pontiki and MC Mining complexes	2.5	2.3	2.6	3.2	3.2
Northern Appalachian:					
Mettiki and Tunnel Ridge complexes	2.8	2.9	2.5	2.9	3.2
Total	30.8	28.9	25.8	26.4	24.3

The following map shows the location of our mining complexes and projects:

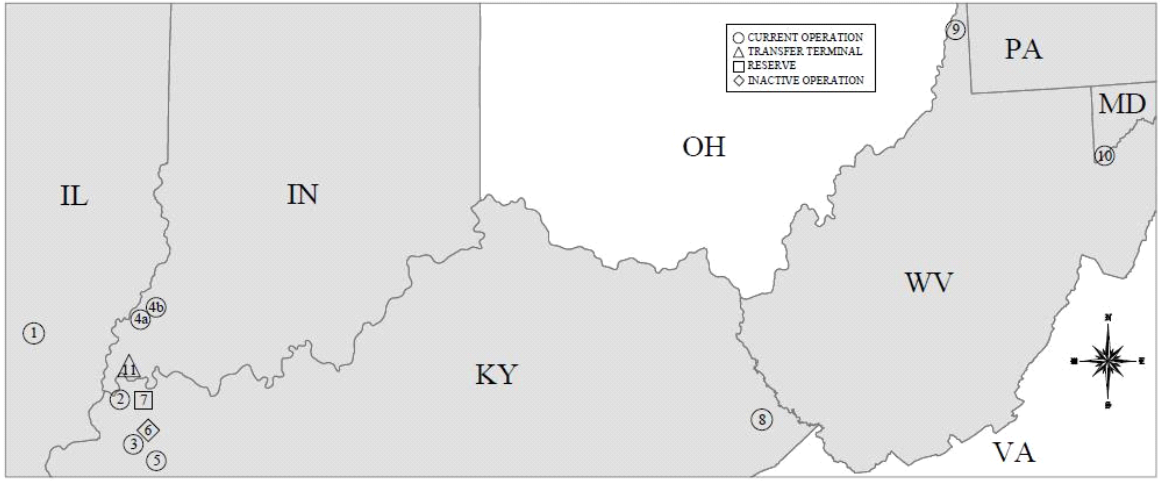
Mining Operations

We produce a diverse range of steam and metallurgical coal with varying sulfur and heat contents, which enables us to satisfy the broad range of specifications required by our customers. The following chart summarizes our coal production by region for the last five years.

Regions	Year Ended December 31, 2017	2016	2015	2014	2013
	(tons in millions)				
Illinois Basin	27.3	25.4	32.0	30.9	30.7
Appalachia	10.3	9.8	9.2	9.8	7.4
Other	—	—	—	—	0.7
Total	37.6	35.2	41.2	40.7	38.8

Alliance Resource Partners, L.P.

Coal Operations



Illinois Basin Operations:

1. HAMILTON COMPLEX
Hamilton Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Longwall
& Continuous Miner
Coal Type: Medium/High Sulfur
Transportation: Railroad,
Truck & Barge

2. RIVER VIEW COMPLEX
River View Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: Medium/High Sulfur
Transportation: Barge

3. DOTIKI COMPLEX
Dotiki Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: High Sulfur
Transportation: Railroad,
Truck & Barge

4. GIBSON COMPLEX
a. Gibson South Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: Low/Medium Sulfur
Transportation: Railroad,
Truck & Barge

b. Gibson North Mine[1]
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: Low/Medium Sulfur
Transportation: Railroad,
Truck & Barge

5. WARRIOR COMPLEX
Warrior Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: Medium/High Sulfur
Transportation: Railroad,
Truck & Barge

6. SEBREE COMPLEX
Onton Mine (Idled)
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: Medium/High Sulfur
Transportation: Barge & Truck

7. HENDERSON/UNION
RESERVES
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous Miner
Miner
Coal Type: Medium/High Sulfur
Transportation: Railroad
& Barge

Appalachian Operations:

8. MC MINING COMPLEX
Excel No. 4 Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Continuous
Miner
Coal Type: Low Sulfur
Transportation: Railroad,
Truck & Barge

9. TUNNEL RIDGE COMPLEX
Tunnel Ridge Mine
Mining Type: Underground
Mining Access: Slope & Shaft
Mining Method: Longwall
& Continuous Miner
Coal Type: Medium/High Sulfur
Transportation: Railroad
& Barge

10. METTIKI COMPLEX
Mountain View Mine
Mining Type: Underground
Mining Access: Slope
Mining Method: Longwall
& Continuous Miner
Coal Type: Low/Medium
Sulfur - Metallurgical
Transportation: Railroad
& Truck

Other Operations:

11. MOUNT VERNON
TRANSFER TERMINAL
Rail or Truck to Ohio River Barge
Transloading Facility

[1] Gibson North Mine is currently non-producing but is expected to resume production in 2018.

May 9, 2014

Ms. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
EPA Docket Center—Mail Code 2822T
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Attn: Docket ID No. EPA-HQ-OAR-2013-0495

Re: Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units
79 Fed. Reg. 1,4380 (Jan. 8, 2014); Docket ID No. EPA-HQ-OAR-2013-0495

Dear Ms. McCarthy:

Alliance Coal, LLC submits the following comments in response to the Environmental Protection Agency's (EPA) proposed new source performance standards (NSPS) for greenhouse gas emissions (GHG) for new fossil fueled-fired electric utility generating units (EGUs).

Alliance is a diversified producer and marketer of coal to major United States utilities and industrial users. Alliance is currently the third largest coal producer in the eastern United States with mining operations in the Illinois Basin and Appalachian producing regions. Alliance operates ten mining complexes in Illinois, Indiana, Kentucky, Maryland and West Virginia. We have more than 4,300 full-time employees, including over 4,000 employees involved in active mining operations.

Our customer base includes major utilities and industrial users. Coal is the energy source used by utilities to fuel approximately 45 percent of the electricity generated in the United States. In 2014, more than 98 percent of our sales tonnage was dedicated to electric utilities.

Alliance believes that the proposed standards embody unlawful and unwarranted policies which will only make our nation's electricity supply less diverse, less reliable, and more expensive while providing no benefits in terms of environmental performance.

EPA readily concedes that the proposed standards will result in negligible carbon dioxide (CO_2) emission reductions and no quantified benefits. Since the proposed rule does not advance the stated objective of reducing CO_2, it obviously cannot in any way be "necessary" to accomplish the purpose for which it is being proposed. This reality alone renders the proposed standards arbitrary and capricious. In many other ways EPA's proposal reflects arbitrary, unreasoned and unlawful policy choices.

1717 South Boulder, Suite 400, Tulsa, Oklahoma 74119
P. O. Box 22027, Tulsa, Oklahoma 74121-2027
Fax: (918) 295-7357

The Clean Air Act (CAA) requires that EPA base any NSPS upon the actual performance of adequately demonstrated technologies, and EPA historically has adhered to this approach in setting every NSPS. Moreover, it is precisely the approach EPA uses in proposing a standard for natural gas combined cycle units (1,000 lbs CO_2/MWh) that can be met by 95 percent of the existing units in operation. In contrast, EPA proposes for new coal EGU's a standard (1,100 lb CO_2/MWh) no existing coal base load EGU can achieve—not even the newest demonstrated coal technologies such as supercritical pulverized coal (SCPC) and integrated gasification combined cycle (IGCC). The proposed emission standard is at least 40 percent lower than the performance level that is achievable by these demonstrated coal technologies. EPA's proposal ignores entirely that a standard based upon the performance of these advanced coal technologies would actually result in substantial emission reductions compared to the emissions from existing subcritical coal plants that dominate the current coal base load power fleet.

The proposed standard for new coal base load power plants is unlawful, unreasoned and unwarranted for the following reasons:

- **CCS is not BSER**: Meeting the proposed standard would require new coal base load power plants to use carbon capture and storage (CCS) technology. CCS is not adequately demonstrated and, therefore, cannot constitute the best system of emission reduction (BSER) under the CAA. No CCS technologies have been demonstrated in a fully integrated end-to-end configuration at scale on a coal base load EGU. Two power plants under construction, two on the drawing board and one abandoned –all examples cited by EPA—do not reflect adequately demonstrated technology. In point of fact, they do not demonstrate anything in terms of performance. The two plants under construction EPA relies upon will be the first demonstrations at scale when they become operational. But again, they represent first-of-a-kind startup commercial demonstrations and the technology will need further demonstration under different conditions and configurations before EPA can consider whether it is adequately demonstrated for establishing an emission standard. For base load electricity generation, CCS is a young, complex and unproven technology. In short, it cannot be the basis for setting a standard.

  More fundamentally, the proposed standard is not based upon any "system" of actual emission reduction from the source. The proposed standard is based solely upon one component of CCS—carbon separation and capture—and, according to EPA, the disposition of the captured CO_2 is outside the scope of the rule. At best, the proposal is a standard for CO_2 separation and there is no emission reduction of CO_2 from the source. In fact, the CO_2 emissions will actually increase because carbon separation and capture consumes a substantial portion of the plant's electrical generation output so the plant will have to be designed to be substantially larger to accommodate the parasitic load needed to operate the carbon separation and capture process.

  EPA's proposed rule is deficient in consideration of the substantial energy requirements intrinsic in CCS systems which lead to increased emissions beyond the EGU, among other environmental and inefficiency drawbacks. As the Agency states in the proposed

rule,[1] CAA section 111 (a) (1) requires the Administrator to take into account "the environmental impact and energy requirements" of the standard. A report by the Congressional Research Service[2] illustrates that the rule is on a scale unlike any other ever promulgated. A coal-fired power plant equipped with CCS is burdened by a parasitic load or energy "penalty" an order of magnitude larger than that of any other environmental control technology. Per CRS:

> "The energy requirements of current CO_2 capture systems are roughly 10 to 100 times greater than those of other environmental control systems employed at a modern electric power plant. This energy 'penalty' lowers the overall (net) plant efficiency and significantly increases the net cost of CO_2 capture. [...] Lower plant efficiency means that more fuel is needed to generate electricity relative to a similar plant without CO_2 capture."[3]

CRS found that new coal-fired power plants equipped with high-capture CCS (Alliance could not locate information or analysis on partial capture) would suffer an energy penalty ranging from 19% to 30%.[4] Illustrated another way, an 800 MW coal-fired power plant equipped with a high-capture CCS system would have to divert the equivalent of 152 to 240 MW of power – a respectable sized power plant in and of itself – just to power the plants own CCS system. According to EIA, that's enough energy to power 94,000 to 149,000 homes.[5] CRS determined that CCS systems substantially weaken a new coal-fired plant's net efficiency, losing 6% to 9% depending on the plant type and technology employed.[6]

Since coal-fired CCS plants consume considerably more coal, upstream emissions from coal mining, processing, and transport are correspondingly higher compared to identical coal-fired plants without CCS. As a result, CRS reports that CCS systems produce increased waste, as well as, increase water and chemical consumption at power plants:

> "For coal combustion plants, this means that proportionally more solid waste is produced and more chemicals, such as ammonia and limestone, are needed (per unit of electrical output) to control NOx and SO2 emissions. Plant water use also

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[1] *Standards of Performance for Greenhouse Gas Emissions from New Stationary Source: Electric Utility Generating Units*, Environmental Protection Agency, 9/20/2013; page 72.
[2] *Carbon Capture: A Technology Assessment*, Peter Folger, Coordinator, Specialist in Energy and Natural Resources Policy, November 5, 2013, Congressional Research Service.
[3] Ibid, page 16.
[4] Ibid, page 16.
[5] Per EIA, in 2011, the average annual electricity consumption for a U.S. residential utility customer was 11,280 kWh. Number of homes calculation assuming an 80 percent power plant utilization factor: 152 MW powered at 80% utilization converted to kWh per year equals 1,065,216,000 kWh per year (152 x 1000 x .8 x 24 x 365) divided by 11,280 kWh annual consumption per home equals 94,434 homes; 240 MW powered at 80% utilization converted to kWh per year equals 1,681,920,000 kWh per year (240 x 1000 x .8 x 24 x 365) divided by 11,280 kWh annual consumption per home equals 149,106 homes.
[6] *Carbon Capture: A Technology Assessment*, Peter Folger, Coordinator, Specialist in Energy and Natural Resources Policy, November 5, 2013, Congressional Research Service.

increases significantly because of the additional cooling water needed for current amine capture systems."[7]

- **EPA Incorrectly and Unlawfully Relies on Three U.S.-Based Projects for its Adequately Demonstrated Finding for CCS:** In making its adequately demonstrated determination, EPA incorrectly relies on power plant projects participating in a government-funded, technology-support program intended for emerging technologies. The three U.S.-based projects identified in this proposed rule have all received various levels of support through the Clean Coal Power Initiative ("CCPI"). The CCPI is administered by the Department of Energy and is intended to help overcome some of the technical risks associated with bringing developing technologies, like CCS, to the point of commercial readiness. The CCPI was not conceived for already deployed and commercially viable technologies, and it is certainly not intended for technologies that have been adequately demonstrated. Congress recognized the intent of the CCPI in the Energy Policy Act of 2005, when it explicitly limited the use of projects receiving assistance through the CCPI in determining a technology has been adequately demonstrated for purposes of regulation under section 111 of the CAA.[8] Yet in this proposed rule, the EPA relies on these three CCPI projects in making its adequately demonstrated determination, contrary to the clear intent of Congress.

  Other agencies within the Federal government have strongly agreed with this conclusion. Prior to releasing the NSPS, the White House Office of Management and Budget gave Federal agencies an opportunity to provide EPA with feedback on the draft rule. Numerous comments submitted through this process were highly critical of EPA's proposal, and in particular the readiness of CCS technology and reliance on CCPI projects.[9] For example, one agency commented that:

  > "EPA's assertion of the technical feasibility of carbon capture relies heavily on literature reviews, pilot projects, and commercial facilities yet to operate. We believe this cannot form the basis of a finding that CCS on commercial-scale power plants is 'adequately demonstrated.'
  >
  > ...We are concerned that the unsupported assertions of technology as 'adequately demonstrated' in this rulemaking will form a precedent for future such determinations, even if the three CCS projects used as the basis for the determination fail or are never completed."

- **CCS costs are exorbitant and unreasonable**: By any measure, the cost of deploying CCS technology is exorbitant and unreasonable. This factor alone disqualifies CCS as BSER for coal base load power plants. Capturing and compressing CO_2 consumes a

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[7] Ibid, page 16.
[8] See 42 U.S.C. 15962(i) ("No technology, or level of emission reduction, solely by reason of the use of the technology, or the achievement of the emission reduction, by 1 or more facilities receiving assistance under this Act, shall be considered to be adequately demonstrated for purposes of section 7411 of this title")
[9] http://www.regulations.gov/contentStreamer?objectId=09000064814f17c1&disposition=attachment&contentType=pdf

substantial fraction of the plant's electrical generation output so a plant with CCS will have to be substantially larger than one without CCS and will require more fuel to power it. The Deputy Assistant Secretary of Energy for Clean Coal recently testified before Congress that CCS technology would increase the cost of producing electricity from a coal base load plant by 70-80 percent. The studies EPA relies upon show similar exorbitant costs for deploying this unproven technology. Not surprisingly, Lynn Good, CEO, Duke Power, recently said that CCS is "too expensive" to consider adding to its recently commissioned Edwardsport IGCC plant. Indeed, the Kemper County Energy Facility EPA cites as the centerpiece for its BSER determination has experienced cost overruns of over 100 percent since 2010 and remains uncompleted. This experience also belies EPA's assumption that the costs for CCS will decrease with the next plants constructed. Actual experience in development of control technologies shows that second generation technologies will cost more as new risks are identified in performance and reliability.

- **The proposed standard is not achievable**: The proposed standard is based entirely upon speculation and conjecture. Because there has been no fully integrated end-to-end demonstration of CCS on a commercial scale coal base load power plant, the proposed standard lacks any credible analytical support that it can be achieved at a single plant let alone for the industry as a whole under the full range of relevant operating conditions. The agency relies upon engineering estimates of a hypothetical IGCC and SCPC units with CCS, not actual operating experience. EPA's approach is unprecedented, unlawful and a stunning departure from over 40 years of regulatory history that relies upon actual emission data from representative units operating with adequately demonstrated technology. Indeed, this consistent historic approach is used by EPA for the proposed standard for natural gas-combined cycle technology. There, EPA reviewed extensive emission data from operating units and selected a standard that can be met by over 95 percent of the currently operating units. Finally, EPA cannot show that the proposed coal unit standard can be met on a continuous basis given the lack of any demonstration of continuous sequestration of the enormous amounts of CO2 from a commercial scale coal base load generation plant.

- **The development of the standards is unreasoned and arbitrary**: EPA arbitrarily uses two distinct and irreconcilable approaches for developing standards for fossil fueled EGUs. The standard proposed for natural gas combined cycle technology is based upon actual emission data from operating units while the standard proposed for coal base load technology is based upon calculations for hypothetical coal units using unproven CCS technologies. The result is a standard that can be met by over 95 percent of the operating natural gas combined cycle units and a standard that cannot be met by a single existing coal base load unit---even those using newest and most advanced coal based technologies such as SCPC or IGCC.

  EPA rejects basing a coal base load plant standard on SCPC and IGCC because, according to EPA, those technologies would not provide "as much emission reductions as practicable." EPA is wrong at every level. First, the proposed standard is not achievable so it will not result in any emission reductions let alone practicable reductions. Second, as

EPA concedes, a standard based upon SCPC and IGCC would result in 5-20 percent emission reductions. Moreover, the emission reductions would be twice that level if the new coal plants replace the oldest existing subcritical plants. These reductions are real, substantial and "as much as practicable" with adequately demonstrated technology. EPA takes an entirely different approach in setting the standard for natural gas combined cycle technology. EPA does not attempt to seek "as much reduction as practicable" and instead allows emission levels 20 percent higher than the levels actually achieved by the best performing natural gas units. EPA's different approaches in setting the coal and natural gas standards cannot be reconciled and, as a result, are unreasoned and arbitrary.

- **CCS-EOR projects lead to net increases in emissions.** As the Agency states in the rule,[10] CAA section 111 (a) (1) requires the Administrator to take into account any "environmental impact" of the standard. The rule is fundamentally flawed in that the emissions EPA wishes to reduce are instead increased as a direct result of the very practices EPA prescribes to defend partial CCS as BSER.

  EPA acknowledges that control costs associated with the construction and operation of coal-fired CCS plants are prohibitively high absent opportunities for enhanced oil recovery.[11] New CCS equipped coal-fired power plants coupled with EOR projects inherently lead to net increases in CO_2 emissions compared to identically constructed new coal-fired power plants without CCS systems, significantly undermining the purpose of the Agency's proposed rule to "limit harmful carbon pollution."[12]

  Notwithstanding the rule's focus on only the power plant and CCS systems, the science indicates that when CCS-EOR projects are examined in tandem these systems lead to net positive CO_2 emissions. A 2009 peer-reviewed paper published in **Environmental Science & Technology** determined that EOR as a method of sequestering CO_2 results in net increases in CO_2 emissions. The paper, *Life Cycle Inventory of CO_2 in an Enhanced Oil Recovery System*,[13] found that the "net emissions from the [CCS-EOR] systems are positive meaning that the GHG emissions are larger than the CO_2 injected and stored in the reservoir."

  The scientists discovered that most assessments utilize "a limited system boundary and ignore the significant emissions that [are] produced upstream of the power plant that captures the CO_2 used in the project, as well as the emissions associated with transporting, refining and combusting the recovered petroleum and petroleum products." They found that, "including all life cycle stages results in significant net emissions."

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[10] *Standards of Performance for Greenhouse Gas Emissions from New Stationary Source: Electric Utility Generating Units*, Environmental Protection Agency, 9/20/2013; page 72.

[11] Ibid, page 272: "As noted, the EPA expects that for the immediate future, captured CO_2 from affected units will be injected underground for geologic sequestration at sites where EOR is occurring."; page 266: ""Moreover, even if requiring CCS adds sufficient costs to prevent a new coal-fired plants [*sic*] from constructing in a particular part of the country due to lack of available EOR to defray the costs, or, in fact, from constructing at all, a new NGCC plant can be built to serve the electricity demand that the coal-fired plant would otherwise serve."

[12] Ibid, page 18.

[13] *Life Cycle Inventory of CO2 in an Enhanced Oil Recovery System*, by Paulina Jaramillo, W. Michael Griffin, and Sean T. McCoy, **Environmental Science & Technology**, Accepted Sept 14, 2009.

When oil is produced, "93% of the carbon in petroleum is refined into combustible products ultimately emitted into the atmosphere[.]" The authors "calculated that between 3.7 and 4.7 metric tons of CO_2 are emitted for every metric ton of CO_2 injected." The paper concludes, "It is clear, that without displacement of a carbon intensive energy source, CO_2-EOR systems will result in net carbon emissions."

EPA's proposed rule states that increased supply of anthropogenic CO_2 may allow for further production from "depleted" oil fields, as CCS promotes EOR:

> "Additionally, oil and gas fields now considered to be 'depleted' may resume operation because of increased availability and decreased cost of anthropogenic CO_2, and developments in EOR technology, thereby increasing the demand and accessibility of CO_2 utilization for EOR."[14]
>
> "Identifying partial CCS as the BSER also promotes further use of EOR because, as a practical matter, we expect that new fossil fuel-fired EGUs that install CCS will generally make the captured CO2 available for use in EOR operations."[15]

Likewise, the additional supply of CO_2 captured from the Kemper County Energy Facility CCS-EOR project, upon which EPA heavily relies in its proposed rule, will allow for the increased production of oil. In December, Denbury Resources, which has contracted to purchase 70 percent of Kemper's captured CO_2,[16] went on record with the Associated Press to state that without the Kemper CCS plant, "they would not be able to produce oil there otherwise."[17] When held to EPA's own misguided standards for lifecycle GHG emission analysis, the Kemper CCS-EOR project will lead to a net increase in CO_2 emissions.

