

U.S. EPA Clean Power Plan for Existing Electric-Generating Units in Michigan

for

Grand Rapids Area Chamber of Commerce – Environmental Affairs Committee

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by

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The following is a brief outline summarizing the key elements of the U.S. EPA Clean Power Plan from a Michigan perspective, prepared for the Grand Rapids Area Chamber of Commerce Environmental Affairs Committee Meeting on September 22, 2015.

A. Clean Air Act §111(d)

Clean Air Act §111 (42. U.S.C. §7411) sets air pollutant emissions performance standards for stationary sources. Up until now, much of the focus on the implementation of this statute has been on what constitutes a “new” source subject to air emissions performance standards, usually due to the extent of modification of a facility. However, subsection 111(d) authorizes U.S. EPA to prescribe standards of performance for “existing” sources. Following promulgation of EPA regulations, each state shall submit a State Plan (not necessarily a SIP), and if a state fails to submit a satisfactory State Plan an EPA Federal Plan (again not necessarily a FIP) would become effective.

B. EPA’s Clean Power Plan

Pursuant to §111(d), EPA’s Clean Power Plan was originally proposed in June 2014, and was finalized by EPA on August 3, 2015 – but has yet to be published in the Federal Register (predicted to be early October). The focus is carbon dioxide (CO₂) emissions from electric generating units – so this rule is both environmental and energy related. The EPA rule sets facility-specific criteria depending on whether the facility uses fossil fuel or natural gas. This so-called “rate-based” criteria is based on pounds of CO₂ per megawatt hour. Under this alternative

performance standard, each regulated electric generating unit must meet those criteria. Alternatively, a state may set a “mass-based” state-wide aggregate goal measured in total CO₂ tons.

C. Timeline

Regardless of Federal Register publication, Clean Power Plan deadlines for interim and final CO₂ emission performance rates begin in 2022 and the full compliance date is 2030. State Implementation Plans must be submitted by September 6, 2016, although a 2 year extension may be requested; there are however potential opportunity costs from seeking an extension. Following submittal, U.S. EPA must review and approve or disapprove State Plans within 12 months – so that Michigan’s State Plan could become final in the normal course by September 2017 or September 2019 at the latest.

D. Court Challenge

Approximately a dozen states, including Michigan’s Attorney General, petitioned the DC Circuit Court of Appeals for an emergency stay of the EPA Clean Power Plan, in part because the foregoing deadlines and timeline is proceeding ostensibly regardless of when the EPA final rule is published in the Federal Register. However, on September 9, 2015, the Court of Appeals rejected the Petition, as it had earlier court challenges filed before the final Clean Power Plan had even been issued. In essence, the Court has held that the Federal Register publication procedure for determining final Agency action and commencing the deadline for challenges would not be circumvented.

E. Greenhouse Gas Emissions Reductions Required

Electric generating units are the stationary sources from which carbon dioxide (CO₂) emissions are required to be reduced by EPA’s Clean Power Plan. These greenhouse gas

controls are based upon three basic approaches to achieve the “best system of emission reduction (BSER)”: (1) increase efficiency of the coal-fired electric generating units; (2) increase natural gas utilization; and/or (3) increase reliance on renewable energy sources. Again, from an energy perspective, fuel choice is obviously a significant aspect of this EPA rule, and economic impacts are a concern.

According to EPA’s “goal visualizer” tool found at www.EPA.gov/cleanpowerplantoolbox, by 2013 Michigan’s total CO₂ emissions must be approximately 47.5 million tons, as compared with the 2012 estimate of over 69 million tons; or 1,169 pounds of CO₂ per megawatt hour, as compared with a 2012 CO₂ rate of 1,928 pounds per megawatt hour. There are interim goals for 2022-2029 published as well. All of these EPA targets appear to be less stringent than last year’s proposed EPA rulemaking would have set.

F. Federal Plan “Hammer”

The Michigan Agency for Energy has announced that a process to develop a State Plan implementing the EPA Clean Power rule is being pursued, despite the Michigan Attorney General’s apparent opposition to the EPA regulation. Nevertheless, as set forth in §111(d), if a state fails to submit a satisfactory State Plan, then U.S. EPA’s Federal Plan would become effective. EPA’s proposed Federal Plan establishes a carbon trading market-based program. Under this approach, electric generating units could purchase carbon credits to satisfy required CO₂ reductions, for instance through the Chicago Climate Exchange or similar state or regional entities, in addition to engineering or technology controls a facility might implement to reduce their carbon emissions. This proposed Federal Plan is not a final EPA rule and is still subject to public comment for at least 90 days following publication in the Federal Register, which is expected in early October 2015.

CONCLUSION: For the foreseeable future, it appears that Michigan, through the Michigan Agency for Energy and Department of Environmental Quality (DEQ), will be developing a State Plan, while the Attorney General likely pursues a Court challenge to the EPA Clean Power Plan regulation. Also proceeding on a somewhat parallel path is U.S. EPA's proposed Federal Plan for a market-based carbon trading regulatory program as an alternative to a State Plan for compliance with the Clean Power Plan.

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