AMERICAN PUBLIC POWER ASSOCIATION
Powering Strong Communities

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May 12, 2017

Submitted via Regulations.gov

Ms. Samantha Dravis
Associate Administrator, Office of Policy and Regulatory Reform Officer
U.S. Environmental Protection Agency, Mail Code 1803A
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

Re: Comments of the American Public Power Association on the Evaluation of Existing Regulations for Repeal, Modification or Replacement; 82 Fed. Reg. 17,793, April 13, 2017 (Docket Id. No. EPA-HQ-OA-2017-0190)

Dear Ms. Dravis:

The American Public Power Association (Association) appreciates the opportunity to submit comments in response to the Environmental Protection Agency's (EPA or Agency) April 13, 2017, *Federal Register* notice in accordance with Executive Order (EO)13777, "Enforcing the Regulatory Reform Agenda".[1] The EO establishes a federal policy "to alleviate unnecessary regulatory burdens."[2] Section 3(a) of the EO directs federal agencies to establish a Regulatory Reform Task Force (Task Force), with a duty to evaluate existing regulations and make "recommendations to the Agency head regarding their repeal, replacement or modification."[3] The EO instructs the Task Force to identify regulations that: (1) eliminate jobs, or inhibit job creation; (2) are outdated, unnecessary, or ineffective; (3) impose costs that exceed benefits; and (4) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.[4] The EO further directs the Task Force to seek input from entities significantly affected by federal regulations that meet some or all of the above criteria. The American Public Power Association represents public power utilities who are significantly affected by several regulations arising from the Clean Air Act (CAA or Act), the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substance Control Act (TSCA).

The Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the Federal Government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. The Association advocates and advises on electricity policy, technology,

[1] EO 13777, "Enforcing the Regulatory Reform Agenda," 82 Fed. Reg. 17,793 (Apr. 13, 2017).
[2] *Id.*
[3] *Id.*
[4] EO 13777 §3(d)(i)-(iv).

trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

The Association's members have extensive experience with burdensome regulations and excessive costs associated with regulatory compliance. We have identified the following regulations issued by the Agency as candidates for repeal, replacement or modification.

I. Climate Related Regulations

A. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; 80 Fed. Reg. 64,662, October 23, 2015 (40 C.F.R. Part 60, Subpart UUUU)

The Association supports the Administration's announced review of the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (111(d) Rule).[5] The Association believes the 111(d) Rule overreached the EPA's statutory authority and sought to do too much too quickly. Thus, the rule would have: created economic inefficiency; imposed inequitably distributed costs on consumers; threatened the reliability of the electricity system; and forced a risky over-reliance on a single fuel—natural gas—to generate electricity. It is for these reasons, the Association joined other parties in challenging the 111(d) rule before the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), (*West Virginia v. EPA, No. 15-1363* and consolidated cases).

The Association encourages the Agency to adhere to the plain meaning of CAA section 111 in the development of a replacement or revision of the 111(d) Rule. A revised or replacement rule must be based upon the following principles: (1) a "best system of emission reduction" (BSER) that can be applied within the fence line of an electric generating unit; (2) allow states to make a case-by-case determination for flexible emission limits for certain units; and (3) emission guidelines must account for the remaining useful life of an electric generating unit (EGU).

B. Carbon Dioxide New Source Performance Standards for New, Modified and Reconstructed Electric Generating Units; 80 Fed. Reg. 64,510, October 23, 2015 (40 C.F.R, Part 60, Subpart TTTT)

The Association supports the Administration's review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified and Reconstructed Stationary Sources: Electric Generating Units (New Plant Rule).[6] The New Plant Rule does not set emission limits that adequately justify the benefits or the costs, as required under the Act in Section 307(d)(3). It is for this reason, the Association joined other parties in challenging the New Plant Rule in the D.C. Circuit, (*North Dakota v. EPA, No. 15-1381*). Any replacement rule should be based on adequately demonstrated "best system of emission reduction" in keeping within the confines of CAA section 111.

[5] 82 Fed. Reg. 16,329 (April 4, 2017).
[6] 82 Fed. Reg. 16,330 (April 4, 2017).