- **The proposal will leave the nation's electricity supply less diverse, less reliable and more expensive**: EPA's proposal effectively bars the construction of new higher efficiency coal base load power plants that are needed to maintain a diverse, reliable and affordable electricity supply. The centrality of coal based electricity to the reliability and affordability of the nation's electricity supply is beyond dispute. Over the past ten years, coal based electricity generation has supplied more than 45 percent of the nation's electricity supply. Currently, 25 percent of the nation's base load power generation capacity (coal, natural gas and nuclear) is 40 years or older and in another decade that will reach almost 50 percent. The Department of Energy's Energy Information Administration forecasts that 60,000 megawatts of coal based load power capacity will close over the next several years principally in response to EPA's recent mercury and air toxic regulations. To maintain a diverse, reliable and affordable electricity grid, new higher efficiency coal units will be required to replace the retiring older coal, natural gas and nuclear electricity generation plants.

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[14] *Standards of Performance for Greenhouse Gas Emissions from New Stationary Source: Electric Utility Generating Units*, Environmental Protection Agency, 9/20/2013; page 232.
[15] Ibid, page 261.
[16] *Denbury Enters into Two Industrial CO_2 Purchase Contracts*, Denbury Press Release, March 16, 2011.
[17] *To clean up coal, Obama pushes more oil production*, Associated Press, by Dina Capiello, Dec 23, 2013.

The importance of supply diversity to the reliability and affordability of electricity is readily apparent. Phillip Moeller, Commissioner, Federal Energy Regulatory Commission (FERC), recently testified that "the power grid is now already at the limit" and the "nation's bulk power system is in a more precarious situation than [he] had feared in years past." Michael Kormos, PJM Interconnection, recently advised FERC that "because less expensive coal generation is retiring and being replaced by other potential high energy cost resources, energy prices could become more volatile due to the increasing reliance on natural gas for electricity generation." Indeed, natural gas prices have more than doubled since their low of $1.82 mm/BTU in April of 2012. This past winter, natural gas prices in some regions reached record highs with mid-points around $40 mm/BTU and bids as high as $100 mm/BTU. Daily average power pricing followed swinging wildly from $40 to $800 MWh.

Greater use of natural gas is partly due to increased supply making it more competitive. However, federal regulations like Utility MACT have led to the closure of a significant number of coal-fired power plants, thereby forcing natural gas generation to pick up the slack. The result is less energy diversity and an electrical grid that is more vulnerable to price spikes during extreme temperatures. In many regions of the country, households depend on natural gas for heat. When temperatures drop, demand for natural gas increases for all consumers including households, commercial buildings and the electric-power sector. Natural gas supplies can be temporarily strained, particularly if there is insufficient pipeline capacity to meet the spike in demand. During the 2014 polar vortex, some regions of the country came perilously close to demand for natural gas exceeding supply which would have led to interruptions of electricity service.

Unfortunately, this situation likely will only get worse. At least one utility company that generates electricity in the mid-Atlantic region stated that 89% of its coal-fired power plants that are scheduled to be shut down in 2015 were running during the cold snap created by the polar vortex. This situation is a clear-cut example of how the EPA's proposed GHG rule for new power plants can and likely will threaten the reliability and affordability of electricity in this country. In this regard, EPA's analysis and assumptions for electricity and natural gas pricing are inadequate and unrealistic.

EPA fails entirely to consider the probability of significant price increases. Turning a blind eye toward the inevitable is irresponsible and a costly gamble with the nation's energy future. Coal serves primarily the power generation market, while natural gas serves many needs including power generation, residential heating, commercial feedstock for manufacturers, transportation and, in the near future, the liquefied natural gas export market. EPA's NSPS policies will have a profound effect upon not only the domestic electricity markets but also many sectors of our economy that rely upon natural gas. As the Department of Energy's National Energy Technology Laboratory (NETL) has warned "policies that encourage the use of natural gas to substitute for coal in power generation could very well lead to spectacular price increases for households and industry." Indeed, according to NETL, coal-based electricity restrained the price of electricity and prevented the price of natural gas from matching the rise in the price of oil. EPA's NSPS proposal

will change all of that—and for the worse. Nothing in EPA's proposal demonstrates that the agency has performed a reasonable assessment of the impacts of this rule upon the vast number of economic sectors that rely upon reliable and competitively priced electricity and natural gas.

For all of the reasons provided in these comments, EPA must withdraw the proposed rule.

Sincerely,

Cason Carter
Vice President, Public Affairs and Corporate Counsel
Alliance Coal, LLC

Dan Barron
Director, Public Policy
Alliance Coal, LLC

REPUBLICAN NATIONAL COMMITTEE
COMMUNICATIONS

PRESS RELEASE

FOR IMMEDIATE RELEASE | 202-863-8614

RNC And Donald J. Trump For President Announce 2016 State Victory Finance Chairs

WASHINGTON – Today the Republican National Committee (RNC) and Donald J. Trump for President announced 2016 State Victory Finance Chairs in thirty-three states and Washington, D.C. As part of the ongoing effort to raise the support needed to win the White House, the RNC and the Trump campaign are continuing to deepen their mutual commitment to expanding a nationwide network of dedicated supporters.

“Having so many long-time supporters eager to come on board signals our nationwide fundraising effort is continuing to gain steam months ahead of Election Day,” said RNC and Trump Victory Finance Chair Lew Eisenberg. “The effort to build national support began the first week in June and continues to gain momentum. We believe that this list will continue to grow in the weeks ahead. Our Victory Finance Chairs in the states are ready to work hard to raise the support we need to keep Hillary Clinton out of the White House, and I’m confident their efforts will also make a difference in our Party’s mission to keep our majorities in the House and Senate.”

“I am excited to have so many individuals committed to victory joining our team,” said Donald J. Trump for President Finance Chairman Steven Mnuchin. “Having experienced fundraising and business leaders in place means we are well-prepared for the long fight ahead against Hillary Clinton, and I expect their efforts will fuel enthusiasm in their states for electing Donald Trump president.”

See below the complete list of State Victory Finance Chairs:

Lloyd Claycomb, Arizona
Albert Braunfisch, Arkansas
Margaret Chai Maloney, California
Sean Maloney, California
Papa Doug Manchester, California
Jamie McCourt, California

Dee and Andy Puzder, California, Presidential Trustees
Larry A. Mizel, Colorado
Ambassador Charlie Glazer, Connecticut
Kevin Moynihan, Connecticut
Brian Ballard, Florida
Thad Beshears, Florida
Duke Buchan, Florida and New York, Presidential Trustee
Steve Crisafulli, Florida
Diana and Llwyd Ecclestone, Florida, Presidential Trustees
Harry Frisch, Florida
Toby Hill, Florida
Darlene Jordan, Florida
Fred Karlinsky, Florida
Ambassador Howard Leach, Florida, Presidential Trustee
Mitch Madique, Florida
Ambassador Francis Rooney, Florida
Wilbur Ross, Florida and New York, Presidential Trustee
Ambassador Mel Sembler, Florida, Trump Victory Vice Chair
Congressman Steve Southerland, Florida
Representative Carlos Trujillo, Florida
Joe Williams, Florida
Rayna Casey, Georgia
Ron Gidwitz, Illinois
Liz Uihlein, Illinois, Presidential Trustee
Rex Early, Indiana
Gary Kirke, Iowa
Mike Whalen, Iowa
Kelly and Joe Craft, Kentucky, Presidential Trustees
Boysie Bollinger, Louisiana
Joe Canizaro, Louisiana
David Fischer, Michigan
C. Michael Kojaian, Michigan, Presidential Trustee
John Rakolta, Jr., Michigan
Ambassador Ron Weiser, Michigan, Trump Victory Vice Chair
Charles Porter, Mississippi
Charles W. Herbster, Nebraska
Phil Ruffin, Nevada, Presidential Trustee
Todd Christie, New Jersey
George Gilmore, New Jersey
Jon F. Hanson, New Jersey
Bob Hugin, New Jersey
AJ Khubani, New Jersey
Tom Maoli, New Jersey
Alex Markowits, New Jersey
Nevins McCann, New Jersey
Tom Mendiburu, New Jersey
Mindy and AJ Papetti, New Jersey
Laura and Richard Saker, New Jersey
Peter Simon, New Jersey
Dr. Stephen Soloway, New Jersey
Doug Steinhardt, New Jersey
Finn Wentworth, New Jersey
Kevin Daniels, New Mexico
Stanley Chera, New York
Edward F. Cox, New York
Howard M. Lorber, New York
Woody Johnson, New York, Trump Victory Vice Chair
Charles P. Joyce, New York
Peter Kalikow, New York
Anthony Scaramucci, New York
Charles Urstadt, New York, Presidential Trustee
Louis DeJoy, North Carolina, Presidential Trustee
Congressman Kevin Cramer, North Dakota
Gary Emineth, North Dakota
Edward F. Crawford, Ohio

Mark Small, Ohio
Bill Summers, Ohio
Ron Weinberg, Ohio
James W. Wert, Ohio
Larry Nichols, Oklahoma
Gordon Sondland, Oregon
Robert B. Asher, Pennsylvania
Dr. Robert Capretto, Pennsylvania
Manuel N. Stamatakis, Pennsylvania
Christine J. Toretti, Pennsylvania
Karen Iacovelli, South Carolina, Presidential Trustee
Bill Hagerty, Tennessee
Gigi and Carl Allen, Texas, Presidential Trustees
Roy Bailey, Texas
Andy Beal, Texas, Presidential Trustee
Doug Deason, Texas, Presidential Trustee
Gaylord Hughey, Texas
Dennis Nixon, Texas, Presidential Trustee
Gene Powell, Texas
John Steinmetz, Texas
Ray W. Washburne, Texas, Trump Victory Vice Chair
Loretta Solon Greene, Virginia
John Rocovich, Virginia
David Tamasi, Washington, DC
Bill Maloney, West Virginia
Diane Hendricks, Wisconsin, Trump Victory Vice Chair
Bill Scarlett, Wyoming

###

BLOG POST

Who will lead Trump's EPA?

By ACCCE
December 2, 2016

KEY TAKEAWAY

Once named, we look forward to working with the next #EPA Admin to improve the quality of life of all Americans

As President-elect Trump's cabinet begins to take shape, attention has turned to who will replace current EPA Administrator Gina McCarthy to lead the agency come January. The next EPA administrator will have a tremendous opportunity to revitalize our energy infrastructure by incorporating our abundance of natural resources, so that the burden of increasingly costly electricity bills can be lifted from the shoulders of American families.

A number of names have been rumored to be in the running, but four contenders seem to be receiving more attention than the rest. They are:

Oklahoma Attorney General Scott Pruitt is likely a familiar name to readers of this blog, and for good reason. He is one of the leading voices in legal efforts challenging President Obama's costly Power Plan. Additionally, during his tenure, he has worked tirelessly to counter EPA's legislative overreach.

Kathleen Hartnett White is a former Commissioner of the Texas Commission on Environmental Quality, the second largest environmental regulatory agency in the world after the U.S. EPA. She too has been a fierce and vocal critic of EPA's aggressive power grabs, calling on Congress to pass the "Stopping the EPA Overreach Act" as a means of restraining "an imperial EPA." She is a defender of the use of coal for power, stating in a recent *National Review* article that it has "long been the mainstay of reliable generation."

Jeff Holmstead is a partner at the Bracewell law firm, where he heads up the Environmental Strategies Group. Formerly, he served as Assistant Administrator of EPA's Air and Radiation office under President George W. Bush. Holmstead, one of the nation's leading climate change lawyers, represented ACCCE in the legal challenge to the Power Plan.

Mike Catanzaro, a lobbyist for CGCN, also worked at EPA under President George W. Bush, serving as associate deputy administrator for the agency. He has also served as associate director for policy for the White House Council on Environmental Quality, as an aide on the Senate Environment and Public Works Committee, and was former House Speaker John Boehner's energy policy adviser.

These four candidates have a deep understanding of the energy and environmental challenges our country faces today, and perhaps, even more importantly, they all appear to recognize EPA's role as an non-intrusive enforcement agency confined by law. Rolling back some of the unconstitutional mandates that have been forced on the industry by the previous administration will have far-reaching positive effects on American families and the economy. Regardless of who is named, we look forward to working with the next EPA Administrator – whoever he or she may be – to improve the quality of life of all Americans.

ACCCE Statement on the Confirmation of Scott Pruitt as EPA Administrator

By Michelle Bloodworth - COO
February 17, 2017

WASHINGTON, D.C. — Following Senate confirmation of Scott Pruitt as Administrator of the Environmental Protection Agency (EPA), the American Coalition for Clean Coal Electricity issued the following statement:

"We are pleased the Senate has confirmed Mr. Pruitt to be the next EPA Administrator. He will make an exceptional head of EPA. Under his leadership, we expect EPA to return to sensible policies that both protect the environment and recognize the need for reliable and affordable coal-based electricity. "

Paul Bailey

President and CEO

American Coalition for Clean Coal Electricity

###

Friday, February 24, 2017

Time 12:00 AM – 12:30 AM
Subject
Show Time As Busy

Time 8:00 AM – 9:00 AM
Subject Chief of Staff Meeting
Location Alm Room
Show Time As Busy

Bangerter, Layne <bangerter.layne@epa.gov> Optional

Time 5:00 PM – 5:30 PM
Subject Becky Keough (ARK DEQ) and Julie Chapman (Sr. Asst.Director and Chief of Law and Policy)
Location Administrator's Office
Show Time As Busy
Joe Craft (b) (6)
Becky Keough (b) (6)

And Julie Chapman, Sr. Asst Director, chief of Law and Policy

---

Time (b) (6)

From: Joseph Craft [redacted]m]
Sent: Wednesday, March 1, 2017 5:17 PM
To: Hale, Michelle <hale.michelle@epa.gov>
Subject: Scheduled speaking engagements

Michelle,

The requested dates are:

1) In Washington DC, April 27, 2017 to speak to our Board and Sr. Management – informal discussion. Which can be anytime that day convenient to Scott. We could do lunch or dinner or take 45 minutes to an hour in conversation that afternoon. Alternatively he could speak at dinner on the 26th.

2) The next event is to speak—prepared remarks and Q&A to the Coal and Investment Forum in Abingdon Va. Sunday evening dinner June 4, 2017 or anytime the next morning June 5, 2017. We have speaking slots for breakfast or lunch or anytime in between.

Let me know if you have any other questions.

Joe

To: Hale, Michelle[hale.michelle@epa.gov]; Joseph Craft[[redacted]]
From: Hupp, Sydney
Sent: Thur 3/16/2017 9:11:16 PM
Subject: RE: Scheduled speaking engagements
Event Request Form.docx

Hi Joe- Good to hear from you! I agree with Michelle on the preference! Would you mind filling out the attached document so that we can gather some more details on the event? Thank you!

Sydney

From: Hale, Michelle
Sent: Wednesday, March 15, 2017 4:52 PM
To: Joseph Craft [redacted]>
Cc: Hupp, Sydney <hupp.sydney@epa.gov>
Subject: RE: Scheduled speaking engagements

Good to hear from you. I think his preference would be the morning of June 5 but not the breakfast slot – something at 9:30 or 10:00 a.m.

I am copying Sydney Hupp who is taking on the scheduling duties now. Syd, this is something that SP has indicated he would really like to do.

Thank you, Joe!

From: Joseph Craft [mailto[redacted]]
Sent: Wednesday, March 15, 2017 4:25 PM
To: Hale, Michelle <hale.michelle@epa.gov>
Subject: RE: Scheduled speaking engagements

Michelle,

Event Request Form for
Administrator E. Scott Pruitt

U.S. Environmental Protection Agency

To request the Administrator to attend and/or speak at your event, please complete and submit the following form.

Group: The Olde Farm

Name of Event: Coal & Investment Leadership Forum

Date of Event: June 4-6 (Speaking June 5 at 9:45 am)

Type of Event (banquet, lecture, panel discussion, etc.): Lecture/Panel Discussion

Role of the Administrator: Speaker

Approximate time will the Administrator's Remarks Begin (example 9:00 am): 9:45 am

Expected length of the Administrator's remarks: 1 hour

Will there be Q&A? If so, for how long and who from? Ex: press, attendees: Yes, approx. 15 minutes - from the forum attendees. No press will be present at any time during the event.

Event begins (example 9:00 am): 7:00 am

Event ends (example 9:00 am): 8:30 pm

Event address (*please include room name or number if applicable*): 16639 Old Jonesboro Road, Bristol, VA 24202 – The Party Barn

Will there be a hold room for the Administrator? (please include room name and/or number): Yes – Cottage (Room name?)

Please list the name and title of the individual who will introduce the Administrator: Joe Craft III

Approximate size of the audience. Please also include a brief description of the makeup of

the audience (*attorneys, business owners, veterans, students etc.*): Approx. 75 – CEO's, Presidents, Vice Presidents, CFO's, Chairman, Managing Directors, Financial Advisors, Executives – Coal and Investment Industries

Please indicate your request for the topic of the Administrator's remarks, if applicable: TBD

Please list any special guests, elected officials, or other dignitaries who are invited or are expected to attend: Tucker Carlson

Please list any other speakers at this event: Tucker Carlson, Chris Horner, [additional speakers pending]

Is this event open to the media?: No

Please list a point of contact for the day of the event, including a cell phone number and e-mail address for the contact: Marc Eubanks, Club Manager: (423) 534-0167, meubanks@theoldefarm.com

If applicable, please list the name(s) and contact information of the person(s) who will greet the Administrator upon arrival, including a cell phone number and e-mail address for each contact:
Marc Eubanks, Club Manager: (423) 534-0167, meubanks@theoldefarm.com

Please list any special information or directions, such as ongoing construction, specific points of entry, or parking instructions, about the event or location:

Please list below any other relevant information such as agendas, background information or other relevant information about the event. (*Information may also be attached and submitted with this form.*)

Please include a contact number for the event location: (276) 669-1042

Please indicate whether this event is held weekly, monthly or annually: Annually

Please indicate the attire for this event (*business, formal, casual, etc.*): Business Casual

Please list any agencies, businesses, schools or universities, or other organizations that may be sponsoring or co-sponsoring this event:

There are no sponsors. This event is totally private and funded by conference fees. The hosts listed below are honorary in nature as they are the top representatives of the industry.

EVENT HOSTS
Jimmy Brock: CEO - CNX Coal Resource, LP;
Chris Cline: Owner - The Cline Group
Joe Craft III: President & CEO – Alliance Resource Partners
Kevin Crutchfield: CEO – Contura Energy
John Eaves: Chairman & CEO – Arch Coal, Inc.
Jim McGlothlin: Chairman & CEO – The United Company
Bob Murray: Chairman, President & CEO – Murray Energy Corporation

Please provide the security contact if contracted or head of security for event location:
Marc Eubanks, Club Manager: (423) 534-0167, meubanks@theoldefarm.com

To: Phelleps, Moya <MPhelleps@nma.org>; Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: Administrator Pruitt Visit

Thank you Moya! It will be wonderful to see the Crafts. So, good news-- we were able to get the flight we wanted. We will land at Ft. Myer at 12:35PM and the security detail will be there ready to transport him, which puts us back to the original request of doing things in the early afternoon. Being much more familiar than we are, does that arrival time help in the planning process, I hope? My apologies for it taking a while to work out on our end.

Thank you!

Sydney Hupp

Office of the Administrator- Scheduling

202.816.1659

From: Phelleps, Moya [mailto:MPhelleps@nma.org]
Sent: Friday, March 31, 2017 12:32 PM
To: Hupp, Millan <hupp.millan@epa.gov>; Hupp, Sydney <hupp.sydney@epa.gov>
Subject: RE: Administrator Pruitt Visit

Millan:

Apologies for not getting the list of attendees to you sooner. It is as of today – March 31. We are expecting approx. 100 people.

NMA"s Chairman is Kevin Crutchfield, CEO, Contura Energy

NMA's Vice Chairman is Phillips Baker, Jr., President and CEO Hecla Mining

As information Joe and Kelly Craft, Alliance Resource Partners , will be at the

meeting.

Please let me know if you need additional details.

Moya

Moya Phelleps
Senior Vice President, Member Services
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Direct: (202) 463-2639
mphelleps@nma.org

From: Phelleps, Moya
Sent: Thursday, March 30, 2017 8:28 PM
To: 'Hupp, Millan' <hupp.millan@epa.gov>; Hupp, Sydney <hupp.sydney@epa.gov>
Subject: RE: Administrator Pruitt Visit

Millan:

We can certainly get you the two and even three rooms in our block for Sunday night. Do you want to make the reservations or are you o.k with us making the reservations and letting the hotel know that payment information will be provided at check-in.

The meeting with the Executive Committee is very flexible and we can make it work for your schedule. Regarding the remarks to the Board, before lunch is fine but is there any possibility to make it 11:30 or Noon. It is not unusual for us to have a speaker address the board, leave immediately after and then we serve lunch.

Do you have a few minutes to get on the phone? It may be easier just to talk it through. I am

To: Hupp, Millan[hupp.millan@epa.gov]
From: Phelleps, Moya
Sent: Mon 4/17/2017 3:38:38 PM
Subject: RE: Administrator Pruitt Visit

I hope this is the last one for the day…we are planning to give Administrator Pruitt a hand painted hard hat with his name. Our legal counsel said it would o.k. based on the gift rules but I want to be sure based on your note in an earlier email today.

Moya Phelleps
Senior Vice President, Member Services
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Direct: (202) 463-2639
mphelleps@nma.org

From: Hupp, Millan [mailto:hupp.millan@epa.gov]
Sent: Monday, April 17, 2017 11:32 AM
To: Phelleps, Moya <MPhelleps@nma.org>
Subject: RE: Administrator Pruitt Visit

Yes, of course. That is no problem.