C. Greenhouse Gas Mandatory Reporting Program; 74 Fed. Reg. 56,260, October 30, 2009 (40 C.F.R. Part 98)

On October 30, 2009, EPA published a rule for the mandatory reporting of greenhouse gases (GHG) from sources that, in general, emit 25,000 metric tons or more of carbon dioxide equivalent (CO_2e) per year in the United States. Implementation of 40 CFR Part 98 is referred to as the Greenhouse Gas Reporting Program (GHGRP). Public power utilities have expended enormous amounts of resources tracking, quality assuring, and reporting vast amounts of information through EPA's Clean Air Markets Division Business System (CAMDBS).

The Association recommends EPA reevaluate the need for the program, particularly for source categories whose GHG emissions are already regulated and remove the redundancy from the GHGR program. As part of the reevaluation, EPA should modify the inclusion of miscellaneous sources, such as, small gas fired heaters, stoves, or lawn mowers. For example, "stationary fuel combustion sources" as defined in Subpart C, cover any device that combusts fuel and doesn't require the device to be used for a specific purpose. Therefore, utilities with emissions above the applicability threshold must include miscellaneous combustion sources in their facility-wide calculations. Further, the contribution from these miscellaneous sources is negligible, but adds significant paperwork, tracking, and annual entry to EPA's electronic Greenhouse Gas Reporting Tool (e-GGRT).

II. Regional Haze

A. Protection of Visibility: Amendments to Requirements for State Plans; 82 Fed. Reg. 3,078, January 10, 2017 (40 C.F.R. Part 51 and 52, Subpart P)

In January, EPA finalized the revisions to the 1999 Regional Haze Rule (RHR), which modified states requirements to meet and implement programs to protect viability in Class I areas under sections 169A and 169B of the CAA. The final rule, "Protection of Visibility: Amendment to Requirements for State Plans" (Visibility Rule), addressed regional haze state implementation plans (SIPs) and progress reports during the second planning period (2018-2028) of the Regional Haze program. The Association offers the following recommendation for modifying the Visibility Rule.

EPA should modify the Visibility Rule to make clear that state policy decisions have primacy in implementing the regional haze program, and that states are free to decide how to evaluate each of the four statuary "reasonable progress" factors. Historically, the CAA, the 1999 RHR, the 2005 and 2006 revisions to these rules, and EPA's Best Available Retrofit Technology (BART) Guidelines all emphasize state primacy in implementing the regional haze program.

The Agency should rescind its interpretation of the relationship between Reasonable Progress Goals (RPGs), state's Long-Term Strategy (LTS) and visibility improvement SIPs. The Final Visibility Rule includes a provision that seeks to "clarify" that,

> "states must submit a "long-term strategy" that includes "enforceable emissions limitations, compliance schedules, and other measures that are necessary to make

reasonable progress," and determine those limits schedules and measures by considering the four statutory factors.[7]

In other words, states must first determine the measures to be included in the LTS based upon an assessment of the reasonable progress factors and then calculate the RPG resulting from those measures. We believe that is inconsistent with prior guidance. For example, EPA's 2007 "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program", which addresses the relationship of RPG to the LTS, include no requirement that a state develop the LTS and determine its emission control measures first and establish RPGs subsequently based on the controls included in the LTS. Further, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *American Corn Growers Association v. EPA, (D.C. Cir. 2002) (Corn Growers)* explained that EPA's 1999 RHR provides that "the determination of what specific control measures must be implemented can only be made by a State once it has conducted the necessary technical analyses of emissions, air quality, and other factors that go into determining reasonable progress".[8] The Agency must revise the Visibility Rule and allow states to set RPGs and *then* develop LTS that are "sufficient to achieve" the RPGs.[9]

The Association recommends the Visibility Rule should be reconsidered and modified to address the above concerns and others problems outlined in utility stakeholder comments on the proposal. The revisions should establish a more neutral methodology for setting emission reduction levels that states can realize to meet their reasonable progress goals all while ensuring states have broad discretion in determining the course for achieving visibility goals.

[7] 82 Fed. Reg. 3,091.
[8] *Corn Growers, 291 F.3d* (quoting 64 FR 35714, 35721 (July 1, 1999).
[9] 82 Fed. Reg. 12,328 (March 5, 2017).