From: Phelleps, Moya [mailto:MPhelleps@nma.org]
Sent: Monday, April 17, 2017 11:31 AM
To: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: Administrator Pruitt Visit

Sorry…are you o.k. if we put the sign outside of the room?

Moya Phelleps
Senior Vice President, Member Services
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Direct: (202) 463-2639
mphelleps@nma.org

From: Hupp, Millan [mailto:hupp.millan@epa.gov]
Sent: Monday, April 17, 2017 11:25 AM
To: Phelleps, Moya <MPhelleps@nma.org>
Subject: RE: Administrator Pruitt Visit

Not at all. He just cannot accept any gifts, awards, or designations.

From: Phelleps, Moya [mailto:MPhelleps@nma.org]
Sent: Monday, April 17, 2017 11:24 AM
To: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: Administrator Pruitt Visit
Importance: High

Millan:

Do you have a problem if we do a sign that will be in the room where we are having lunch that will welcome Administrator Pruitt and acknowledges the luncheon sponsor?

Moya

Moya Phelleps
Senior Vice President, Member Services
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001

Phone: (202) 463-2600 Direct: (202) 463-2639
mphelleps@nma.org

From: Hupp, Millan [mailto:hupp.millan@epa.gov]
Sent: Sunday, April 16, 2017 4:38 PM
To: Phelleps, Moya <MPhelleps@nma.org>
Subject: Re: Administrator Pruitt Visit

Perfect. Thank you, Moya.

Millan Hupp

202.380.7561

Sent from my iPhone

On Apr 16, 2017, at 3:02 PM, Phelleps, Moya <MPhelleps@nma.org> wrote:

> Millan:
>
> Kevin Crutchfield, CEO of Contura Energy and NMA's Chairman will introduce Administrator Pruitt.
>
> The attached list that I sent earlier is NMA's Executive Committee. Everyone should be at the meeting but Mr. Goldberg and Mr. McMullen who will call into the meeting.
>
> Regarding the meeting on Sunday, April 23 at Noon for the walk-thru, we should meet in the lobby. The following individuals will be participating from the hotel:
>
> Taylor Svoboda

Meetings and Special Events Manager

The Ritz-Carlton Golf Resort, Naples

Matthew Murphy

Loss Prevention Supervisor

The Ritz-Carlton Golf Resort, Naples

I will be at the meeting as well.

Please let me know if you have any further questions or need anything.

Thank you.

Moya

From: Hupp, Millan [mailto:hupp.millan@epa.gov]
Sent: Sunday, April 16, 2017 10:37 AM
To: Phelleps, Moya <MPhelleps@nma.org>
Subject: Re: Administrator Pruitt Visit

Moya,

Do you happen to know yet who will be introducing the Administrator?

Also, the list of board members your sent me, if that the list of folks that will be in the Executive meeting?

Thanks so much,

Millan

From: Phelleps, Moya <MPhelleps@nma.org>
Sent: Tuesday, April 11, 2017 4:08:46 PM
To: Hupp, Millan
Subject: RE: Administrator Pruitt Visit

Millan:

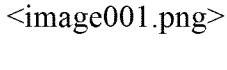
The lunch will be in Tiberon #3 and the meeting with the Executive Committee will be in Anhinga. Our office will be available should you need a holding space. It is Sabal Palm. A map of the meeting room space is attached.

A list of NMA's Executive Committee is attached. If you need additional information on the companies, please let me know.

We are confirmed for a walk through on Sunday, April 23 at Noon. I will let you know where we will meet.

Best regards,

Moya



Moya Phelleps
Senior Vice President, Member Services
National Mining Association
101 Constitution Ave. NW, Suite 500 East
Washington, D.C. 20001
Phone: (202) 463-2600
Direct: (202) 463-2639
mphelleps@nma.org

From: Hupp, Millan [mailto:hupp.millan@epa.gov]
Sent: Tuesday, April 11, 2017 10:40 AM
To: Phelleps, Moya <MPhelleps@nma.org>
Subject: RE: Administrator Pruitt Visit

So sorry – just a couple more questions.

Could you please remind me of the name of the room where he will be speaking? Also, will you have a hold available should we need it?

Thank you so much.

Millan

From: Phelleps, Moya [mailto:MPhelleps@nma.org]
Sent: Tuesday, April 11, 2017 10:35 AM
To: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: Administrator Pruitt Visit

Millan:

Good morning. Thank you for the information below. Thanks for providing the information regarding Lincoln Ferguson and JP Freire.

Derek Burke

Office: 239-254-3396

We will be meeting this afternoon and I will let you know who will be introducing Administrator Pruitt. I will send you a list of the Executive Committee members by the end of the day.

attendance will cover a meal that is provided to all attendees, it does not cover side events, receptions, and other meals (like a speaker's dinner) that are not open to all attendees.

Financial Disclosure Implications

Because this is not a gift, there are no financial disclosure reporting obligations.

Time (b) (6), (b) (7)(C)
Subject AA Flight 1557: OKC - DFW
Show Time As Busy
Record Locator: (b) (6), (b) (7)(C)
AA Record Locator: (b) (6), (b) (7)(C)

Time (b) (5) DPP
Subject
Show Time As

Time (b) (5) DPP
Subject
Show Time As

Saturday, April 22, 2017

Time All Day
Subject Earth Day
Location (b) (5) DPP
Show Time As Free

Time (b) (5) DPP
Subject
Show Time As

Time (b) (6), (b) (7)(C)
Subject AA Flight 2426: DFW - TUL
Show Time As Busy
Status:
Confirmed - American Airlines Record Locator: (b) (6), (b) (7)(C)

Monday, April 24, 2017

Time 7:00 AM – 7:25 AM
Subject Cheryl to Open Administrator's Office for Cleaning
Recurrence Occurs every Monday, Tuesday, Wednesday, Thursday, and Friday effective 4/3/2017 until 5/31/2017 from 7:00 AM to 7:25 AM
Show Time As Busy

Time (b) (6), (b) (7)(C)
Subject Delta Flight 2837: TUL-ATL
Show Time As Busy

[redacted]

Time 1:30 PM – 2:30 PM
Subject Speaking Engagement: National Mining Association Spring Board of Directors Meeting
Location Ritz Carlton Golf Resort; 2600 Tiburon Drive, Naples, FL 34109
Show Time As Busy

From: Keith, Jennie
Sent: Wednesday, April 5, 2017 11:33 PM
To: Hupp, Sydney <hupp.sydney@epa.gov>
Cc: Hupp, Millan <hupp.millan@epa.gov>
Subject: Fw: National Mining Association- For Approval

Hi Sydney,

There are no ethics concerns with respect to this event. It may be

important to know that the organization extending the offer is a lobbying organization. The White House Ethics Pledge prohibits acceptance of gifts from lobbyists, but as there is no gift offered, the Ethics Pledge is not implicated. This information is provided solely for your consideration. See the following for more complete details.

Best, Jennie for OGC/Ethics

White House Ethics Pledge

The White House Ethics Pledge does not allow political appointees to accept gifts from registered lobbyists. The persons extending the invitation are registered lobbyists or lobbying organizations, therefore if the official speaks, he must be careful about the organization offering him a tangible gift to take home with him.

Acceptance of Free Attendance (including meals)

Because the official has been invited to speak and present information on behalf of the agency, pursuant to 5 CFR 2635.204(g)(1), acceptance of free attendance and any meals provided on the day of the event is not considered a gift. The official's participation in the event is viewed as a customary and necessary part of his performance of the event and does not involve a gift to him or to the agency. While free attendance will cover a meal that is provided to all attendees, it does not cover side events, receptions, and other meals (like a speaker's dinner) that are not open to all attendees.

Financial Disclosure Implications

Because this is not a gift, there are no financial disclosure reporting obligations.

Attendees	**Name <E-mail>**	**Attendance**
	(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.	Organizer
	Hupp, Millan <hupp.millan@epa.gov>	Required
	Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
	Kime, Robin <Kime.Robin@epa.gov>	Required

Time 2:30 PM – 3:00 PM
Subject Meeting with NMA Executive Committee
Show Time As Busy
Attendees:
Staff: JP Freire, Lincoln Ferguson

Time 3:00 PM – 3:30 PM
Subject Depart for Ft. Myers Airport
Show Time As Busy

Time (b)(6), (b)(7)(C)

To: Hupp, Sydney[hupp.sydney@epa.gov]
Cc: Deborah Lackey[Deborah.Lackey@arlp.com]; Eb Davis[Eb.Davis@arlp.com]; Dan Barron[Dan.Barron@arlp.com]; Ferguson, Lincoln[ferguson.lincoln@epa.gov]; Hupp, Millan[hupp.millan@epa.gov]
From: Joseph Craft
Sent: Wed 4/19/2017 7:37:04 PM
Subject: Re: Board Meeting Request

I will see him at NMA meeting on Monday and we can discuss.

Sent from my iPhone powered by Coal!

On Apr 19, 2017, at 2:35 PM, Hupp, Sydney <hupp.sydney@epa.gov> wrote:

Thank you! Those times work. What would you like for him to speak about?

Thanks!

Sydney Hupp

Office of the Administrator- Scheduling

202.816.1659

From: Deborah Lackey [mailto:Deborah.Lackey@arlp.com]
Sent: Tuesday, April 18, 2017 12:03 PM
To: Hupp, Sydney <hupp.sydney@epa.gov>
Cc: Joseph Craft <Joseph.Craft@arlp.com>; Eb Davis <Eb.Davis@arlp.com>; Dan Barron <Dan.Barron@arlp.com>
Subject: RE: Board Meeting Request

Hi Sydney.

The setting will be casual and off the record in a private dining room at Del Friscos Grille.

Cocktails are planned for 6:30 followed by dinner at 7:00. The Administrator's remarks would follow dinner.

We have some flexibility in the evening's schedule, so please let us know if these times will be acceptable to the Administrator.

Best,

Deborah

<image001.png>

Deborah Lackey | Controller
Alliance Resource Holdings
1717 South Boulder Avenue, Suite 400, Tulsa, OK 74119
☎ 918.295.7665 | 6 918.295.7361 | ✉ deborah.lackey@arlp.com

From: Hupp, Sydney [mailto:hupp.sydney@epa.gov]
Sent: Tuesday, April 18, 2017 10:07 AM
To: Dan Barron <Dan.Barron@arlp.com>
Cc: Deborah Lackey <Deborah.Lackey@arlp.com>
Subject: RE: Board Meeting Request

Hi Dan,

This is a go on our end! What time does he need to be at Del Frisco's? And is this a formal speaking setting?

To: Kelly Craft[kelly@[redacted]
From: Hupp, Sydney
Sent: Tue 4/25/2017 7:28:07 PM
Subject: RE: Joe Craft

Got it. Thank you!

_____
Sydney Hupp
Executive Scheduler
Office of the Adminsitrator
202.816.1659 (c)

-----Original Message-----
From: Kelly Craft [mailto:[redacted]
Sent: Tuesday, April 25, 2017 3:17 PM
To: Hupp, Sydney <hupp.sydney@epa.gov>
Subject: Joe Craft

Good afternoon Sydney,

The details for Wednesday, April 26th dinner.

Trump Hotel

BLT Prime in the GRANT Room
6:30PM cocktails

Joe will be waiting for Scott at your designated entrance. Please feel free to communicate with Joe at [redacted] to provide details.

I appreciate the time you have given to make this happen for the Alliance Resource Partners Board meeting.

Please expect an email with short bios on each member of ARLP Board of Directors.

Also, unfortunately I am not able to attend the dinner with Scott and Ambassador MacNaughton. I appreciate the invitation and look forward to having this dinner later in summer.

Please feel free to reach out with any questions.

Again, thank you.
Kelly Craft

859-221-0136 cell

Sent by my coal powered IPad

Kelly Craft

ADMINISTRATOR PRUITT SPEAKER REQUEST FORM
U.S. Environmental Protection Agency

Deadline for Acceptance:	
Event Title:	*Alliance Resource Partners LP Board of Directors meeting*
Speech Date:	Wednesday, April 26, 2017 (dinner), or Thursday, April 27, 2017 (lunch, afternoon, or dinner)
Is the Above Date Flexible:	No
Speech Time & Duration:	45 minutes to one hour
Speaker Requested:	Administrator Scott Pruitt
Would You Consider a Surrogate:	No
Event Location:	*Wednesday 4/26/17 dinner:* BLT Prime by David Burke Private Dining Room Trump International Hotel 1100 Pennsylvania Ave NW Washington DC 20004 *Thursday 4/27/17 lunch or afternoon:* Reserved Meeting Room Trump International Hotel 1100 Pennsylvania Ave NW Washington DC 20004 *Thursday 4/27/17 dinner:* Del Frisco's Grille Private Dining Room 1201 Pennsylvania Ave NW Washington DC 20004
Open Press/Closed Press:	Closed
Is Event Webcast/Recorded/Transcribed:	No
Purpose of the Event:	Quarterly Meeting with Directors & Senior Management (16 persons)
Speech Topic:	
Requested Presentation Format:	Informal Discussion, Q&A
Dress Code:	Business Casual
Speech/Presentation Duration:	45 minutes to one hour
Teleprompter Available:	No
Microphone / Room Setup:	

ADMINISTRATOR PRUITT SPEAKER REQUEST FORM
U.S. Environmental Protection Agency

Event Sponsor: Joe Craft, CEO, Alliance Resource Partners, LP

Relationship to the EPA:

Honorable Guests Attending:

Notable Federal, State or Local Appointed or Elected officials attending:

Individual Introducing Administrator: Joe Craft

Person to contact for speechwriting purposes:

Person to contact for media purposes:

Origin of Invitation:

Day of Event Point of Contact: Joe Craft [redacted]

Security Contact:

Is the organization or host of the event a registered 501(c)(3), (4), or has a 527 Political Action Committee (PAC):

Will there be a presentation of a "gift" to the Administrator?

If so, what is the US currency value of the gift?

Will a meal be provided, if so what is the US currency value?

Please return this form completed to scheduling@epa.gov and Sydney Hupp (hupp.sydney@epa.gov).

To: Hupp, Millan[hupp.millan@epa.gov]
Cc: Joseph Craft[J[redacted]
From: Eb Davis
Sent: Tue 4/25/2017 9:33:09 PM
Subject: Alliance Dinner
Alliance Resource Partners Attendees.pdf

Good afternoon. Mr. Joe Craft asked that I send you the attached list of the Alliance attendees for the dinner with Administrator Pruitt tomorrow evening. Please let me know if you need anything further.

Eb Davis

Ex. 6 - Personal Privacy

Alliance Resource Partners, L.P.
Board of Directors Meetings
April 26 - 27, 2017

Attendee Information

Full Name	Title
Joseph W. Craft III	Chairman of the Board, President and CEO of ARLP and Director, President and CEO of AHGP
Brian L. Cantrell	Senior Vice President and Chief Financial Officer
Nick Carter	Director - ARLP
J.W. Craft IV	Vice President - Strategic Marketing, Planning and Development
Thomas M. Davidson	Director - AHGP
R. Eberley Davis	Senior Vice President, General Counsel and Secretary
Robert J. Druten	Director - AHGP
Cary P. Marshall	Vice President – Corporate Finance and Treasurer
John P. (Jack) Neafsey	Chairman of the Board of ARLP
John H. Robinson Jr.	Director - ARLP
Robert G. Sachse	Executive Vice President – Marketing
A. Wellford Tabor	Managing Partner, Keeneland Capital, LLC
Wilson M. (Mack) Torrence	Director - AHGP and ARLP
Timothy J. Whelan	Senior Vice President – Sales and Marketing
Thomas M. Wynne	Senior Vice President and Chief Operating Office

Schwab, Justin <schwab.justin@epa.gov>	Required
Eric Vance (Vance.Eric@epa.gov) <Vance.Eric@epa.gov>	Required

---

Time 4:45 PM – 5:05 PM
Subject Briefing re: Meet the Cabinet Event
Location Administrator's Office
Show Time As Busy
Handling: Lincoln, Tate, Troy, Millan

Attendees

Name <E-mail>	Attendance
(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.	Organizer
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
Hupp, Millan <hupp.millan@epa.gov>	Required
Bennett, Tate <Bennett.Tate@epa.gov>	Required
Lyons, Troy <lyons.troy@epa.gov>	Required
Ringel, Aaron <ringel.aaron@epa.gov>	Required

Time 5:30 PM – 5:50 PM
Subject Briefing re: Alliance Resource Partners LP Board of Directors Meeting
Location Administrator's Office
Show Time As Busy
*informal setting, bullet talking points are good most likely

Attendees

Name <E-mail>	Attendance
(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.	Organizer
Hupp, Millan <hupp.millan@epa.gov>	Required
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required

Time 6:30 PM – 8:30 PM
Subject Dinner with Alliance Resource Partners LP Board of Directors Meeting
Location Trump Hotel; BLT Prime; Grant Room
Show Time As Busy
Topic: similar NMA topics
Location: Trump Hotel; BLT Prime; Grant Room
Staffing:
Attendees: Quarterly Meeting with Directors & Senior Management (16 persons)
POC: Joe Craft;(b) (6)

NOTE: Joe will be waiting at the designated entrance

From: Keith, Jennie
Sent: Friday, April 14, 2017 3:45 PM
To: Hupp, Sydney <hupp.sydney@epa.gov <mailto:hupp.sydney@epa.gov> >
Cc: Hupp, Millan <hupp.millan@epa.gov <mailto:hupp.millan@epa.gov> >
Subject: RE: Board Meeting Request

Hi Sydney,

There are no ethics concerns with respect to this event. See the following for more complete details.

Best, Jennie for OGC/Ethics

White House Ethics Pledge

The White House Ethics Pledge does not allow political appointees to accept gifts from registered lobbyists. The persons extending the invitation are not registered lobbyists or lobbying organizations, therefore the Ethics Pledge is not implicated.

Acceptance of Free Attendance (including a meal)

Because the official has been invited to speak and present information on behalf of the agency, pursuant to 5 CFR 2635.204(g)(1), acceptance of free attendance and any meals provided on the day of the event is not considered a gift. The official's participation in the event is viewed as a customary and necessary part of his performance of the event and does not involve a gift to him or to the agency. While free attendance will cover a meal that is provided to all attendees, it does not cover side events, receptions, and other meals (like a speaker's dinner) that are not open to all attendees.

Financial Disclosure Implications

Because this is not a gift, there are no financial disclosure reporting obligations.

Attendees	**Name <E-mail>**	**Attendance**
	(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.	Organizer
	Hupp, Millan <hupp.millan@epa.gov>	Required
	Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required

Thursday, April 27, 2017

Time 7:00 AM – 7:25 AM
Subject Cheryl to Open Administrator's Office for Cleaning
Recurrence Occurs every Monday, Tuesday, Wednesday, Thursday, and Friday effective 4/3/2017 until 5/31/2017 from 7:00 AM to 7:25 AM
Show Time As Busy

AMERICAN COALITION FOR CLEAN COAL ELECTRICITY

May 15, 2017

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Comments of the American Coalition for Clean Coal Electricity in Response to EPA's Request for Comments on "Evaluation of Existing Regulations" Pursuant to Executive Order 13777, 82 Fed. Reg. 17,793 (Apr. 13, 2017); Docket ID No. EPA-HQ-OA-2017-0190

Submitted to Regulations.gov, Docket ID No. EPA-HQ-OA-2017-0190

The American Coalition for Clean Coal Electricity (ACCCE) appreciates the opportunity to provide comments regarding EPA's efforts to evaluate regulations pursuant to Executive Order 13777, *Enforcing the Regulatory Reform Agenda*.[1] ACCCE is a national trade organization whose mission is to advocate on behalf of the coal fleet and coal-fired electricity.[2]

To provide some context for our comments, the coal fleet is one of the nation's principal sources of baseload electricity. Baseload electricity sources are the foundation of the electricity grid because they can be counted on 24/7. Thus, the coal fleet helps to ensure the electricity grid is both reliable and resilient. Unfortunately, EPA regulations have been a major factor in the retirement, so far, of 451 coal-fired electric generating units in 37 states that represent a total of more than 75,000 megawatts (MW) of electric generating capacity.[3] These EPA-caused retirements represent almost one quarter of the U.S. coal fleet. Basically, recent EPA regulations have become a threat to a reliable and resilient electricity grid.

Our comments below offer recommendations on eight regulations: Clean Power Plan (CPP); carbon dioxide (CO_2) New Source Performance Standards (NSPS) for new coal-fired power plants; effluent limitations guidelines (ELGs); coal combustion residuals (CCR) rule; New Source Review (NSR) program; Cross-State Air Pollution Rule (CSAPR) Update

rule; the recent regulations to amend the regional haze program; and the startup, shutdown, and malfunction (SSM) SIP call.

CLEAN POWER PLAN

EPA should repeal the Clean Power Plan.

There are three fundamental flaws with the CPP.[4] First, the CPP is unlawful because EPA is prohibited from regulating CO_2 emissions from coal-fired power plants under Section 111(d) of the Clean Air Act (CAA or Act) since EPA already regulates coal-fired power plants under Section 112 of the Act. Second, EPA has exceeded its authority under Section 111(d) by setting CO_2 performance standards based on emissions reductions that are only achievable by measures undertaken outside the boundaries of power plants ("outside the fence"). Third, the CPP impermissibly infringes on states' inherent sovereign authority to regulate electricity by requiring the generation of electricity to shift from coal-fired power plants to natural gas and renewable energy resources.

In addition, the CPP is an expensive program that would impose annual compliance costs (according to EPA's estimate) of up to $8.4 billion per year, while having a trivial effect on climate change.[5] For example, the CPP would reduce global average temperature increase by 0.01°F and sea level rise by the thickness of two sheets of paper.[6]

If EPA determines it is necessary to regulate CO_2 emissions from existing power plants under Section 111(d), the CPP should be replaced with guidelines that give states the authority to set reasonable CO_2 performance standards based on measures that are achievable "inside the fence" at each power plant.

NEW SOURCE PERFORMANCE STANDARDS

EPA should repeal the NSPS.

The CO_2 NSPS requires new coal-fired power plants to be equipped with carbon capture and storage (CCS) technology.[7] This requirement has the effect of banning new coal-fired power plants because current CCS technology is not yet commercially available and adding CCS to new coal-fired plants at this time would make them prohibitively expensive to build and operate.

In the past few years, new coal-fired plants have been built in the U.S. that are both highly efficient and clean. These new high-efficiency, low-emissions (HELE) power plants reduce major air pollutants by as much as 99% or more, and their efficiencies enable them to achieve CO_2 emission rates 20% lower than the existing coal fleet.[8] If EPA determines it is necessary to replace the NSPS, the agency should promulgate new NSPS based on HELE technology, not on CCS.

EFFLUENT LIMITATIONS GUIDELINES

EPA should revise the ELG rule.

EPA's ELG rule imposes stringent requirements on wastewater discharges from coal-fired power plants.[9] EPA has announced it is reconsidering the ELG rule in response to petitions for reconsideration filed by the Utility Water Act Group (UWAG) and the Small Business Administration. In addition, EPA has administratively stayed the compliance deadlines of the ELG rule while the Agency completes its review of the ELG rule.[10]

The ELG rule, if it remains in place, is projected to cost electricity generators hundreds of millions to billions of dollars and, in combination with the Coal Combustion Residuals (CCR) rule, is already causing coal-fired power plant retirements. For example, Santee Cooper in South Carolina estimates the cost of the two rules to exceed $700 million for just two coal-fired plants; and Northern Indiana Public Service Company projects the total cost for the ELG and CCR rules to be as much as $830 million and be a major driver in the retirement of four coal-fired electric generating units.[11]

In contrast to its cost, the ELG rule would have minimal water quality benefits. According to EPA's cost-benefit analysis of the ELG rule, its projected cost, $470 million to $480 million per year, exceeds its projected water quality benefits of $150 million to $180 million per year. And EPA projected human health benefits of only $11 million to $17 million per year.[12]

Therefore, EPA should undertake a new ELG rulemaking that revises the zero discharge limit for bottom ash transport waters because, for example, it relies to a large extent on outdated data, and because bottom ash

transport waters pose minimal environmental risks. EPA should also revise the stringent and potentially unachievable treatment requirements for scrubber wastewater.[13]

Finally, environmental groups have filed a lawsuit challenging EPA's administrative stay of the ELG rule. ACCCE supports EPA in its defense of the stay and its efforts to proceed with reconsideration of the ELG rule in an expeditious manner.

COAL COMBUSTION RESIDUALS

EPA should revise the CCR rule.

The CCR rule establishes new requirements for the location, design, structural integrity, and operation of ash ponds and landfills that receive CCR.[14] Many of these requirements are inflexible and prescriptive because at the time of promulgation of the CCR rule, federal statute did not provide EPA or the states with the authority to implement or enforce the requirements of the rule.[15]

Last December, Congress enacted legislation to correct this problem by authorizing states to implement and enforce the requirements of the CCR rule through state permitting programs.[16] With the passage of this legislation, these inflexible and prescriptive CCR requirements are no longer needed or justified because there is now a regulatory authority that can oversee the implementation of the program and consequently avoid any potential abuses that could have resulted under a self-implementing program. For example, the existing CCR rule contains prescriptive provisions for the placement of groundwater monitors, even though their placement can best be determined by state authorities on a case-by-case basis.[17]

Furthermore, the CCR rule contains other inflexible, overly prescriptive requirements that preclude the tailoring of the rule's requirements based on site-specific conditions. One notable example is the inflexibility of the closure requirements of the final rule. For example, the failure to meet many of the rule's requirements immediately triggers an obligation to close existing CCR disposal facilities, even though other corrective action measures may be available at considerably less cost for ensuring the

protection of human health and the environment based on site-specific circumstances at the particular disposal facility.[18]

These inflexible requirements are precisely the type of requirements that justify replacement and modification under President Trump's recent Executive Orders for regulatory reform. Accordingly, EPA should now initiate a new rulemaking which revises the substantive requirements of the CCR rule and removes those that are no longer necessary due to the fact that state agencies and EPA itself can implement the rule. A new CCR rule can address these and other inflexible CCR requirements to reduce costs and continue to ensure that human health and the environment are protected.

Finally, EPA has already taken steps to improve the administration of CCR program through EPA-approved state permit programs, as authorized under the new legislation. This is reflected by a recent EPA announcement that it is working on guidance that is intended to facilitate prompt development and EPA approval of state programs to implement the CCR rule.[19] ACCCE commends EPA for developing this guidance and urges the Agency to expeditiously approve state CCR programs as they are submitted.

NEW SOURCE REVIEW

EPA should revise its NSR regulations.

EPA's NSR program has been the subject of litigation and controversy for decades. The Agency has taken the position that certain projects that improve the reliability, efficiency, and safety of power plants are "non-routine," cause (according to EPA's calculations) emissions increases, and therefore subject the power plants to NSR. Because NSR typically requires lengthy permitting reviews and the installation of the most advanced (and costly) emissions control technology available, EPA's NSR program has been a major deterrent to otherwise-beneficial projects at power plants that, in many cases, would have resulted in emissions decreases, increased electric reliability, and enhanced worker safety.[20]

In addition, the NSR program has resulted in almost 20 years of costly and protracted litigation between the EPA and electric utilities. Unfortunately,

neither EPA nor the courts have able to resolve the basic question as to what is a "modification" that triggers NSR permit review. As a result, considerable uncertainty remains as to whether a particular power plant project to maintain or enhance efficiency or to enhance the plant's reliability or safety is exempted from NSR review as a "routine" change. Nor do the NSR regulations establish a clear and straightforward emissions increase test for determining whether a non-routine change results in a significant net emissions increase that triggers NSR.

To remedy these problems, EPA should revise its regulations to make it clear that reliability, efficiency, and safety improvement projects performed routinely within the electric power sector – as opposed to projects solely performed routinely at the specific power plant – are deemed to be "routine" and, therefore, are not subject to NSR review. In addition, EPA's revised rules should establish a less complicated emissions increase test for determining whether non-routine projects trigger NSR. That emissions increase test should be based on maximum hourly emissions, the same test EPA uses in its NSPS regulations. In this way, a non-routine change would not cause an emissions increase that triggers NSR unless that change results in an increase in maximum achievable hourly emissions.

CSAPR UPDATE

EPA should revise the CSAPR Update rule.

In 2016, EPA issued the CSPAR Update rule to help achieve attainment of the 2008 ozone NAAQS.[21] There are several major problems with this Update rule. For example, EPA made a policy decision that upwind states that are contributing very tiny amounts of pollution to downwind nonattainment areas (1% of the standard) in other states, based on emissions from all sources, must reduce emissions from power plants, which represent only a fraction of the emissions from all sources that contribute to the 1% threshold. This policy decision by EPA was not specifically addressed, let alone statutorily mandated, by the CAA. As a result, it is appropriate for EPA reevaluate this decision, particularly given that it is imposing very costly controls on coal-fired power plants for minimal air quality improvements.

These and other problems with the rule are detailed in pending industry petitions for reconsideration of the Update rule.[22] EPA should grant these pending petitions and initiate a new rulemaking that corrects the methodological problems identified in the petitions and should specifically reconsider the portions of the rule that resulted in ozone-season NO_x budgets more stringent than those established for states under Phase 2 of the original CSAPR.

REGIONAL HAZE

EPA should revise its regional haze regulations and reconsider its regional haze FIPs.

Shortly before President Trump's inauguration, EPA finalized revisions to its regional haze regulations.[23] While these new regulations have one favorable provision – a 3-year extension of the deadline for states to submit SIPs for the second regional haze planning period – the regulations include provisions that exceed EPA's authority under the Clean Air Act.

For example, states must now first establish a long-term strategy to reduce regional haze *before* adopting visibility-based goals for reasonable progress toward elimination of man-made visibility impairment. This cart-before-the-horse approach, as well as other troubling aspects of the new regional haze regulations, must be corrected.[24] Therefore, EPA should grant the pending industry petitions for reconsideration and replace the unlawful aspects of its regional haze regulations, while maintaining the extended 2021 deadline for the second planning period.[25] The new replacement regulations should re-establish state primacy in developing regional haze plans and give states broad discretion in determining reasonable glide paths to reduce visibility impairment. In addition, the replacement regulations should establish a more objective and even-handed methodology for setting the emissions reduction levels that states must achieve to meet their reasonable progress goals during the second and subsequent planning periods of the regional haze program.

In addition, the Obama Administration imposed FIPs on a number of states. EPA has already begun to reconsider several of those FIPs. ACCCE commends EPA for these actions, and urges EPA to review other Obama-

era FIPs to determine if reinstatement of state-developed SIPs is the correct approach in each of those cases.

STARTUP, SHUTDOWN, AND MALFUNCTION

EPA should revise its SSM policies.

EPA has long recognized that emissions controls often do not operate at optimal removal efficiency during startup and shutdown conditions, and the Agency has also recognized that unavoidable malfunctions can occur despite best operational and maintenance practices. For that reason, EPA has historically recognized these issues in its federal emissions standards, for example under the NSPS and MACT programs, and has also approved SIPs that recognize these realities. However, over the past few years, EPA began rulemakings to remove these exclusions from the NSPS and MACT regulations. And in 2015, EPA issued a SIP call to 36 states requiring them to remove their previously EPA-approved SSM provisions. These EPA policy changes can unnecessarily increase operating costs and could increase the risk of further coal retirements, with little to no environmental or human health benefit.

There are two steps that EPA can take immediately to minimize the regulatory burdens being imposed on coal-fired power plants with regard to SSM. First, EPA should repeal the SSM SIP call and reaffirm the authority of states to determine how to deal with SSM. Second, EPA should establish work practice standards that apply during SSM periods for the NSPS and MACT programs.

In conclusion, we commend EPA for undertaking this review and urge the Agency to move quickly to change these regulations and policies.

Sincerely,

/s/

Paul Bailey
President and Chief Executive Officer

[1] See 82 Fed. Reg. 17,793 (April 13, 2017) (EPA notice requesting submission of comments on existing regulations pursuant to Executive Order 13777).

[2] ACCCE's members include electricity generators, coal producers, railroads, barge lines, and equipment suppliers.

[3] ACCCE, *Retirement of Coal-Fired Electric Generating Units as of February 25, 2017*.

[4] 80 Fed. Reg. 64,662 (Oct. 23, 2015).

[5] EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, August 2015.

[6] ACCCE, Climate Effects of EPA's Final Clean Power Plan, August 6, 2015; Lomborg, Bjorn, "Impact of Current Climate Proposals," *Global Policy* (2015) doi: 10.1111/1758-5899.12295.

[7] 80 Fed. Reg. 64,510 (Oct. 23, 2015).

[8] *See, for example*, EPA, "Documentation for EPA Base Case v.5.13 Using the Integrated Planning Model" (November 2013), Tables 5-5 and 3-12, showing SO_2 removal of 96%, NO_x removal of 90%, mercury removal of 90%, and HCl removal of 99%. Particulate matter removal by electrostatic precipitators is well over 99%. (See Babcock and Wilcox, "Electrostatic Precipitator Delivers Maximum Efficiency," http://www.babcock.com/library/Documents/ps-422.pdf (2015)). And, regarding CO_2 emission rates, *see* Cichanowicz, J. Edward and Michael C. Hein, *Evaluation of CO_2 Emissions Rates from State-of-art Coal-fired Electric Generating Units (EGUs)*, February 26, 2014 (showing CO_2 emissions rates for supercritical coal units entering commercial operation since 2007 and burning bituminous and subbituminous coal of 1,700 - 1,900 lb./MWh). EIA, "Frequently Asked Questions," "How much carbon dioxide is produced per kilowatt-hour when generating electricity with fossil fuels"? (Last updated February 29, 2016). https://www.eia.gov/tools/faqs/faq.cfm?id=74&t=11 (showing 2014 average emissions rates for existing bituminous and subbituminous coal units of 2,070 lb./MWh and 2,160 lb./MWh, respectively).

[9] 80 Fed. Reg. 67,838 (Nov. 3, 2015). The Steam Electric ELGs apply to all steam-electric power plants, including nuclear and oil and gas-fired power plants. Our discussion is limited to coal-fired power plants.

[10] 82 Fed. Reg. 19,005 (Apr. 25, 2017).

[11] NIPSCO, *Northern Indiana Public Service Company 2016 Integrated Resource Plan*, November 1, 2016, Appendix A, Exhibit 3 (page 405 of pdf). South Carolina Public Service Authority, *$52,400,000 Santee Cooper: Revenue Obligations, 2016 Tax-Exempt Refunding Series C*, October 6, 2016, page 44.

[12] EPA, *Benefit and Cost Analysis for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, September 2015.

[13] *See Utility Water Act Group Petition for Reconsideration of EPA's "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category: Final Rule," 80 Fed. Reg. 67,838 (Nov. 3, 2015)*, March 24, 2017.

[14] 80 Fed. Reg. 21,302 (April 17, 2015).

[15] *See* 80 Fed. Reg. at 21,311-12 and 21,332-25.

[16] This CCR legislation was included in section 2301 of the Water Infrastructure Improvements for the Nation Act (WIIN Act), which was enacted into law on December 19, 2016.

[17] *See* 80 Fed. Reg. 21302, 21396-97 (April 17, 2015) (declining to adopt certain provisions for tailoring the groundwater and corrective action requirements).

[18] *See* 40 C.F.R. §257.101(a)(1) (imposing closure requirements for any violation of a groundwater protection standard).

[19] See EPA press release, "EPA Promotes Cooperation with States to Facilitate Safe Disposal of Coal Ash," May 1, 2017.

[20] For example, installation of state-of-the-art air emissions controls for a 500-MW coal unit would cost over half a billion dollars. See EPA, Documentation for Base Case v.5.13 Using the Integrated Planning Model: Emission Control Technologies, November 2013. The cost of retrofitting a scrubber on a 500 MW, 10,000 Btu/kWh heat rate coal-fired unit is reported to be $544/kW, while an SCR costs $266/kW, and a baghouse costs $202/kW. All three figures are in 2011$. We adjusted these costs to 2015$ using the Bureau of Economic Analysis Gross Domestic Product Implicit Price Deflator, yielding $580/kW for a scrubber, $280/kW for an SCR, and $213/kW for a baghouse. The total cost would be approximately $1,080/kW, or $540 million for a 500 MW unit.

[21] 81 Fed. Reg. 74,504 (Oct. 26, 2016).

[22] *See Petition for Reconsideration and Partial Stay of the Utility Air Regulatory Group, in the Matter of: Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (81 Fed. Reg. 74504 (Oct. 26, 2016); EPA Docket No. EPA-HQ-OQR-2015-0500* (December 23, 2016) and Midwest Ozone Group, *Petition for Administrative Reconsideration of Updated Cross State Air Pollution Rule* (December 21, 2016).

[23] 82 Fed. Reg. 3078 (Jan. 10, 2017).

[24] *See, for example*, Petitioner Utility Air Regulatory Group's Nonbinding Statement of Issues, *Utility Air Regulatory Group v. United States Environmental Protection Agency*, No. 17-075, D.C. Circuit (Apr. 14, 2017).

[25] See, for example, *Petition of the Utility Air Regulatory Group to the Administrator of the United States Environmental Protection Agency for Partial Administrative Reconsideration of the Final Rule: Protection of Visibility: Amendments to Requirements for State Plans: Final Rule. 82 Fed. Reg. 3078 (Jan. 10, 2017)*, March 13, 2017.

News Releases

News Releases from Headquarters > Water (OW)

EPA Takes Action to Postpone Costly Steam Electric Power Plant Effluent Guidelines Rule

05/25/2017

Contact Information:
(press@epa.gov)

WASHINGTON – U.S. Environmental Protection Agency Administrator Scott Pruitt today signed a proposed rule to postpone compliance dates for the effluent limitations guidelines and standards for steam electric power plants (ELG Rule), which was published in November 2015.

"This proposed rule is one of nearly two dozen significant regulatory reform actions I have taken during my short time as EPA Administrator to protect the environment, jobs and affordable, reliable energy. Today's action, if finalized, will provide relief from the deadlines under the existing ELG Rule while we carefully consider the next steps for this regulation," said Administrator Pruitt.

Specifically, EPA proposes to postpone the compliance dates for the more stringent best available technology economically achievable ("BAT") requirements in the 2015 rule for each of the following wastestreams: fly ash transport water, bottom ash transport water, flue gas desulfurization ("FGD") wastewater, flue gas mercury control wastewater, and gasification wastewater.

Last month EPA determined that two administrative petitions asking the agency to reconsider the 2015 ELG Rule raised issues sufficient to warrant reconsideration of the rule.

EPA is requesting a 30-day comment period that will begin upon publication in the Federal Register at: www.regulations.gov and searching for EPA-HQ-OW-2009-0819.

EPA is posting a pre-publication copy at: https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule#documents

To: Hupp, Sydney[hupp.sydney@epa.gov]
Cc: Bennett, Tate[Bennett.Tate@epa.gov]
From: Rashid G. Hallaway
Sent: Mon 6/5/2017 3:20:58 PM
Subject: ACCCE Board Meeting Request

Hi Sydney,

Hope you had a good weekend. The American Coalition for Clean Coal Electricity is having their mid-year board meeting in Washington on Thursday, June 29th, and would love to have the Administrator attend for 30-45 minutes if his schedule permits. The meeting starts at 10am on the 29th, but we will accommodate the Administrator's schedule if he is available to give brief remarks.

There will be several CEOs and senior executives in attendance from the coal, railroad and utility sectors. Bob Murray, who is the current Chairman of ACCCE, and Joe Craft of Alliance are scheduled to attend the meeting as are several senior executives from CSX, Norfolk Southern, BNSF, Union Pacific, AEP, Southern Company, Peabody Energy, etc.

The ACCCE board meeting would be a great opportunity for the Administrator to discuss his regulatory reform efforts. Please let me know if you need any additional information. Thank you for your consideration and assistance.

RH

Thursday, June 29, 2017

Time	8:00 AM – 9:00 AM
Subject	Chief of Staff Meeting
Location	Alm Room
Recurrence	Occurs every Monday, Tuesday, Wednesday, Thursday, and Friday effective 5/19/2017 until 7/31/2017 from 8:00 AM to 9:00 AM
Show Time As	Busy

Please note the location starting 9 May 2017
POC: ALM Room Cheryl Woodward

Attendees

Name <E-mail>	Attendance
Administrator (b)(6) < Administrator (b)(6)	Organizer
Kundinger, Kelly <kundinger.kelly@epa.gov>	Required
Munoz, Charles <munoz.charles@epa.gov>	Required
White, Elizabeth <white.elizabeth@epa.gov>	Required
Bolen, Brittany <bolen.brittany@epa.gov>	Required
Kelly, Albert <kelly.albert@epa.gov>	Required
Bowman, Liz <Bowman.Liz@epa.gov>	Required
Inge, Carolyn <Inge.Carolyn@epa.gov>	Optional
Burke, Marcella <burke.marcella@epa.gov>	Required

Time	9:30 AM – 9:45 AM
Subject	Prep for ACCCE Speaking Event
Location	Administrator's Office
Show Time As	Busy

Attendees

Name <E-mail>	Attendance
Administrator (b)(6) < Administrator (b)(6)	Organizer
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
Jackson, Ryan <jackson.ryan@epa.gov>	Required
Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>	Required
Chmielewski, Kevin <chmielewski.kevin@epa.gov>	Required
Hupp, Millan <hupp.millan@epa.gov>	Required
McMurray, Forrest <mcmurray.forrest@epa.gov>	Required

Time	9:45 AM – 10:00 AM
Subject	Depart for ACCCE Board Meeting
Show Time As	Busy
Categories	Blue Category

Time	10:00 AM – 11:00 AM
Subject	Speak at American Coalition for Clean Coal Electricity Board Meeting (ACCCE)
Location	DCI Group, 1828 L Street NW Suite 400

Attachments	EPA Administrator Pruitt Speaker Request Form (002) copy.docx Board agenda - Final.docx.pdf
Show Time As	Busy
	POC: Rashid Hallaway rhallaway@hhqventures.com 202.486.0521 NOTE: Having Rashid send an updated request since speaking time has been changed

Attendees

Name <E-mail>	Attendance
Administrator (b)(6) < Administrator (b)(6)	Organizer
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
Hupp, Millan <hupp.millan@epa.gov>	Required
Chmielewski, Kevin <chmielewski.kevin@epa.gov>	Required
McMurray, Forrest <mcmurray.forrest@epa.gov>	Required
Jackson, Ryan <jackson.ryan@epa.gov>	Required
Gunn, Ashley L. EOP/WHO < (b) (6) >	Required

Time	11:00 AM – 11:15 AM
Subject	Depart for Office
Show Time As	Busy
Categories	Blue Category

Time	11:00 AM – 12:00 PM

To: Heath Lovell[Heath.Lovell@arlp.com]
Cc: Jackson, Ryan[jackson.ryan@epa.gov]
From: Dravis, Samantha
Sent: Sat 7/15/2017 6:35:14 PM
Subject: Re: Utility Point of Contact

Thanks Heath!

Sent from my iPad

On Jul 14, 2017, at 10:58 AM, Heath Lovell <Heath.Lovell@arlp.com> wrote:

Samantha,

It was a pleasure meeting you at the ACCCE Board Meeting. As we discussed, I have passed your email along to Big Rivers (Coleman closure due to MATS) and Kentucky Secretary of Energy Charles Snavely (sulfur permit issue related to Century Aluminum adding a pot line).

If there is anything I can do to help, please let me know.