III. Air Emissions Transport

A. Cross-State Air Pollution Update Rule; 81 Fed. Reg. 74,504, October 26, 2016 (40 C.F.R. Part 52 and 40 C.F.R. Part 78 and 40 C.F.R. Part 97)

EPA should modify several aspects of the Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards (CSAPR Update Rule). The CSAPR Update Rule sets strict nitrogen oxide (NOx) emission limits for 22 states in the eastern U.S., that EPA deemed contributed significantly to nonattainment or interfering with maintenance of the 2008 ozone NAAQS.[10] The CSAPR Update Rule creates a new regulatory program that imposes costs which exceed any meaningful benefit. The Association recommends this rule be revised, not withdrawn, because there are EGUs operating in the states covered by the CSAPR Update rule that have begun planning for compliance, during the 2017 ozone season (May 1-Septebmer 30). The Agency should modify key elements of the CSAPR Update Rule to increase the levels of state emission budgets based upon corrections and continuous review of the rule. EPA should modify the CSAPR Update Rule to address many of the issues raised in petitions for judicial review pending before the D.C. Circuit and the administrative petitions for reconsideration.

IV. National Ambient Air Quality Standards (NAAQS)

A. 2015 Ozone National Ambient Air Quality Standard Notice of Data Availability; 82 Fed. Reg. 1,733, January 6, 2017

EPA issued a "Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS)" (NODA) in January. The NODA states that the information being provided is intended "to help states develop SIPs to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS."[11]

EPA's modeling methodology is based on the trifecta of worst meteorology, maximum emissions from power plants in upwind states, and stagnant air conditions over a coarse modeling grid, and consequently predicts potential violations of the ozone NAAQS and/or interference with ozone maintenance plans at or near downwind receptors. As a rule, the interstate transport rule tightens state budgets and requires over-control of emissions in many states. The Association recommends the Agency withdraw the NODA and correct the flawed assumptions for EGU retirements and assumptions regarding the implementation of the 111(d) rule before using this information to draft future transport rules to address the 2015 ozone NAAQS.[12]

[10] 81 Fed. Reg. 74,506.
[11] 82 Fed. Reg. 1,733 (Jan. 6, 2017).
[12] EPA is reviewing the Clean Power Plan, 82 Fed. Reg. 16,329.

B. State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; 80 Fed. Reg. 33,840, June 12, 2015, (40 C.F.R. Part 52)

In 2015, EPA issued a "SSM SIP Call" directing 36 states to revise their previously approved SIPs, because the Agency's most recent interpretation of emissions from affected sources during periods of startup, shutdown, and malfunction (SSM) had changed. The SSM SIP Call requires that emission limits be complied with continuously, including during periods of SSM. There is a fundamental problem with this interpretation, for even the best designed and well-maintained equipment can break down over its lifespan. Previously, best work practices were considered acceptable during periods of equipment startup, shutdown, and malfunction.

Under the CAA framework, states have served in the lead role attaining, maintaining, and enforcing the NAAQS through their SIPs. EPA has no authority to force states to prescribe specific control measures. EPA's SSM SIP Call inappropriately limits a state's ability to select a mix of control measures suitable to meet a state's obligation under the CAA. The SIP Call imposes upon states and EPA the added burden and costs associated with the review and approval/disapproval of revising state rules without any corresponding finding of air quality related benefits. Many states are already achieving some or all the NAAQS through existing SIPs. The Association recommends EPA repeal the SSM SIP Call and approve state SSM SIPs that are protective of the environment.

EPA's SSM SIP Call was issued without any assessment of the impact of these Affirmative Defenses or SSM Exclusions from CAA violations on the respective air quality of the states. Thus, EPA violated the Act. State air quality planning and maintenance was firmly entrusted by Congress to the States, and not the federal government.[13]

V. Hazardous Air Pollutant Regulations

A. Mercury and Air Toxics Standards (MATS) (40 C.F.R. Part 63 Subpart UUUUU)

The MATS rule is one of the most extensive regulations affecting coal- and oil-fired EGUs. The electric utility industry has made significant financial commitments associated with purchasing, installing, and operating emission controls, performance testing, monitoring, recordkeeping, and reporting. EPA promulgated several successive rulemakings over a period of more than 5 years which resulted in the Agency's Technical Corrections to the MATS Rule.[14] The Technical Corrections Rule sought to fix errors, but did little to address overall compliance burdens. The Association believes there are elements of the MATS rule that would benefit from modifications to streamline

[13] 42 U.S.C. § 7410 (1970, as amended in 1977).
[14] EPA-HQ-OAR-2009-0234 (April 6, 2016).

electronic reporting requirements and reduce costs and support an appropriate level of flexibility.