Thanks,
Heath

To: Ex. 6 - Personal Privacy
From: Ex. 6 - Personal Privacy @vzwpix.com
Sent: Fri 7/28/2017 6:45:16 PM
text_0.txt

Thank you Scott. She was voted out of committee Yesterday and hopefully goes before full Senate next week. We will be in DC next week and have been cleared to have the "long awaited" dinner with you and Ambassador McNaughton if your schedule permits. We are open Mon thru Wednesday next week.
Also I understand you maybe in my hometown of Hazard around noon on August 29 with Majority Leader McConnell -- My Company has a stakeholders meeting for our suppliers and customers the evening of the 29th in Henderson Ky and would be honored for you to come and speak to that group. If available I can provide transportation to make the logistics work for you. Let me know if the dinner or visit to Henderson are doable.
How all is well!!

News Releases

News Releases from Headquarters > Water (OW)

EPA Finalizes Rule to Postpone Steam Electric Power Plant Effluent Guidelines Rule

09/13/2017

Contact Information:
(press@epa.gov)

WASHINGTON – The U.S. Environmental Protection Agency (EPA) has finalized a rule postponing certain compliance dates by two years for the effluent limitations guidelines and standards for steam electric power plants (ELG Rule) that were issued in November 2015.

"Today's final rule resets the clock for certain portions of the agency's effluent guidelines for power plants, providing relief from the existing regulatory deadlines while the agency revisits some of the rule's requirements," said **EPA Administrator Scott Pruitt**.
The final rule postpones the compliance dates for the best available technology economically achievable ("BAT") effluent limitations and pretreatment standards ("PSES") for two wastestreams at existing sources, bottom ash transport water and flue gas desulfurization ("FGD") wastewater, for a period of two years.

Last month, the Administrator announced that he would reconsider BAT effluent limitations and PSES in the 2015 rule that apply to bottom ash transport water and FGD wastewater. As part of this upcoming rulemaking, EPA will provide an opportunity for public comment on any proposed revisions to the 2015 final rule.

At this time, EPA does not intend to conduct a rulemaking that would potentially revise BAT effluent limitations and PSES in the 2015 rule for fly ash transport water, flue gas mercury control wastewater, and gasification wastewater, or any of the other requirements in the 2015 rule.

EPA is posting a pre-publication copy of today's final rule at:

https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule#pending

7:30 p.m. Dinner concludes and guests depart

Tuesday, September 26, 2017

Time	7:15 AM – 8:00 AM
Subject	Discussion
Location	Administrator's Office
Reminder	15 minutes
Show Time As	Busy
Attendees	**Name <E-mail>** **Attendance**

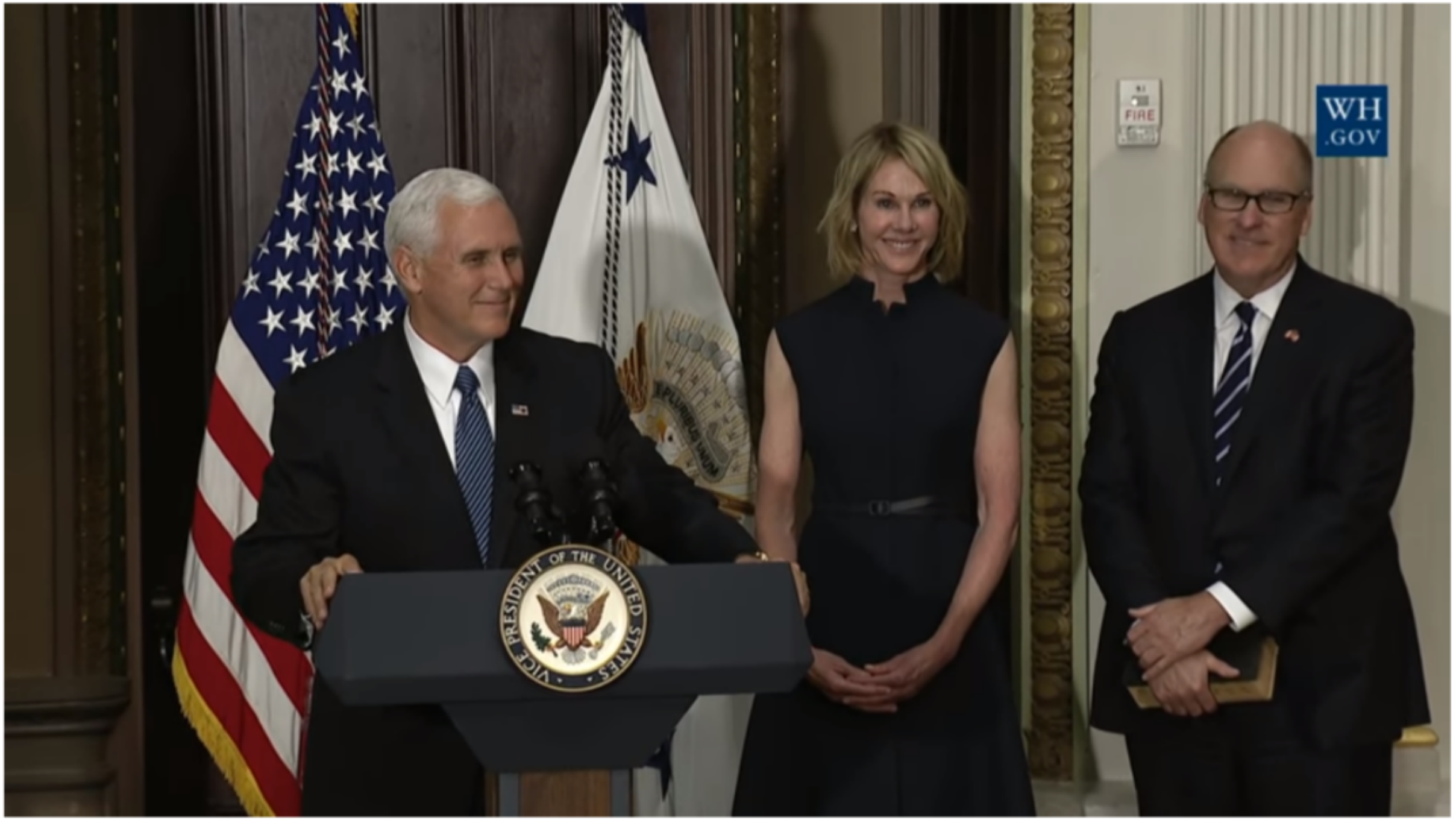
Show Time As Busy

Time 5:00 PM – 5:30 PM
Subject Swearing-In Ceremony: Kelly Craft, Ambassador to Canada
Location Indian Treaty Room, EEOB
Reminder 15 minutes
Show Time As Busy

Time 7:00 PM – 7:30 PM
Subject Williams Board Speaking Engagement
Location Trump Hotel, Patton Room
Reminder 15 minutes
Show Time As Busy
Attendees

Name <E-mail>	Attendance
b(6) Administrator < b(6) Administrator	Organizer
McMurray, Forrest <mcmurray.forrest@epa.gov>	Required
Hupp, Millan <hupp.millan@epa.gov>	Required

Wednesday, September 27, 2017



Vice President Pence Swears in US Ambassador to Canada Kelly Knight Craft

9,015 views

405 33 SHARE

The White House
Published on Sep 26, 2017

SUBSCRIBE 1M

Monday, October 9, 2017

Time All Day
Subject Columbus Day Holiday
Reminder 18 hours
Show Time As Free

Time All Day
Subject Hold: Kentucky
Reminder 18 hours
Show Time As Free
Attendees

Name <E-mail>	Attendance
b(6) Administrator < b(6) Administrator	Organizer
Tate Bennett (Bennett.Tate@epa.gov) <Bennett.Tate@epa.gov>	Required

---

Time 10:15 AM – 11:00 AM
Subject Coal Event at Whayne Supply
Location Hazard, KY
Reminder 15 minutes
Show Time As Busy

Time 11:00 AM – 11:15 AM
Subject FOX Interview
Location Hazard, KY
Reminder 15 minutes
Show Time As Busy

Time 11:30 AM – 12:15 PM
Subject Roundtable at LD Gorman's Office
Location Hazard, KY
Reminder 15 minutes
Show Time As Busy

Time 2:30 PM – 3:30 PM
Subject Agriculture Event at Mayhan Farm
Location Georgetown, KY
Reminder 15 minutes
Show Time As Busy

Time (b) (6), (b) (7)(C)
Subject Flight: LEX - ATL
Location (b) (6),
Reminder 15 minutes
Show Time As Busy

Time (b) (6), (b) (7)(C)
Subject Flight: ATL - (b)
Location (b) (6),
Reminder 15 minutes
Show Time As Busy

America First Energy Conference

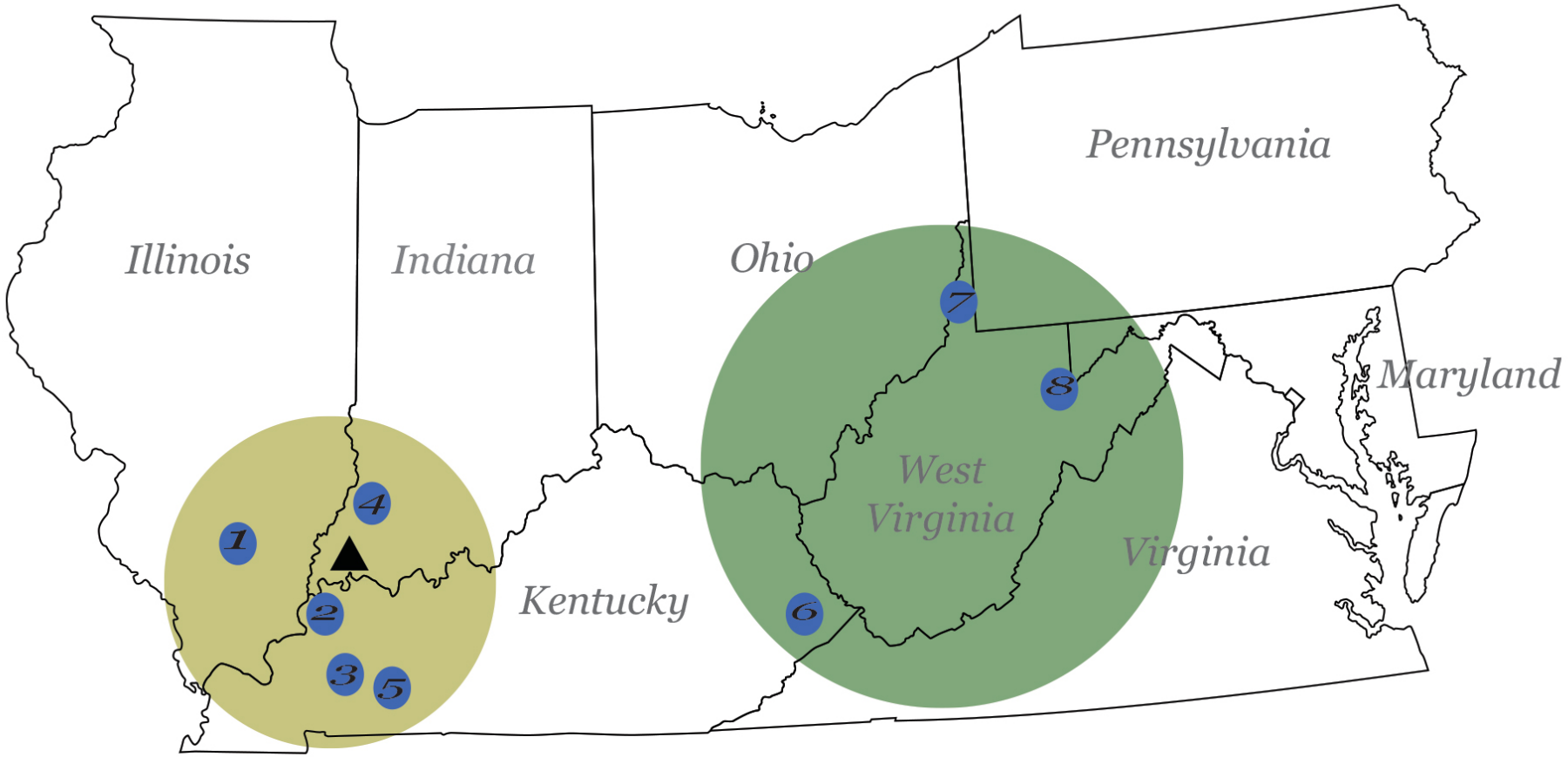
November 9 , 2017

Heath Lovell

Vice-President – Public Affairs

ALLIANCE RESOURCE PARTNERS, L.P.

ALLIANCE HOLDINGS GP, L.P.



Illinois Basin

Appalachia

1. Hamilton Complex
2. River View Complex
3. Dotiki Complex
4. Gibson South Complex
5. Warrior Complex
6. MC Mining Complex
7. Tunnel Ridge Complex
8. Mettiki Complex

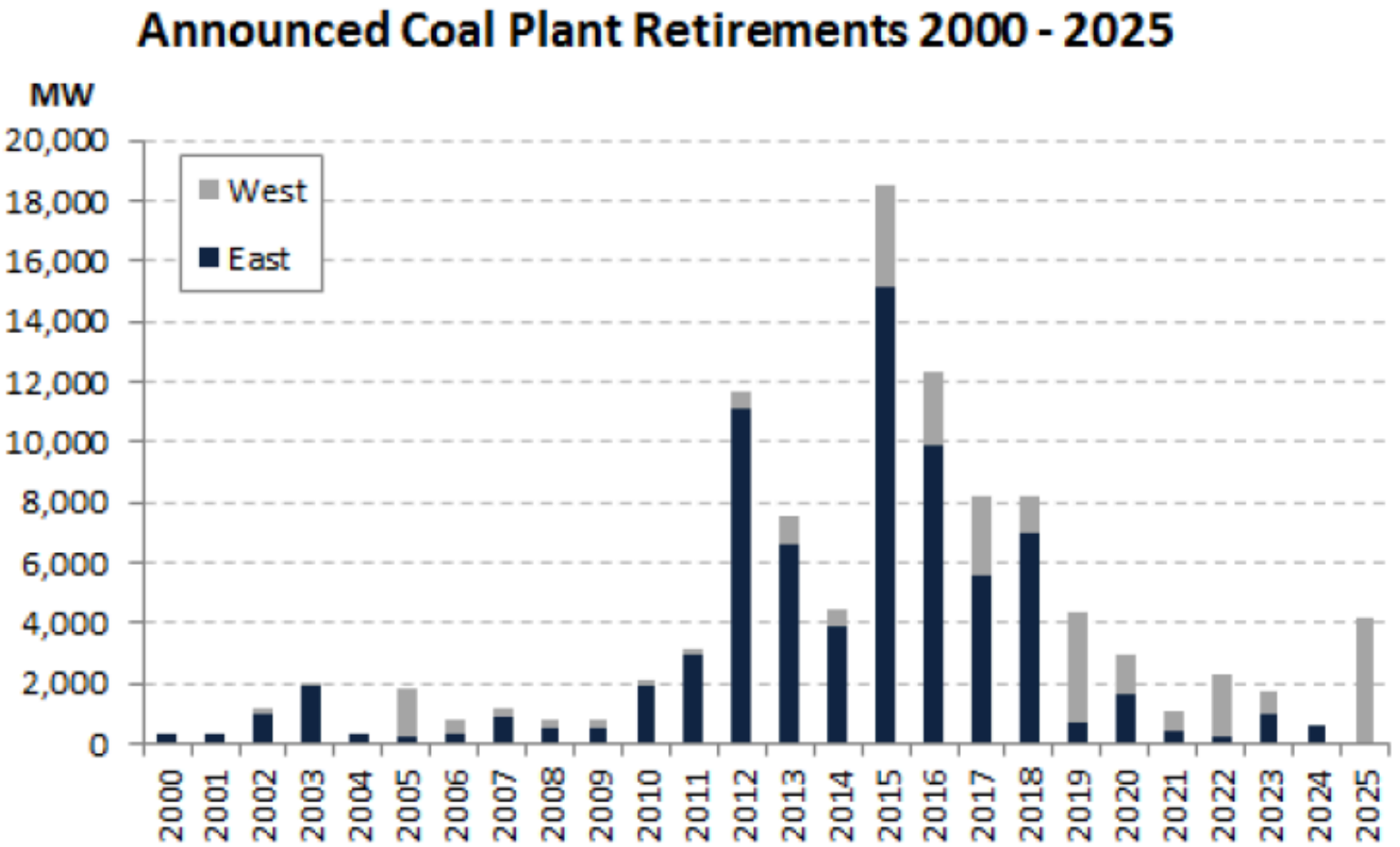
▲ Mount Vernon Transfer Terminal

Nation's Coal Fleet

- Coal generation capacity totaled 316 GW in 2011
- 54 GW was retired from 2012-2016
- An additional 54 GW is planned for retirement
  - 24 GW scheduled between 2017-2020*
  - 30 GW scheduled after 2020
- Average capacity factor 53% (68% in 2010)
- Average age 41 years
- Opportunity: attributes, especially on-site fuel, important for reliability and resilience

Source: ACCCE – *Retirement of US Coal-Fired Generating Units*, 10/24/17

Nation's Coal Fleet



Source: Energy Ventures Analysis, *Outlook for US Coal Power Fleet* Presentation, 10/3/17
Used with Permission

ALLIANCE RESOURCE PARTNERS, L.P.

ALLIANCE HOLDINGS GP, L.P.

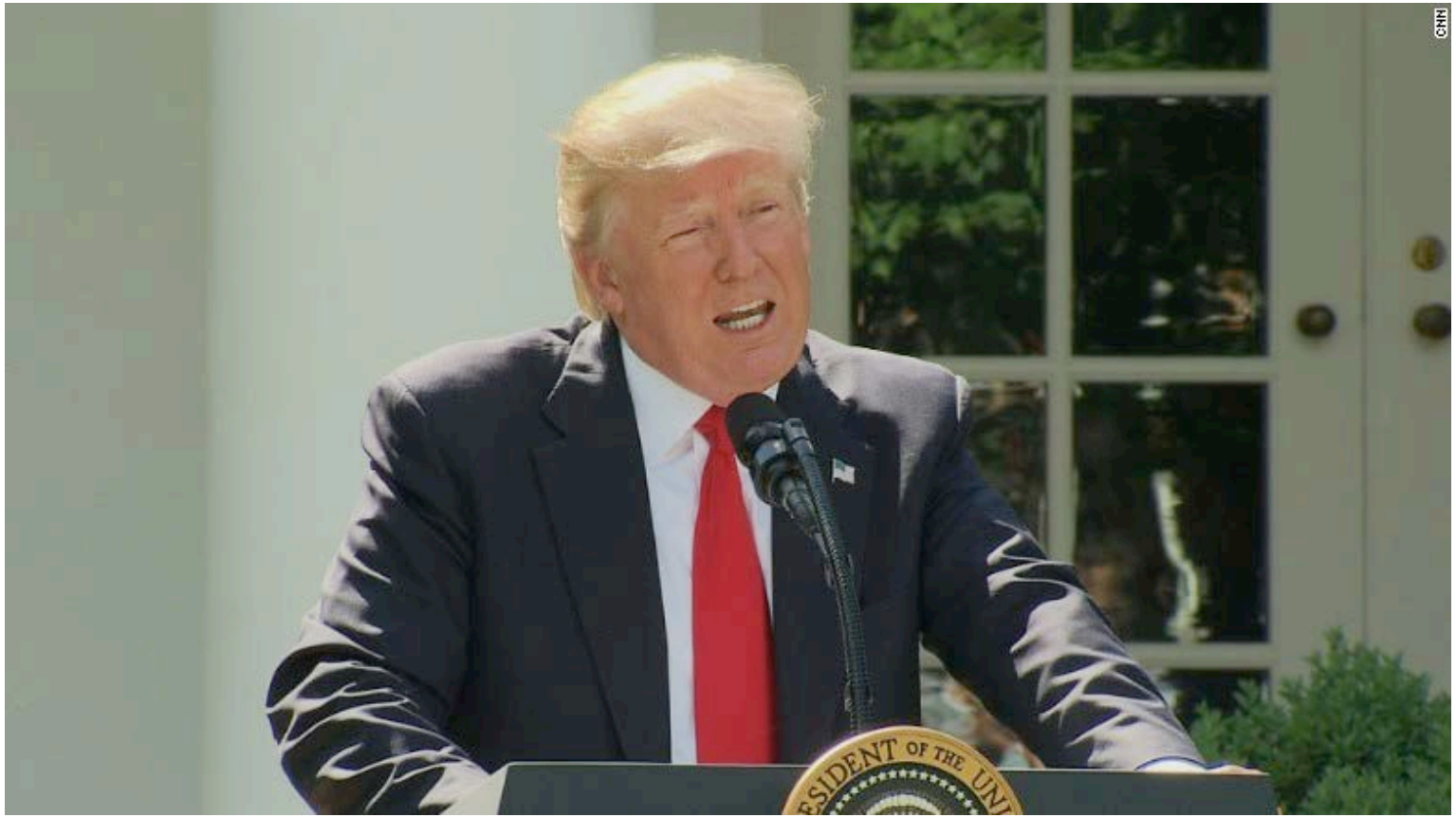
“Circle of Life”

- EPA Regulations
- -> Higher Cost of Electricity
- -> Decreased Competitiveness of American Manufacturing
- -> Loss of Manufacturing Jobs
- -> Decreased Electrical Load
- -> Loss of Tax Revenue at the State and Local Level
- -> Utilities Spend Capital to Generate an Increase in Income
- -> Increased Costs are Passed on to Ratepayers
- -> Result is Higher Cost of Electricity (and the circle continues)

Trump Wins!

A new hope!

- **Trump pulls U.S out of Paris Climate Agreement**



America First!
Executive Order to Create Energy Independence

Energy Week

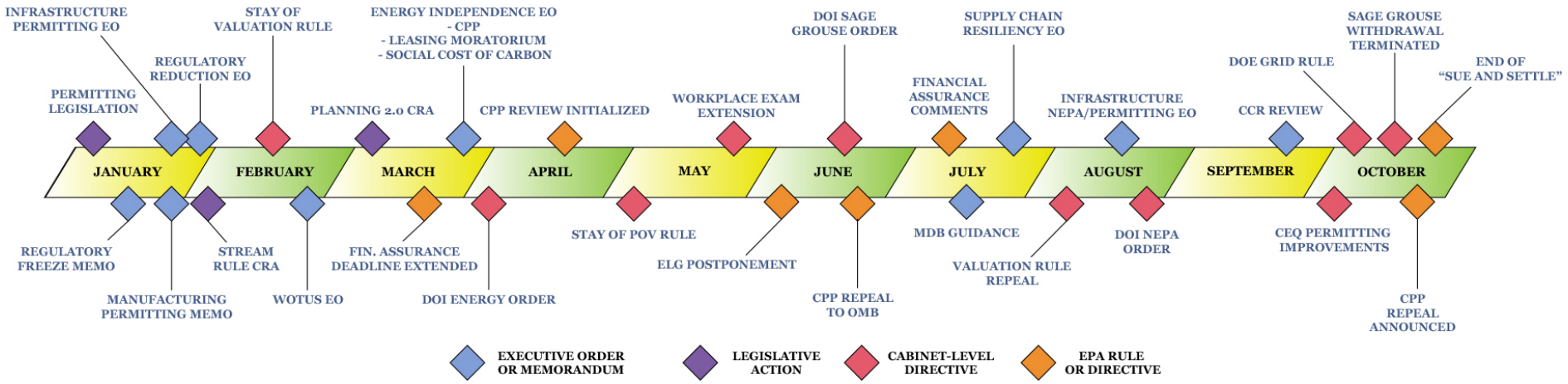
Pruitt announces CPP Repeal in Hazard, KY

Regulatory Relief

Actions Taken to Date

- **Legislative actions through Congressional Review Act**
  - Voided "Stream Protection Rule" (2/26)
  - Voided "Resource Management Planning (2.0) Rule" (3/27)
- **Executive Orders**
  - Promoting Energy Independence & Economic Growth
    - Directs EPA to rescind and rewrite Clean Power Plan (CPP)
  - CWA WOTUS Rule
- **Administrative Stays & Extensions**
  - EPA Financial Assurance
  - MSHA Metal/Nonmetal Workplace Examinations
  - DOI Coal Royalty Valuation
  - EPA Power Plant ELGs
  - MSHA Pattern of Violations
  - EPA Ozone NAAQS
  - DOI SPR Biological Opinion
- **Presidential and Secretarial Memos**
  - Review of Electric Grid Ordered by DOE
  - Streamline Permitting
  - Expediting Environmental Reviews and Approvals

Regulatory Relief



Resolved

- Stream Protection Rule
- BLM Planning 2.0
- Sage Grouse Withdrawal
- DOI Mitigation Requirements
- Coal Leasing Moratorium
- Leasing Act Royalty Valuation
- SMCRA FWS Biological Opinion
- Multi Development Bank Policy
- Social Cost of Carbon Guidance
- NEPA GHG Guidance
- Definition of Solid Waste
- OSM Temporary Cessation of Operations
- OSM Bonding
- OSM Blasting

Underway

- CERCLA Financial Assurance
- Permit Streamlining
- Clean Power Plan
- Power Plant ELGs
- New Source Review
- Waters of the US
- Clean Water Act Vetoes
- DOE Grid Rule
- Regional Haze
- Ozone NAAQS
- NSPS New Poer Plants
- MSHA POV Rule
- MSHA MNM Workplace Examinations
- MSHA Right-Sizing
- Coal Combustion Waste

EXECUTIVE BRANCH

EPA CONFIRMATIONS & NOMINATIONS

ENVIRONMENTAL PROTECTION AGENCY 7 positions

CONFIRMED	Administrator	Scott Pruitt
NOMINATED	Deputy administrator	Andrew Wheeler
NOMINATED	General counsel	Matthew Z. Leopold
NOMINATED	Assistant administrator for water	David Ross
NOMINATED	Assistant administrator for air and radiation	William L. Wehrum
NOMINATED	Assistant administrator for chemical safety and pollution prevention	Michael Dourson
NOMINATED	Assistant administrator for enforcement and compliance assurance	Susan Bodine

ENVIRONMENTAL PROTECTION AGENCY 6 positions

NO NOMINEE	Chief financial officer
NO NOMINEE	Assistant administrator for administration and resources management
NO NOMINEE	Assistant administrator for environmental information
NO NOMINEE	Assistant administrator for international and tribal affairs
NO NOMINEE	Assistant administrator for research and development
NO NOMINEE	Assistant administrator for solid waste and emergency response

Source: Washington Post, https://www.washingtonpost.com/graphics/politics/trump-administration-appointee-tracker/database/.

Heath Lovell

Alliance Coal, LLC

Vice-President – Public Affairs

[redacted]

[redacted]

ALLIANCE RESOURCE PARTNERS, L.P.

ALLIANCE HOLDINGS GP, L.P.

From: Keith, Jennie
Sent: Tuesday, December 19, 2017 2:20 PM
To: Ford, Hayley <ford.hayley@epa.gov>
Cc: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: Ethics Approval: UK/Louisville Basketball Game

Hi there!

Please proceed!

I was able to talk with Justina today just to make sure of everything. And everything as we discussed and outlined in your email is correct.

Thanks!
Jennie for OGC/Ethics

From: Ford, Hayley
Sent: Tuesday, December 19, 2017 1:40 PM
To: Keith, Jennie <Keith.Jennie@epa.gov>
Cc: Hupp, Millan <hupp.millan@epa.gov>
Subject: RE: Ethics Approval: UK/Louisville Basketball Game

Hi Jennie,

Can you please respond to the below so that we can proceed? Thank you!

Hayley Ford
Deputy White House Liaison and Personal Aide to the Administrator
Environmental Protection Agency
ford.hayley@epa.gov
Phone: 202-564-2022
Cell: 202-306-1296

From: Ford, Hayley
Sent: Friday, December 15, 2017 10:31 AM
To: Keith, Jennie <Keith.Jennie@epa.gov>
Cc: Millan Hupp (hupp.millan@epa.gov) <hupp.millan@epa.gov>
Subject: Ethics Approval: UK/Louisville Basketball Game

Hi Jennie,

To memorialize our phone conversation, Administrator Pruitt is planning to attend the Louisville/UK men's basketball game on 12/29 in Lexington, KY. He will be bringing his son with him. The tickets are part of Joe Craft's season ticket package on the floor. UK informed Joe that the face value of the tickets is $130 each. The Administrator will write a check to Joe paying for the tickets for him and his son.

Joe Craft is the President & CEO of Alliance Resource Partners. His wife is the US Ambassador to Canada.

Please advise with your ethics guidance.

Thank you!

Hayley Ford
Deputy White House Liaison and Personal Aide to the Administrator
Environmental Protection Agency
ford.hayley@epa.gov
Phone: 202-564-2022
Cell: 202-306-1296

From: Saylor, Alan
Sent: Thursday, December 28, 2017 12:27 PM
To: Pelarski, Cory <cory.pelarski@uky.edu>; Scott, Walter E <ericscott@uky.edu>
Subject: Re: EPA Administrator Contact/Info

[redacted] I have made arrangements with the Chief for them to have theses passes and she will have them.

Sent via the Samsung Galaxy Note8, an AT&T 4G LTE smartphone

-------- Original message --------
From: "Pelarski, Cory" <cory.pelarski@uky.edu>
Date: 12/28/17 12:00 (GMT-05:00)
To: "Scott, Walter E" <ericscott@uky.edu>
Cc: "Saylor, Alan" <alan.saylor@uky.edu>
Subject: EPA Administrator Contact/Info

LT. Scott,

The EPA Administrator is going to be attending the game tomorrow with his son (college age). They will have [redacted] KSP with them as an advanced party and [redacted] EPA Agents arriving with the Administrator and his son approximately 30-45 min prior to tip off. They will be sitting in front of the Euruption Zone near the UK player entrance at the high table. The Administrator will probably be visiting Mrs. and Mr. Kraft and going to the locker room. The governor will also be in attendance with his group. I have included the contact information for the EPA agent in charge below. He did ask if I would be greeting them and available and I told him unless something changes there will be no UKPD officer available to their team. Mr. Harold (Rupp Security) and SA Dass have included me in a group thread if anything changes.

EPA Special Agent
Paul L. Dass
Cell: (202) 897-8206

Respectfully,
Ofc. Pelarski
Contact: 218-330-2977

Ambassador Kelly Craft
@USAmbCanada

Follow

Great to see @EPAScottPruitt at the game. Congrats to @KentuckyMBB on the big win and Shai for player of the game! 🏀

4:10 PM - 29 Dec 2017

1 Retweet **12** Likes

1 1 12

Thursday, December 28, 2017

Time 2:30 PM – 3:00 PM
Subject Radio Interview: Rush Limbaugh with Mark Stein
Location Call-In (b) (6)
Show Time As Busy

Attendees	Name <E-mail>	Attendance
	b(6) Administrator < b(6) Administrator	Organizer
	Hewitt, James <hewitt.james@epa.gov>	Required
	Bowman, Liz <Bowman.Liz@epa.gov>	Required
	Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
	Hupp, Millan <hupp.millan@epa.gov>	Required

Monday, January 1, 2018

Time All Day
Subject New Years Day Holiday
Reminder 18 hours
Show Time As Free

Time b(5), DPP
Subject
Location
Show Time As
Attendees

UNIVERSITY OF KENTUCKY

Official Records Custodian
301 Main Building
Lexington, KY 40506-0032
859 257-6366
fax 859 323-1062
www.uky.edu

May 23, 2018

VIA EMAIL: steve.eder@nytimes.com

Mr. Steve Eder
New York Times

RE: Open Records Request

Dear Mr. Eder:

This letter is in response to your Open Records Request received by this office on May 18, 2018. You requested the following information:

> "Thanks again for your assistance with this request. I'm hoping you can clarify a couple points. In your response, you advised "that the tickets for the section were Mr. Pruitt was seated are not sold on an individual game basis but rather held by university season ticket holders." It is our understanding that these seats belong to Joe & Kelly Craft, as I am sure you are aware. How much do each of these seats cost, for a season ticket? In addition, is there a minimum donation amount required to secure these seats and if so, can you tell me what that amount is?"

RESPONSE: Pursuant to your most recent request, please be informed that the University's Athletics Department has advised that the cost of a season ticket for section FL39 rows AAA and BBB is $1300 (per seat) for the 2017-18 season. If available as a single game ticket for the U of L game on 12/29/17, the cost would have been $135 per ticket; however, since these tickets were sold in the season ticket package, the cost for this game was $130 per seat. A minimum donation for a pair of seats in section FL39 rows AAA and BBB is for $1million, payable over a specified time.

If we can be of further assistance, please feel free to contact the Open Records Office.

Respectfully,

Bill Swinford
Official Records Custodian

News Releases from Headquarters > Land and Emergency Management (OLEM)

EPA Proposes First of Two Rules to Amend Coal Ash Disposal Regulations, Saving Up To $100M Per Year in Compliance Costs

03/01/2018

Contact Information:
EPA Press Office (press@epa.gov)

WASHINGTON — Today, the U.S. Environmental Protection Agency (EPA) is proposing the first of two rules that will amend the regulations for the disposal of coal combustion residuals, also known as CCR or coal ash, from electric utilities and independent power producers. EPA's Regulatory Impact Assessment shows this proposal, if finalized, will save the utility sector up to $100 million per year in compliance costs.

"Today's coal ash proposal embodies EPA's commitment to our state partners by providing them with the ability to incorporate flexibilities into their coal ash permit programs based on the needs of their states," **said EPA Administrator Scott Pruitt.** "We are also providing clarification and an opportunity for public comment – something that is much-needed following the public reaction to the 2015 coal ash rule."

EPA estimates this proposed rule would save the regulated community between $31 million and $100 million per year. Today's proposed rule includes more than a dozen changes to the 2015 final CCR rule, which established minimum national standards regulating the location, design, and operation of existing and new CCR landfills and surface impoundments at more than 400 coal-fired power plants nationwide.

The final 2015 CCR rule remains subject to litigation pending before the U.S. Court of Appeals for the D.C. Circuit. The proposal addresses four provisions of the 2015 CCR rule that the D.C. Circuit remanded back to EPA in 2016, as well as additional provisions in response to comments received since the final rule went into effect and a petition for rulemaking EPA received in May 2017.

The proposal would allow alternative performance standards for coal ash disposal units with operating permits issued under an approved state or federal coal ash permit program. The proposal also requests comment on whether a regulated facility could develop and implement similar alternative standards that would be subject to oversight and enforcement by EPA. Many of the proposed changes are based on the environmental protections and regulatory flexibilities contained in EPA's longstanding rules governing disposal of municipal solid waste. The proposal includes:

- A change to allow a state regulatory program to establish alternative risk-based groundwater protection standards for constituents that do not have an established maximum contaminant level (MCL), rather than the use of background levels that are currently required. The proposal also requests public comment on whether a facility may be allowed to establish alternative risk-based standards using a certified professional engineer or other means, subject to EPA oversight.
- A request for comment on whether the current deadlines for groundwater monitoring and analysis remain appropriate in light of the new legal authorities and potential regulatory changes.
- A request for public comment on modifying the location restrictions and associated deadlines concerning construction or operation of a CCR landfill or surface impoundment in certain areas.
- Changes to allow states to establish alternative requirements for how facilities respond to and remediate releases from CCR landfills and surface impoundments. The proposal also requests comment on allowing states to determine when an unlined surface impoundment that is leaking may undertake corrective action rather than be forced to stop receiving CCR and close.
- The addition of boron to the list of constituents for which facilitites would need to perform assessment monitoring.
- Streamlined administrative procedures that a facility may comply with if there is a non-groundwater release that can be addressed within 180 days. EPA also requests comment on whether this time period is appropriate.
- Modification of the performance standard for vegetative slope protection to protect against erosion and failure of a surface impoundment.
- A change to the closure provisions to allow the use of coal ash during the closure process and to allow non-CCR waste to continue to be placed in a CCR surface impoundment that is subject to closure.

At that time the final CCR rule was issued in 2015, EPA did not have the authority to allow states to become authorized to administer their own CCR permit programs in lieu of the federal regulations or to provide alternative regulatory standards and compliance options. However, in 2016, Congress amended the Resource Conservation and Recovery Act with passage of the Water Infrastructure Improvements for the Nation Act (WIIN Act), which provides authority for states to become authorized to operate CCR permit programs "in lieu of the federal regulations," as long as the EPA determines that the state's requirements are at least as protective as the standards in the 2015 final rule or successor regulations. The WIIN Act also provides EPA new authority to provide oversight of CCR units.

EPA will be accepting public comment on this proposal for 45 days after publication in the Federal Register and plans to hold a public hearing to receive additional feedback on the proposal during the public comment period. EPA also plans to propose additional changes to the CCR rule later this year.

Additional information on this proposal and how to comment can be found at: https://www.epa.gov/coalash

News Releases from Headquarters › Office of the Administrator (AO)

Presidential Memo on Implementation of Air Quality Standards Showcases EPA Progress on Promoting Domestic Manufacturing and Job Creation

Administrator Pruitt takes final action: no change to standards for nitrogen dioxide

04/12/2018

Contact Information:
(press@epa.gov)

WASHINGTON – Today, President Donald Trump signed a Memorandum for the Administrator of the Environmental Protection Agency (EPA), directing EPA to ensure efficient and cost-effective implementation of air quality standards under the National Ambient Air Quality Standards (NAAQS) and regional haze programs of the Clean Air Act.

"This memorandum helps ensure that EPA carries out its core mission, while reducing regulatory burdens for domestic manufacturing," **said EPA Administrator Scott Pruitt.** "International and background sources of air pollution are critical issues facing state, local, and tribal agencies implementing national standards. The President's leadership will guide our Agency's continued commitment to proper implementation of the Clean Air Act."

The memo, *Promoting Domestic Manufacturing and Job Creation -- Policies and Procedures Relating to Implementation of Air Quality Standards*, calls for setting air quality standards based on transparent science.

On April 6, Administrator Scott Pruitt took final action to retain, without revisions, the current health-based standards for oxides of nitrogen (NO_X). This decision, informed by the recommendation of the Agency's independent science advisors and consistent with comments from states and key stakeholders, keeps the one-hour standard at a level of 100 parts per billion and an annual standard of 53 parts per billion. These standards focus on nitrogen dioxide to address NOx.

EPA also intends to finalize guidance recommending "significant impact levels" for ozone and fine particulate matter soon. This guidance will further reduce permitting burdens for U.S. manufacturers.

The Clean Air Act requires EPA to set NAAQS for "criteria pollutants," which include NOx, ground-level ozone, particulate matter – and other pollutants. NOx emissions have dropped by more than 50 percent since 2000 and currently there are no monitors in the U.S. measuring pollution above those standards.

EPA has already made tremendous progress toward President Trump's direction for regulatory relief:

- The Obama Administration imposed more than 50 Federal Implementation Plans (FIPs) on states, about 10 times the number of FIPs by the three previous administrations combined. Under Administrator Pruitt, EPA has turned an average of one FIP into a State Implementation Plan (SIP) every month.
- Administrator Pruitt inherited a backlog of more than 700 SIPs. Since March 2017, EPA has taken final action on more than 350 SIPs.
- EPA, in close collaboration with states, plans to increase the number of areas that meet NAAQS by approximately 20 percent.
- The Agency is taking action to simplify the New Source Review process and has committed to reduce, by 50 percent, the number of permitting-related decisions that exceed six months by October 2019.
- While tremendous progress has been made in reducing criteria pollutants and regional haze, background and international air pollution contributes significantly to air quality issues under increasingly stringent standards. EPA is committed to maximize flexibility for the Clean Air Act tools for regulatory relief, including through the exclusion of data from "exceptional events" and provisions to address violations caused by international – including non-North American – sources. Since 2016, EPA has received and acted upon more than 20 "exceptional event" demonstrations, nearly all of which concurred with state recommendations.
- In January 2018, EPA announced decisions to revisit onerous and duplicative parts of the Obama's Administration's Regional Haze Rule and to finalize additional flexibilities for state plans due in 2021.

"The Arizona Department of Environmental Quality has been a leader in exceptional event demonstrations and we appreciate the Administration's commitment to timely review of the same. And, we wholeheartedly support the continuing study of background and international transport of air pollutants," **said Director of the Arizona Department of Environmental Quality Misael Cabrera.**

"This new directive to streamline the approval process for state air quality plans is welcome news," **said Wisconsin Department of Natural Resources Secretary Dan Meyer.** "EPA's efforts to work cooperatively with states on Clean Air Act issues in a timely manner will encourage economic growth while protecting the environment."

"Having reduced air pollution from local sources in our region by more than 85 percent, we are grateful for EPA's initiative to streamline implementation and provide for better accounting of international pollution transport as we continue

our efforts to further reduce air pollution and improve public health for San Joaquin Valley residents," **said Executive Director of the San Joaquin Valley Air Pollution Control District in California Seyed Sadredin.**

"The current Clean Air Act regulatory review process is confusing, results in conflicting standards, and does not provide local officials with the predictability they need to develop long-term transportation plans aimed at reducing emissions. ARTBA endorses the Trump Administration's plan to reform the process to speed up the delivery of transportation improvement projects while also maintaining environmental protections," **said American Road & Transportation Builders Association President & CEO Peter Ruane.**

LAST UPDATED ON APRIL 12, 2018

April 26, 2018

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

EPA Docket Center
U.S. Environmental Protection Agency
WJC West Building, Room 3334
1301 Constitution Ave., NW
Washington, DC 20460

American Coalition for Clean Coal Electricity Comments on EPA's Proposed Rule to Repeal the Clean Power Plan

The American Coalition for Clean Coal Electricity (ACCCE) submits to the Environmental Protection Agency (EPA or Agency) the following comments in strong support of EPA's proposed rule to repeal the Clean Power Plan (CPP)[1] in its entirety.[2]

As discussed below, EPA should repeal the CPP for two important and compelling reasons. First, the CPP is illegal because the rule greatly exceeds EPA's authority to regulate carbon dioxide (CO_2) emissions from fossil-fueled power plants under section 111(d) of the Clean Air Act (CAA or Act). Second, even if for the sake of argument the CPP were determined to be lawful, it would establish bad environmental policy that would have substantial adverse energy and economic repercussions for the nation. These adverse consequences would result from the fact that the CPP would impose massive costs on consumers and businesses without providing any meaningful effect on climate change, cause substantial additional retirements of existing coal-fueled generation that, in turn, will increase risks to the reliability and resilience of the nation's electricity grid, and usurp states' and grid operators' traditional role of determining the appropriate mix of electricity generating resources in each state or region

ACCCE is a non-profit organization that is the only national trade organization whose sole mission is to advocate at the federal and state levels on behalf of the nation's coal fleet. Our members represent every sector of the coal-fueled electricity industry, including electricity generators, coal producers, railroads, barge operators, and equipment manufacturers.[3]

In addition to these comments, ACCCE is a member of the Utility Air Regulatory Group (UARG) and supports and incorporates the UARG comments on the Proposed Rule by reference herein.