In a recent round of MATS-related rulemaking, EPA is seeking to improve the electronic reporting requirements in the MATS rule to allow all reports to be submitted using the Emissions Collection and Monitoring Plan System (ECMPS). The ECMPS is already being used under the Acid Rain Program and CSAPR. The Association is supportive of the use of ECMPS software for electronic reporting under MATS. However, we recommend the Agency take a closer look at the very detailed electronic reporting proposed in the "MATS Completion of Electronic Reporting Requirements" rule to ensure that the reporting burden will not be greater than the cost savings.[15] The new reporting would significantly increase the amount of information EGUs would have to report, both for performance stack tests and continuous emissions monitoring systems (CEMS). For example, EPA proposes to require submission of significantly more detailed reference method information in Extensible Markup Language (XML) format for each relative accuracy test audit (RATA), relative response audits (RRA), and response correlation audits (RCA), and to require that submission no later than submission of the current quarterly reports.

B. National Emission Standards for Hazardous Air Pollutants from Stationary Reciprocating Internal Combustion Engines; 78 FR 6,711, January 30, 2013 (40 C.F.R. Part 63 Subpart ZZZZ)

Reciprocating Internal Combustion Engines (RICE) units are commonly used as back up and peaking sources of power for plants to generate electricity and to power pumps and compressors. The rule requires non-emergency, non-black start compression ignition (CI) stationary RICE >500 horsepower (HP) that are not limited-use stationary RICE to conduct performance tests every 8,760 hours or every three years whichever comes first.[16] This essentially means that engines used primarily for peaking power must be tested every three years despite limited operating hours. The Association recommends the Agency modify the testing requirements for non-emergency engines, based exclusively on the hours of operation. This modification would prevent RICE units from burning a significant amount of fuel solely for compliance testing and limit their air emissions.

Further, the Association recommends the RICE rule amend the requirement to continuously monitor catalyst inlet temperature and pressure drop. These parameters should be recorded during periodic compliance testing to verify that they are within the allowable ranges during normal operation.

VI. New Source Performance Standards

A. New Source Performance Standards for Stationary Gas and Combustion Turbines; 77 Fed. Reg. 52,554, August 29, 2012 (40 C.F.R. Part 60, Subpart KKKK)

In 2012, EPA proposed to amend the New Source Performance Standards for New, Modified and Reconstructed Stationary Combustion Turbines (Combustion Turbine

[15] 81 Fed. Reg. 67,062 (Sept. 29, 2016).
[16] 40 CFR § 63.6620, Table 3.

NSPS) after receiving petitions for reconsideration from the electric utility industry.[17] The proposed Combustion Turbine NSPS alters the analysis used to determine whether an existing combustion turbine has been "reconstructed", thus subjecting a facility to the Combustion Turbine NSPS emission limits, Prevention of Significant Deterioration (PSD) and Title V requirements, for work that is performed routinely. The Agency has not finalized its proposal. The Association requests the Agency issue a supplemental proposal withdrawing the 2012 proposed Combustion Turbine NSPS and revising the rule to remove the ambiguity around necessary maintenance activity and which standards apply.

The South Carolina Department of Health and Environmental Control has informed one of our members that should EPA's 2012 Combustion Turbine NSPS become finalized as proposed, this Association's member's replacement of a turbine engine at a landfill gas facility would retroactively trigger a requirement to meet the 2012 limits. The Association also suggests the Agency prevent retroactive applicability of the 2012 proposed limits.

VII. Preconstruction Permitting

A. New Source Review (40 C.F.R. Part 51.165, 51.166, 52.21, 52, 24 and Part 51)

The New Source Review program requires that owners or operators of a proposed new major source or a proposed major modification, resulting in a significant emission increase of an existing source, undergo a preconstruction permitting process. The permit applicant is issued a permit if the owner/operator can demonstrate, through air quality modeling, that the new source or major modification will not cause or contribute to a violation of air quality standards; install best available control technology (BACT), and demonstrates that the new source or major modification will not impact the air quality values in federally protected lands. The EPA should overhaul and simplify the New Source Review (NSR) program to remove the uncertainty that prevents maintenance projects that EGUs must undertake to improve reliability, efficiency, safety, and availability. The NSR program is costly and provides questionable net environmental benefits.