I. ACCCE Members have a Substantial Interest in the Repeal of the Clean Power Plan.

ACCCE and its members believe it is critically important to preserve the fleet of existing coal-fired power plants. The importance of the existing coal fleet was recently reaffirmed by the Department of Energy (DOE), the Federal Energy Regulatory Commission (FERC), and the North American Electric Reliability Corporation (NERC). These entities and others have recognized the essential reliability and resiliency attributes the coal fleet provides to the electricity grid.[4]

In the last several years, threats to the resiliency and reliability of the electric grid have increased. More than 111,000 megawatts (MW) of coal-fueled generating capacity have retired or announced plans to retire.[5] This disturbing trend in coal plant retirements would be exacerbated with the implementation of the CPP. EPA has projected that the CPP would cause the retirement of an additional 29,000 MW of coal-fueled generating capacity by 2025.[6]

The pace of coal plant retirements has caused cascading effects throughout the coal industry and industries that support coal, such as railway and barge transportation, not to mention coal-producing communities. Roughly 90% of coal produced in the U.S. is transported by rail or barge.[7] From the peak of U.S. coal transport in 2008 to 2016, U.S. railroads have seen a 45% decrease in carloads of coal.[8] In one year alone, from 2015 to 2016, gross revenues attributable to coal transport fell 25% for Class I railroads.[9]

Workers across the coal industry have been hit hard too. Between 2011 and the second quarter of 2017, 65,484 coal miners lost their jobs, a 45.7% decline.[10] In that same period, nearly 8,000 well-paying jobs have been lost in fossil-fueled electric power generation.[11] Unfortunately, these types of quality jobs are increasingly hard to find in the workers' current regions. Nor are jobs generally available in other energy sectors (such as solar energy development), as such opportunities "vary regionally and often do not correlate well with concurrent job losses in sectors such as coal mining or power plant operations."[12]

EPA's failure to repeal the CPP will do further harm to American workers who depend on the coal industry for their livelihoods. Analysis of lost coal jobs in Southwestern Virginia by the King University School of Business Institute for Regional Economic Studies found that each coal mining job supports 1.27 jobs in other sectors of the region's economy.[13] The loss of 100 coal mining jobs would lead to 127 jobs being lost

in all other industries, for a total loss of 227 jobs.[14] Each job in the coal mining industry generates almost $128,000 in earnings paid to households employed in all industries of the region's economy.[15] Therefore, a loss of 100 coal mining jobs would depress the local economy by $12.8 million.[16]

For these reasons, ACCCE and its members have a substantial interest in EPA's Proposal to repeal the CPP in its entirety.

II. The Clean Power Plan Is Illegal and Should Be Repealed.

In the Proposed Rule, EPA has provided a detailed analysis of the Agency's authority to regulate CO_2 emissions from existing electric generating units (EGUs) under section 111(d) of the CAA. This analysis concludes that EPA only has authority to require states to set CO_2 performance standards that satisfy two related statutory requirements. First, the standards must be based on control measures that are determined to be the "best system of emission reduction" (BSER) and second, in making this BSER determination, EPA may consider only control measures "that can be applied at, to or for" an individual stationary source.[17] Based on this reading of the statute, EPA proposes to determine that it does not have authority to establish CO_2 performance standards for existing sources under section 111(d) based on the "beyond-the-fence" methodology used in the CPP rule. That methodology resulted in the establishment of stringent CO_2 emission standards that could not be met by individual coal-fueled power plants and would instead have required generation shifting to natural gas and renewable energy resources.

ACCCE strongly agrees with the Agency's conclusions for the reasons explained below.

A. CAA Section 111 Bars EPA from Requiring States to Establish Generation-Shifting Performance Standards.

Section 111 of the CAA only authorizes the establishment of technology-based performance standards applicable to individual sources within each regulated source category based on the BSER control measures that can be implemented at each individual source. This source-specific and technology-based methodology for establishing performance standards is required by section 111 of the CAA, which expressly requires the setting of performance standards "for" and "applicable … to" individual regulated sources.[18]

Importantly, EPA's role in setting performance standards is limited to establishing a "procedure" for states to submit "plans" that "establish standards of performance *for any existing source*" in accordance with that procedure.[19] State plans in turn must "*apply*[] a standard of performance to any *particular source*."[20] The CAA defines a "stationary source" as "any building, structure, facility, or installation which emits or may emit any

air pollutant."[21] Thus, section 111(d) permits EPA to call on states to establish performance standards only for the building, structure, facility, or installation whose emissions are being controlled.

This statutory language unambiguously bars the CPP methodology of establishing performance standards that are based on the shifting of generation to energy resources with reduced or zero CO_2 emissions. Such generation shifting does not entail setting standards that are "for" or "applicable" to affected EGUs (*i.e.*, the building, structure, facility or installation that emits CO_2). Rather, it involves something else entirely, namely, the shifting of generation from coal-fueled EGUs to lower-emitting gas-fueled units or the shifting of generation from fossil-fueled EGUs to zero-emitting renewable energy resources. This is plainly beyond what the CAA permits.

Judicial precedent confirms this interpretation of the CAA. In several cases involving the regulation of emissions under section 111, the courts have ruled that performance standards set under section 111 must apply to individual sources in regulated source categories, rather than to groups of sources or the category as a whole.[22] EPA has ignored this clear and unequivocal legal precedent by setting emissions reductions that are impossible to achieve by any individual coal-fueled EGU but rather are achievable only through shifting of generation to gas-fueled and renewable energy resources across the electricity grid. Requiring an owner or operator of a coal-fueled power plant to construct or purchase generation from other facilities with lower CO_2 emissions (or emissions credits under an emissions trading scheme) is not a standard "for" that individual source at all and therefore is clearly illegal under the CAA.

B. The CPP Is Illegal Because It Violates the Supreme Court's Clear Statement Rule By Seeking To Transform the Power Sector Without A Clear Statement Of Authority From Congress.

In order for the CAA to authorize the CPP's attempt to transform the power sector, EPA must show that the Act contains a clear statement *compelling* the Agency's reading of section 111(d). Because the Act includes no such clear authorization—and in fact, as indicated above, the statute unambiguously forecloses such an interpretation—the CPP violates the clear statement rule established in several recent Supreme Court rulings.

One such ruling is *Utility Air Regulatory Group v. EPA* ("*UARG*").[23] In this case, the Supreme Court ruled that no federal agency (including EPA) can exercise transformative power over matters of economic and political significance unless it has clear congressional authorization to do so. In rejecting EPA's effort to dramatically expand to two CAA permitting programs for regulating greenhouse gas emissions, the Court explained that when an agency seeks to make "decisions of vast 'economic and political

significance'" or "bring about enormous and transformative expansion" in its authority under a "long-extant statute," it must point to a "clear[] statement from Congress."[24]

There is no question that the CPP is a transformative rule that would have enormous economic and political impacts on the electricity sector and the nation as a whole. The Obama Administration itself expressly confirmed this fact during the rollout of the CPP when it stated that the objective of CPP was to achieve an "aggressive transformation" of the electricity mix in nearly every state by systematically "decarboniz[ing] power generation" and ushering in a new "clean energy" economy.[25] The transformative nature of the CPP is also confirmed by the fact that the emissions limitations imposed by the CPP would require states to transform their mixes of electricity generation, force the premature closure of coal-fueled plants, and dictate how much electricity each electricity source may generate.

In addition, the Supreme Court has ruled that clear congressional authorization is required when a federal agency intrudes on an "area[] of traditional state responsibility," such as the states' traditional role in structuring their own energy markets and resources.[26] This clear statement rule bars any federal agency from broadly interpreting the CAA in a manner that would invade or encroach upon a traditional state regulatory power unless "unmistakably clear … language" compels the federal agency to do so.[27] In the case of the CPP, there is no language in section 111 or any other provision of the CAA that clearly authorizes EPA to encroach upon traditional powers of states to regulate the generation and use of electricity. Rather, as discussed above, section 111 of the Act contains only a very general authorization to establish technology-based performance standards based on those BSER control measures that can be applied to or for an individual source. This general language is simply not sufficient to satisfy the Supreme Court's clear statement rule and therefore provides an independent legal basis for the repeal of the CPP in its entirety.

C. Prior Agency Practice and the Broader Statutory Context Further Confirm that The Clean Power Plan Is Illegal and Should Be Repealed.

Prior agency practice and the broader statutory context for setting performance standards for stationary sources under other CAA regulatory programs support EPA's proposal to repeal the CPP. These factors further demonstrate that the BSER control measures used for setting CO_2 performance standards under section 111(d) must be measures that can be taken at or applied to each individual power plant itself. The generation-shifting performance standards established by the CPP fail to comply with this requirement and therefore provide an additional legal basis for concluding the CPP is illegal and should be repealed.

1. The CPP Approach is Contrary to Over 45 Years of Prior Agency Practice Under CAA Section 111.

The generation-shifting approach taken in the CPP departs from 45 years of consistent EPA practice, further confirming that this approach is contrary to the requirements of the CAA. Each of the approximately 100 new source performance standards that EPA has set under section 111 for more than 60 source categories has been based on a system of emission reduction that can be achieved with technological and operational measures that the regulated source itself can implement.[28]

In promulgating standards of performance for new and modified refineries, EPA recently reiterated its long-standing view that "[t]he standard that the EPA develops [is] based on the [best system of emission reduction] *achievable at the source*."[29] EPA also took the same well-established approach in promulgating the CO_2 performance standards for new coal- and gas-fueled EGUs under section 111(b) of the CAA. EPA based the standards on its examination of the level of emissions performance these EGUs achieve by using control technologies and operating practices at the EGU facilities themselves, and not based on some CO_2 emission level that could be achieved by shifting some portion of the EGU's generation to new lower- or zero-emitting energy resources. Notably, the Agency issued these performance standards for new EGUs at the same time EPA issued the final CPP rule.

This radical departure from past EPA rulemakings and Agency practice further demonstrates the arbitrariness of EPA's statutory interpretation, and that section 111(d) does not provide EPA with authority to adopt generation-shifting performance standards in the CPP for the first time in the history of the CAA.

2. The Broader Statutory Context Reinforces EPA's Proposed Interpretation.

EPA's proposed interpretation of section 111 is reinforced by the overall statutory context into which section 111 fits. For example, the Prevention of Significant Deterioration (PSD) permit program requires that performance standards be set for each affected source based on the "best available control technology" (BACT). In setting those standards, both the statute[30] and EPA regulations[31] require that the section 111 standards set the "floor" and thereby prohibit the BACT limits from being less stringent than the applicable section 111 emission limits. EPA's approach under the CPP, however, could have the effect of imposing more stringent performance standards under section 111 than can be established as BACT, given that the BACT performance standards must be applied

to the source itself and do not include control options that are beyond-the-source, such as generation shifting measures called for under the CPP.[32]

This problem can be corrected by reading the provisions of section 111 in a manner consistent with the PSD requirements noted above for setting BACT performance standards. Under this interpretation, the provisions of section 111 must adhere to the same source-specific standard-setting framework used for establishing BACT limits, a framework that does not rely on generation-shifting measures that cannot be applied at, to, or for a particular source.

Other CAA regulatory programs also require EPA to set performance standards that are focused solely on achieving emission reductions at individual sources. Notable examples include the performance standards based on "lowest achievable emission rate" for criteria air pollutants under the nonattainment new source review (NSR) permit program,[33] those based on "maximum achievable control technology" (MACT) for hazardous air pollutants under the air toxics program,[34] and "best available retrofit technology" for mitigating visibility impairment in Class I areas under the regional haze program.[35]

In contrast, where Congress did authorize emission control measures that go beyond a specific source for the purpose of meeting aggregate emission reduction goals, it spoke clearly and precisely. Notable examples applicable to the power sector include the acid rain emissions trading program specifically established pursuant to Title IV of the CAA and the interstate emission trading programs (such as the Cross-State Air Pollution Rule) authorized by section 110(a)(2)(D) of the Act. In both cases, Congress expressly authorized EPA to pursue a particular air quality objective through the establishment and implementation of emissions trading schemes. In the case of the acid rain program, Title IV of the Act established a detailed regulatory framework for the establishment and implementation of a cap-and-trade program for reducing SO_2 emissions nationwide from all fossil-fueled EGUs. Similarly, Congress expressly authorized the use of "marketable permits" and other types of emission trading mechanisms to achieve emission reductions necessary for addressing interstate transport of air pollution in order to achieve national ambient air quality standards (NAAQS) under section 110 of the CAA.[36]

Viewed in this context, Congress' silence on the use of control measures that can be implemented outside the regulated source in setting the performance standards under section 111(d) reinforces the interpretation that CO_2 standards for existing EGUs cannot be set based on such generation-shifting measures. In particular, this broader statutory context indicates that unintended and illogical consequences would occur by employing the CPP approach. For example, the CPP approach of setting performance standards based on beyond-the-source control measures can result in the imposition of more

stringent emission reduction obligations under section 111 than could ever be established for the source-specific performance standards like BACT, LAER and MACT. Such outcomes are at odds with general CAA regulatory framework.

III. The CPP Should Be Repealed In Its Entirety.

EPA should withdraw the CPP in its entirety. There are significant legal and technical errors in the methodology that the Agency used for setting the CO_2 performance standards under the CPP. These errors are so fundamental that the Agency has no choice but to repeal the CPP rule in its entirety.[37]

EPA's proposed legal basis for repealing the CPP in its entirety is that the generation-shifting measures identified under Building Blocks 2 and 3 of the CPP were unlawful for the reasons noted above, while the on-site efficiency measures of Building Block 1 "are not severable and separately implementable."[38] In support of this conclusion, the Agency cites to a prior EPA determination made in the CPP that Building Block 1 efficiency measures "cannot stand on their own" and be separately implemented due to the "rebound effect" that would result from EPA's repeal of Building Blocks 2 and 3. According to EPA's determination in the CPP, the rebound effect would result from the "improved competitiveness and increased generation at the EGUs implementing heat rate improvements" required under Building Block 1 and, consequently, this response "could weaken or potentially even eliminate the ability of Building Block 1 to achieve CO_2 emission reductions."[39]

ACCCE agrees that EPA must withdraw the CPP in its entirety rather than severing and implementing a revised CPP based only on the emission reduction levels achievable under Building Block 1. However, we do not agree that Building Block 1 (*i.e.*, on-site efficiency measures) cannot stand on its own as a section 111 standard due to a lack of "meaningful emission reductions," as claimed by EPA in the CPP. Section 111 is fundamentally different from the other air regulatory provisions, such as those for attaining the NAAQS through state implementation plans under section 110 of the CAA. Unlike these air quality programs, section 111 was not written to achieve specific emission reduction goals or levels that must be achieved by individual sources or from any source category as a whole. Instead, as a technology-based program, section 111 authorizes EPA only to adopt standards of performance that reflect the best system of emission reduction, regardless of the level of emission reductions that are actually achieved individually or collectively by the implementation of the performance standards.

Rather, EPA's legal basis for repealing the CPP in its entirety should be based on a conclusion that Building Blocks 2 and 3 exceed EPA's statutory authority (as noted

above), and Building Block 1 is fatally flawed due to major deficiencies in EPA's technical analysis used in determining the reductions achievable by improving power plant efficiency. As documented in our prior comments on the CPP, as well as the comments of UARG that were incorporated into those comments by reference, there were significant methodological errors in EPA's Building Block 1 determination that all coal-fueled EGUs can on average achieve a 4% efficiency (heat rate) improvement. In the CPP, EPA assumed that a 4% improvement can be achieved by "best practices to reduce hourly heat rate variability" as a "best-practices opportunity" based on various technical studies.[40]

However, EPA provided no data showing that an average 4% improvement has been demonstrated to be generally available for all existing coal-fired EGUs covered under the CPP. In addition, many of the coal-fueled units in the United States, particularly those that are still operating after the compliance deadline for the Mercury and Air Toxics Standards (MATS Rule),[41] are likely to have already implemented many of the best practices identified by EPA for improving plant heat rates, thereby limiting the total amount of reductions that could be achieved. Finally, EPA has overlooked the degradation in heat rate that typically results from the application of newly-retrofitted emissions controls to comply with federal and state requirements such as the MATS Rule, intrastate and transport regulations related to NAAQS attainment, and the increase in cycling operations that has been occurring for coal-fueled generation. In other words, heat rate improvements available to coal-fueled power plants are highly unit-specific, will degrade over time, and any analysis that assumes that a 4% improvement is available across-the-board is flawed.

Each of these methodological flaws provides a strong technical basis for determining that the CPP Building Block 1 analysis is fatally flawed and therefore cannot be used in setting CO_2 performance standards for existing EGUs under section 111(d). As a result, EPA has no choice but to repeal the CPP in its entirety due to the fact Building Blocks 2 and 3 are unlawful and Blocks 1 is technically flawed; and the Agency is foreclosed from using the CPP Building Block 1 analysis to set performance standards under any type of CPP replacement rule that EPA elects to adopt.

IV. Policy Reasons Justify Full Repeal of the CPP.

The CPP is bad environmental and energy policy. Compelling policy reasons therefore justify a full CPP repeal even if the CPP were determined to be lawful (which it is not for the legal and technical reasons discussed above). ACCCE urges EPA also to exercise its discretionary authority under the CAA to further justify the repeal of the CPP based on policy reasons, the most compelling of which are briefly summarized below.

Regulation Of Energy Matters Is Beyond EPA's Expertise. The CPP inappropriately seeks to regulate energy matters that are clearly outside the expertise and experience of EPA. While EPA has authority to establish performance standards for existing EGUs under section 111(d) and, in doing so, is required to consider "energy requirements" in setting those standards, this authority does not empower EPA to regulate electricity or determine the appropriate generation mix in meeting future electricity demand. Rather, these types of energy matters have been traditionally left to the Federal Energy Regulatory Commission (FERC) and the states. The Federal Power Act provides FERC with regulatory authority over electric utilities engaged in *interstate* commerce, including wholesale sales, transmission of electricity, and reliability.[42] States, by contrast, have exclusive authority to regulate the *intrastate* generation and transmission of electricity.

The CPP intrudes on this well-established federal-state regime for the regulation of energy by imposing an additional layer of CAA regulation that will have a profound and transformative impact on the electric power sector. Among other things, it would require electricity generators to change their mixes of electricity generation, force the premature closure of coal-fueled plants that generate affordable and reliable electricity, and dictate how much electricity each energy resource may generate. Since the regulation of these types of matters is well beyond EPA's expertise and experience, it would be inappropriate for EPA to use its CAA authority to intrude upon these matters traditionally left to FERC and the states.

Significant Risks Are Posed To The Electric Power Grid. The CPP poses significant risks to ensuring a reliable and resilient supply of electricity for the nation. By its own admission, EPA found that the CPP would result in the premature retirement of additional coal-fired power plants, projecting in its original Regulatory Impact Analysis ("Original RIA") that the CPP would result in the retirement of an additional 29,000 MW of coal-fired electric generating capacity by 2025.[43] DOE, FERC, NERC, and others have already raised concerns about the potential impact of continuing retirements of coal-fueled electric generating capacity on the reliability and resilience of the electric grid.[44] The CPP would exacerbate these risks to grid reliability and resilience.

EPA also did not even attempt to perform a detailed power flow analysis or to project new transmission additions when estimating the potential impacts of the CPP on the electric power sector. Instead, it simply made projections of the total, region-wide capacity for new renewable energy facilities and shifts from coal- to gas-fueled generation that might be available by 2030.[45] Commenters, including entities charged with maintaining the reliability of the nation's electric grid, raised significant issues regarding the basis for these projections and the likelihood that projected capacity would

materialize.[46] EPA also found that any realistic appraisal of reliability could not be done until after the rule was implemented by the states.

Enormous Compliance Costs Are Imposed Without Achieving Meaningful Climate Benefits. The CPP would unnecessarily cost consumers and businesses billions of dollars. For example, the Energy Information Agency recently estimated that the CPP would cost $14.4 billion in 2030.[47] In the Regulatory Impact Analysis for the Proposed Repeal Rule ("Current RIA"), EPA estimated that the cost of the CPP to be as much as $33.3 billion per year by 2030.[48] By contrast, EPA has estimated the cost of all power sector regulations through 2010 to be $7 billion per year, with the MATS rule adding $10 billion per year to that total.[49]

Moreover, the CPP would impose these enormous costs on consumers and businesses without achieving a meaningful effect on climate change. Based on EPA's own methodology for estimating climate change effects,[50] the cumulative CO_2 emissions reductions achieved from the power sector under the CPP would only reduce atmospheric CO_2 concentrations by 0.2% by 2050. In turn, this miniscule reduction in atmospheric CO_2 concentrations would only reduce global temperatures by 1/80th degree Celsius by 2100 and decrease sea level rise by just 0.20 millimeter (the thickness of two sheets of paper) by 2050.[51]

The evaluation of costs and benefits in the Current RIA further supports EPA's proposal to repeal the CPP. The RIA demonstrates that the actual costs are much greater than costs initially estimated by EPA, and the Agency's estimated climate-related benefits are much smaller than its original estimates. Repealing the CPP would avoid $33.3 billion in compliance costs by 2030 (using a 7% discount rate), while only forgoing domestic climate benefits of $0.5 billion.[52] ACCCE believes that the repeal of the CPP is justified in light of this cost-benefit analysis that demonstrates substantial compliance costs would be incurred under the CPP while only minimal domestic climate benefits would be lost if the CO_2 reductions from CPP were not achieved.

Executive Order 13783 Requires EPA To Provide Relief from Undue Regulatory Burdens Imposed On the Energy Sector. Executive Order 13783 directs all federal agencies, including EPA, to suspend, revise, or rescind all existing regulations that are determined to "unduly burden the development of domestic energy resources." As noted above and documented in both the Original and Current RIA, the CPP would impose massive costs on the economy, including the power sector and consumers, and create major risks to the electricity grid through the premature retirement of an additional 29,000 MW of coal-fueled generating capacity by 2025. These CPP regulatory burdens are exactly the types of undue regulatory burdens from which Executive Order 13783 directs EPA to provide relief for domestic energy resources.

The CPP Usurps State Regulatory Authority. The CPP is fundamentally inconsistent with the cooperative federalism framework established under the CAA. Notably, section 111(d) gives states the primary responsibility to establish plans for the implementation and enforcement of performance standards for existing sources and limits EPA's role to establishing "a procedure" for the development and submission of those state plans. Instead of following this cooperative federalism framework, EPA has usurped states' regulatory role under section 111(d) by establishing binding national performance standards for all existing power plants under the CPP and imposing those binding standards through federal plans in those cases where states have failed to comply with the requirements of the CPP. Furthermore, these national standards are fixed and may not be varied in light of the remaining useful life of any particular plant or other plant-specific factors, as required by section 111(d)(1) of the CAA.[53]

This usurpation of state authority is another fundamental flaw in the CPP and thereby provides another reason why the CPP should be withdrawn.

V. EPA's Current RIA Provides a Sound Cost-Benefit Evaluation in Support of the Full CPP Repeal.

EPA's analysis of the costs and benefits of the CPP in the Current RIA is greatly improved compared to the approach taken in the Original RIA. EPA notes, importantly, that the new approach in the RIA "underscores the uncertainty associated with any agency action of this magnitude, especially in actions where discretion is afforded to State governments."[54]

A thorough evaluation of the new RIA is contained in a report prepared for ACCCE and the Utility Air Regulatory Group by NERA Economic Consulting entitled "Technical Comments on EPA's Regulatory Impact Analysis for the Proposed Repeal of the Clean Power Plan," which is attached to our comments. The improvements in the current RIA include the following.

The Current RIA includes an improved presentation of co-benefits. First, the current RIA includes a range of assumptions for predicted fine particulate matter ($PM_{2.5}$) co-benefits resulting from the implementation of the CPP. NERA points out that $PM_{2.5}$ co-benefits from coincidental reductions in emissions of the $PM_{2.5}$ precursors SO_2 and NO_x have been used to justify numerous unrelated air regulations for nearly 20 years. For example, NERA cites a 2011 report in which it found that EPA relied heavily on co-benefit $PM_{2.5}$ reductions in justifying over two dozen air regulations between 1997 and 2011, including the MATS rule.[55] In most of these cases, $PM_{2.5}$ benefits accounted for nearly all of the monetary benefits in the unrelated air regulations. And EPA's inclusion of $PM_{2.5}$ co-benefits in areas *in compliance with* EPA's health-protective $PM_{2.5}$ National Ambient Air

Quality Standards (NAAQS) provided most of the total benefits in these earlier analyses. This was the case in the Original CPP RIA.

The Current RIA greatly improves the treatment of co-benefits. EPA accomplishes this improvement by presenting sensitivity analyses that eliminate or "zero-out" $PM_{2.5}$ co-benefits at (1) levels below the current $PM_{2.5}$ NAAQS and (2) at levels below the "lowest measured level" (LML) of the epidemiological studies underlying the $PM_{2.5}$ risk estimates. These sensitivity cases result in greatly reduced co-benefits. For example, assuming that $PM_{2.5}$ co-benefits fall to zero below the current NAAQS results in 2030 would forego co-benefits of $1.2 billion to $4.5 billion (in the mass-based implementation assumption), compared to foregone co-benefits of $10.6 billion to $28.1 billion (also for the mass-based case) using the original analysis.

These sensitivity analyses should be included because the NAAQS are set at levels designed to protect public health with an adequate margin of safety. Therefore, considering only co-benefits in areas with $PM_{2.5}$ concentrations exceeding the NAAQS (or in areas with $PM_{2.5}$ concentrations exceeding the LMLs from epidemiological studies) is a more appropriate and accurate way to quantify and consider any actual or projected co-benefits that may result from $PM_{2.5}$ emission reductions.

The Current RIA improves critical assumptions used to calculate climate-related benefits. The CPP is intended to address climate change, and the direct forgone benefits of its repeal are therefore climate-related benefits. EPA uses the "social cost of carbon" (SCC) to estimate climate benefits in both the Original RIA and the Current RIA. The previous Administration published several sets of SCC estimates (in 2010, 2013 (two sets), and 2015). ACCCE submitted comments in 2014 when proposed SCC estimates were published for public comment.[56]

The Current RIA alters several critical assumptions used to derive SCC estimates, both in a manner consistent with ACCCE's 2014 recommendations on the SCC estimates. First, the Current RIA compares only *domestic* projected climate damages to CPP compliance costs.[57] The Original RIA performed its cost-benefit analysis based on *global* damages, which included not just domestic damages but also all climate damages projected to occur outside the U.S. Under this approach used for the CPP, the Original RIA compared global damages to domestic compliance costs.

In 2014, ACCCE and others recommended such a change to the derivation of the SCC to focus only on domestic climate damages in 2014 because (1) OMB guidance requires agencies to assess the effects of potential regulations on the domestic economy, and (2) because, as a policy matter, comparing costs imposed on U.S. consumers to benefits assumed to occur everywhere in the world is an apples-to-oranges comparison that exaggerates and distorts domestic benefits derived from regulatory action and relies

on U.S. consumers to pay for future worldwide benefits.[58] This is a clear overreach of regulatory authority that must be rectified by repealing the CPP.

In addition, NERA notes in its report that the economic literature supports the principle that "policies that are likely to produce positive net benefits only when including some or all of non-domestic benefits should be avoided." And, as presented in the Current RIA's Table 1-5, the compliance costs of the CPP *exceed* the domestic climate benefits in every case. In other words, avoiding the *domestic* compliance costs of the CPP saves billions of dollars more than the forgone *domestic* climate benefits. For example, in 2030, the projected compliance costs avoided by repealing the CPP are as much as $33.3 billion, while in that year (and for the same discount rate), only $0.5 billion in domestic climate benefits will be forgone. Therefore, on the basis of sound economic analysis alone, the CPP should be withdrawn.

Second, the Current RIA properly considers, in addition to the 3% discount rate in the original RIA, a discount rate of 7%. This is consistent with OMB Guidance and was recommended by ACCCE in 2014.[59] Using a higher discount rate, as ACCCE pointed out, adds a "model risk" premium to the lower discount rates used in the SCCs derived by the previous Administration.

In addition to these changes made in the analysis presented in the RIA, in the attached report NERA recommends several changes in the way both avoided costs and forgone benefits should be presented in any final RIA repealing the CPP. For example, while EPA properly considers sensitivities in which $PM_{2.5}$ co-benefits are reduced at levels below the NAAQS and LMLs, it does not do so for ozone co-benefits. The result is that almost all of the remaining co-benefits are due to ozone concentrations below the ozone NAAQS. NERA strongly recommends that EPA include ozone co-benefit sensitivities in the same manner it included those for $PM_{2.5}$ co-benefits.

And finally, NERA points out that the costs included in the original RIA and the avoided costs presented in the current RIA are missing important components. For example, the RIA does not include an analysis of the potential impact of natural gas price increases on non-electricity consumers, which NERA's analysis for ACCCE in 2014 estimated to range from $15 billion to $144 billion.[60] An analysis of these kinds of cost increases should be included in any final RIA. NERA suggests other additional analyses for any final RIA in its report.

VI. Conclusion

For all of the legal and policy reasons discussed above, ACCCE wholeheartedly supports the repeal of the Clean Power Plan in its entirety.

Sincerely,

Paul Bailey
President and Chief Executive Officer

Attachment: "Technical Comments on EPA's Regulatory Impact Analysis for the Proposed Repeal of the Clean Power Plan," NERA Economic Consulting.

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[1] *See* Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 Fed. Reg. 64,662 (Oct. 23, 2015) ("CPP Final Rule").

[2] *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule*, 82 Fed. Reg. 48,035 (October 16, 2017).

[3] A list of ACCCE members is provided in Appendix 1.

[4] *See* e.g.,, Perry, Rick, "Secretary of Energy's Direction …," Received by Neil Chatterjee, Cheryl LaFleur, and Robert Powelson, September 28, 2017; Federal Energy Regulatory Commission, Department of Energy, "Grid Resiliency Pricing Rule," Notice of Proposed Rulemaking, 82 Fed. Reg. 46940 (October 10, 2017); NERC, "Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking," October 23, 2017; NERC, *2017 Long Term Reliability Assessment*.

[5] ACCCE, RETIREMENT OF COAL-FIRED ELECTRIC GENERATING UNITS (October 24, 2017).

[6] EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, October 23, 2015.

[7] MARIANNE MINTZ, CHRIS SARICKS, AND ANANT VYAS, COAL-BY-RAIL: A BUSINESS-AS-USUAL REFERENCE CASE 9 (U.S. Department of Energy Argonne National Laboratory 2015).

[8] ASSOCIATION OF AMERICAN RAILROADS, RAILROADS AND COAL 6 (Association of American Railroads 2017).

[9] ASSOCIATION OF AMERICAN RAILROADS, RAILROADS AND COAL 7 (Association of American Railroads 2017).

[10] *See* MINE SAFETY AND HEALTH ADMIN., *Employment/Production Data Set.*

[11] *See* BUREAU OF LABOR STATISTICS, *Quarterly Census of Employment and Wages, Private, NAICS 221112 Fossil fuel electric power generation, All Counties, 2011* and *2017*.

[12] DOE, *Staff Report to the Secretary on Electricity Markets and Reliability* (August 2017) at 23.

[13] Sam Evans, *Economic Impacts of Job Losses in the Coal Mining Industry*, 7 KIRES Paper 1 (Feb. 2013).

[14] *Id*.

[15] *Id*. at 2.

[16] *Id*. at 2.

[17] 82 Fed. Reg. at 48,039.

[18] CAA §§ 111(a)(2), (b)(1)(B), (d). However, it should be noted that this interpretation does not require individual sources to implement changes in order to comply with the applicable performance standards. Nor does it impose an obligation on states to submit plans that would require a source to install and operate any particular emission control measure under section 111. Rather, EPA would be issuing an emission guideline that States then use to develop and implement performance standards. Affected sources would then comply with the applicable performance standards by using any method capable of achieving that standard—or, if the source's emissions already meet that standard, without taking any affirmative steps at all.

[19] CAA §111(d)(1) (emphasis added).

[20] CAA §111(d)(1) (emphasis added).

[21] CAA §111(a)(3).
[22] One notable example is *ASARCO, Inc. v. EPA*, in which the D.C. Circuit ruled that the CAA "limit[s] the definition of 'stationary source' to one facility" and not a "combination of facilities." 578 F.2d 319, 324, 326 n. 24 (D.C. Cir. 1978). As a result, the court found that EPA has no authority to "change the basic unit to which the [standards] apply from a single building, structure, facility, or installation—the unit prescribed in the statute—to a *combination* of such units." 578 F.2d at 327. Notably, the court in *ASARCO* goes on to state that the objective of section 111 is to require sources "to employ pollution control systems" at the source and that Congress never contemplated setting standards based on reductions that cannot be achieved at the source. 578 F.2d at 327-28. Similarly, the court ruled in *National Southwire Aluminum Company v. EPA* that section 111 performance standards must "specif[y] the maximum rate at which an *individual source* may emit pollution." 838 F.2d 835, 837 n. 3 (6th Cir. 1988).
[23] *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014) (*UARG*).
[24] *UARG*, 134 S. Ct. at 2444 (2014) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)). The Supreme Court subsequently confirmed the *UARG* ruling in *King v. Burwell*, holding that courts are not to presume that Congress would implicitly delegate to agencies "question[s] of deep 'economic and political significance'" because, if "Congress wished to assign [such] question[s] to an agency, it surely would have done so expressly." *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015) (citation omitted).
[25] White House Statement (August 5, 2015).
[26] *Bond v. United States*, 134 S. Ct. 2077, 2089 (2014) (noting "well-established principle that it is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides the usual constitutional balance of federal and state powers"). Notably, the Supreme Court has specifically recognized that "the regulation of utilities is one of the most important functions traditionally associated with the police powers of the States" *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission*, 461 U.S. 375, 377 (1983).
[27] *American Bar Association v. FTC*, 430 F.3d 457, 471-72 (D.C. Circuit 2005).
[28] *See* 40 C.F.R. Part 60, subparts Cb-OOOO.
[29] 79 Fed. Reg. 36,880, 36,885 (June 30, 2014) (emphasis added).
[30] *See* CAA § 169(3).
[31] 40 C.F.R. §52.51(b)(12).
[32] *See e.g.*, U.S. EPA, PSD and Title V Permitting Guidance for Greenhouse Gases, 24 (March 2011) (indicating that BACT encompasses "all 'available' control options ... that have the potential for practical application to the emissions unit").
[33] *See* CAA §§ 171(3), 173(a)(2); 40 C.F.R. §52.165(a)(1)(xiii).
[34] *See* CAA § 112(d)(2).
[35] *See* CAA §169A(b)(2)(A).
[36] See CAA §110(a)(2)(A) (authorizing states to adopt and include in their state implementation plans "economic incentives such as fees, marketable permits, and auctions of emissions rights").
[37] An entirely new rule is necessary to address the significant legal and technical flaws of the CPP rule if the Agency elects to move forward with a replacement rule that does not mandate generation shifting or other such measures that could force the power sector to re-engineer the electric grid. For the reasons discussed in this section, it is simply not possible for EPA to avoid a repeal of the entire CPP rule by first invalidating generation-shifting measures identified in Building Blocks 2 and 3 as unlawful, and then severing and separately implementing the on-site efficiency improvement measures identified under Building Block 1 of the CPP rule.
[38] 82 Fed. Reg. at 48,039, fn 5. See also *id.* at 48,038.
[39] 80 Fed. Reg. 64,662, 64,758 (October 23, 2015).
[40] EPA originally proposed to require a 6% heat rate improvement for coal-fired EGUs nationwide, representing a 4% heat rate improvement due to implementation of best practices and a 2% heat rate improvement from equipment upgrades. In the final CPP rule, EPA abandoned its proposal to rely on heat rate improvements from equipment upgrades. Although EPA calculated different heat rate improvements for each interconnection region, the final rule relied on the CO_2 performance rate calculated for the Eastern Interconnection with a 4.3% heat rate improvement when setting the CO_2 performance rate for coal-fired EGUs under the Clean Power Plan.
[41] *See* 77 Fed. Reg. 9,304 (Feb. 16, 2012) (codified at 40 C.F.R. pts. 60, 63).
[42] *See* Sections 201-223 of the Federal Power Act.
[43] EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, October 23, 2015.
[44] *See*, for example, Perry, Rick, "Secretary of Energy's Direction …," Received by Neil Chatterjee, Cheryl LaFleur, and Robert Powelson, September 28, 2017; Federal Energy Regulatory Commission, Department of Energy, "Grid

Resiliency Pricing Rule," Notice of Proposed Rulemaking, 82 Fed. Reg. 46940 (October 10, 2017); NERC, "Comments of the North American Electric Reliability Corporation in Response to Notice of Proposed Rulemaking," October 23, 2017; NERC, *2017 Long Term Reliability Assessment*.

[45] GHG Mitigation Measures TSD (August 2015).

[46] *See, e.g.*, Midcontinent Independent System Operator, Inc. Comments at 3, EPA-HQ-OAR-2013-0602-22547; Southwest Power Pool, SPP's Reliability Impact Assessment of the EPA's Proposed Clean Power Plan, at 3, 5-6 (Oct. 8, 2014), PSA 01-PSA 08; NERC, Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Initial Reliability Review at 19, EPA-HQ-OAR-2013-0602-37006.

[47] EPA, *Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal*, (October 2017) ("Current RIA") at 18.

[48] Current RIA at 4.

[49] Annual cost of all Clean Air Act rules for the electric power sector promulgated by 2010 from U.S. EPA, *The Benefits and Costs of the Clean Air Act from 1990 to 2020* (2011), Table 3-2. Electric utility direct annual compliance costs were $6.6 billion (2006$) in 2010; this is equivalent to $7.1 billion in 2010$. MATS annual cost from U.S. EPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, December 2011 ($9.6 billion cost in 2006$ is equivalent to $10 billion in 2010$.)

[50] In particular, ACCCE has relied on EPA's assessment of the climate impacts of the proposed greenhouse gas emission standards for light-duty vehicles. See U.S. EPA, *Regulatory Impact Analysis: Final Rulemaking for 2017-2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*, August 2012.

[51] ACCCE, "*Climate Effects" of EPA's Final Clean Power Plan*, August 2015. See also Lomborg, Bjorn, *Impact of Current Climate Proposal, Global Policy (2015).*

[52] Current RIA at 4 and 9.

[53] 80 Fed. Reg. at 64,870.

[54] 82 Fed. Reg. at 48,043 note 22.

[55] NERA Economic Consulting, *An Evaluation of the PM2.5 Health Benefits estimates in Regulatory Impact Analyses for Recent Air Regulations* (December 2011).

[56] ACCCE, "Re: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (Nov. 2013)," February 26, 2014. ("ACCCE SCC Comments")

[57] Results using global SCC values are contained in Appendix C of the current RIA.

[58] ACCCE SCC Comments at 6-7.

[59] U.S. Office of Management and Budget, Circular A-4, Regulatory Analysis, September 17, 2003; ACCCE SCC Comments.

[60] NERA Economic Consulting, "Potential Energy Impacts of the EPA Proposed Clean Power Plan," included in comments submitted by ACCCE to EPA-HQ-OAR-2013-0602.

RETIREMENT OF U.S. COAL-FIRED ELECTRIC GENERATING UNITS[1]

Status as of May 1, 2018

All Retirements

Since 2010, power plant owners have announced either the retirement or conversion to other fuels of a very large number of coal-fired electric generating units.[2] The table on the following pages summarizes all publicly announced retirements through 2030. The table shows that 628 coal-fired generating units in 43 states — totaling almost 115,000 megawatts (MW) of generating capacity — have retired or announced plans to retire. (This represents the retirement of an additional 4,000 MW and 18 coal-fired generating units since the last ACCCE update in January.) These retirements are approaching 40% of the U.S. coal fleet that operated in 2010. So far, approximately 68,000 MW of coal-fired generating capacity have retired. Between 2018 and 2020, an additional 25,000 MW are expected to retire, bringing total retirements to 93,000 MW by the end of 2020.

EPA-Attributed Retirements

The table also includes retirements that have been explicitly attributed to EPA regulations and policies. These EPA-caused retirements total 463 units and represent almost 77,000 MW of coal-fired generating capacity. Of the total, 58,000 MW have already retired.

ISO/RTO Retirements

Over 45,000 MW of coal-fired generating capacity in ISO/RTO regions have retired. An additional almost 17,000 MW in these regions are slated to retire over the period 2018 through 2020, of which 11,600 MW have been attributed to wholesale electricity market conditions. The regions with the most retirements through are PJM (32,000 MW), MISO (14,400 MW), ERCOT (5,700 MW), and SPP (4,400 MW).

[1] These retirements and conversions are based primarily on public announcements by the owners of the coal units. We also use other information sources that are reliable. These retirements and conversions are *not* based on modeling projections. We do not include small (less than 25 MW) cogeneration units. Since most of these units are retiring, not converting to another fuel, we use the term "retirements" in this paper to characterize units that may be *either* retiring or converting.

[2] In 2010, according to EIA, the U.S. coal fleet was comprised of 1,396 electric generating units located at 580 power plants for a total electric generating capacity of approximately 317,000 MW.

	MW RETIRING	UNITS RETIRING
1. Ohio	12,131[3] / 6,421[4]	59 / 40
2. Indiana	6,569 / 6,129	39 / 34
3. Pennsylvania	5,847 / 5,548	34 / 30
4. Texas	5,672 / 1,399	10 / 3
5. Illinois	5,663 / 3,076	21 / 14
6. Alabama	5,166 / 5,166	26 / 26
7. Michigan	4,911 / 4,075	44 / 31
8. Florida	4,752 / 1,568	14 / 7
9. North Carolina	4,615 / 2,783	37 / 20
10. Kentucky	4,168 / 3,743	20 / 18
11. West Virginia	4,040 / 2,740	20 / 18
12. Georgia	3,752 / 3,249	17 / 15
13. Arizona	3,482 / 3,482	8 / 8
14. Virginia	3,258 / 2,354	29 / 16
15. Wisconsin	2,928 / 1,287	27 / 16
16. Nevada	2,689 / 0	8 / 0
17. Tennessee	2,659 / 2,659	17 /17
18. Oklahoma	2,414 / 2,414	5 / 5
19. Colorado	2,405 / 1,776	19 / 16
20. Missouri	2,372 / 2,355	24 / 23
21. Minnesota	2,288 / 2,150	17 / 15
22. Montana	2,248 / 154	5 / 1
23. New Mexico	2,222 / 2,222	7 / 7
24. Utah	2,072 / 272	7 / 5
25. Iowa	1,847 / 1,579	33 / 29
26. South Carolina	1,768 / 1,768	14 / 14
27. New York	1,708 / 475	14 / 3
28. Massachusetts	1,663 / 1,408	8 / 6
29. Arkansas	1,659 / 1,659	2 / 2
30. New Jersey	1,543 / 268	6 / 2
31. Washington	1,376 / 0	2 / 0
32. Nebraska	757 / 637	6 / 5
33. Mississippi	706 / 706	2 / 2
34. Oregon	585 / 585	1 / 1
35. Louisiana	575 / 575	1 / 1
36. Connecticut	566 / 0	2 / 0
37. Kansas	550 / 478	7 / 6
38. Delaware	360 / 0	4 / 0

[3] Total coal retirements.
[4] Coal retirements attributed to EPA regulations and policies.

39. Maryland	**250 / 115**	**3 / 2**
40. North Dakota	**189 / 0**	**1 / 0**
41. California	**129 / 0**	**3 / 0**
42. Wyoming	**49 / 49**	**4 / 4**
43. South Dakota	**22 / 22**	**1 / 1**
43 / 37 States	**114,625 / 77,346 MW**	**628 / 463 Units**

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.@EPAScottPruitt has been an exceptionally effective leader on behalf of many long-overdue regulatory reforms. We look forward to continue working with him to advance sensible policies that protect the environment and help preserve the coal fleet.

Trump's Pruitt Test

The President needs to show some loyalty to his leading reformer.

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