In the case of routine maintenance, repair and replacement (RMRR), EPA has excluded these activities from NSR applicability because they are not the types of activities Congress contemplated as "major modifications". The Agency continues to interpret this exclusion very narrowly, requiring RMRR activities to occur multiple times at a given unit, even though court cases have held that routine activities should be excluded even if they do not occur frequently. The Association recommends the Agency initiate a new rulemaking to clarify that all routine repairs are excluded from NSR. The NSR program is a disincentive for power plants to improve operation that can reduce air emissions.

B. Prevention of Significant Deterioration (PSD)

The Prevention of Significant Deterioration (PSD) provisions under the CAA require permits for the construction of new or major modification of existing industrial facilities,

[17] 77 Fed. Reg. 52,554 (August 29, 2012).

like power plants and other major stationary sources of emissions that emit above a certain threshold and are located in an area that is in attainment or unclassifiable with the NAAQS.[18] Facilities receiving a PSD permit are subject to a "best available control technology" (BACT) analysis for each regulated pollutants (sulfur dioxide (SO_2), nitrogen oxide (NOx), particulate matter (PM), carbon monoxide (CO), and GHGs). The process for obtaining a PSD permit is time consuming, expensive and uncertain. As discussed above the RMRR exemption does not trigger NSR, however, any physical or operational change that improves efficiency can do so. The PSD program dis-incentivizes existing power plants from pursuing equipment upgrades that would improve a facility's overall efficiency and utilization. There are projects at power plants that would improve efficiency and lower emissions that may not even be considered due to the burdens of the NSR and PSD permitting program.

VIII. Water Regulations

A. Effluent Limitation Guidelines and Standards for Stream Electric Power Generating Point Sources; 80 Fed. Reg. 67,838, November 3, 2015 (40 C.F.R. Part 423)

In 2015, EPA finalized Effluent Limitations Guidelines and Standards for Steam Electric Power Generating Point Sources (ELG Rule). The ELG rule imposes technology-based standards for the control of wastewater discharges under the Clean Water Act (CWA). The Association recommends that the Agency modify the ELG Rule based upon its effect on jobs, costs that exceed benefits, and lack of transparency of the rule's underlying data.

The flue-gas desulfurization (FGD) wastewater and bottom ash transport water (BATW) requirements should be revised. The Agency issued the ELG rule without gathering data on certain types of plants subject to the rule. For example, approximately 25 percent of the coal plants burn power river basin (PRB) coal, however, EPA collected no data on the treatability of selenium and nitrates from these types plants. Additionally, the data used to support a "zero liquid" discharge requirement for BATW was poor quality and decades old. This information was used to determine a cost-effectiveness ratio that allows EPA to compare the ELG rule to other effluent guidelines. It stands to reason, if the underlying data was flawed and obsolete that the rule should be revised to address these concerns.

EPA should revise the ELG rule to evaluate the environmental benefit and costs of regulating indirect dischargers that discharge all their wastewater through Publicly Owned Treatment Works (POTW). POTW regulate all discharges through their pre-treatment permit ensuring that final discharge to surface waters meet all permitted water quality conditions. EPA's own analysis illustrates that discharges through POTW have limited pollutant loadings and relatively high costs of installing technology. [19]

Further, several community-owned utilities are dealing with the cumulative effect of complying with the many environmental regulations such as the ELG and coal combustion residuals (CCR) rules. The Agency should consider revising the ELG rule to

[18] 42 USC §§ 7470-79.

[19] Effluent Limitation Guidelines, Regulatory Impact Analysis, EPA-821-R-15-004, Table F-2 which shows total pollutant removal from this sector is barley 0.1 % of the entire industry sector.

allow flexibility to meet the rule's applicability date, of no later than December 31, 2023, to provide more time for maturation of treatment technology and subsequent pilot testing.

EPA should exempt those small generating units under 400 megawatts (MW), especially as it pertains to bottom ash handling and FGD wastewater. In the preamble of the proposed rule, EPA considered a regulatory flexibility option for small plants. The Agency recognized that small plants were under economic pressures to close and "many companies may choose to shut down 400 MW and smaller units instead of making new investments to comply with the proposed zero discharges bottom ash requirements."[20] This is still the case. The overly stringent ELG requirements could force the retirement of many existing coal-fired plants and thereby affecting the local communities in which the plants operate.

B. National Pollutant Discharge Elimination System-Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities; 79 Fed Reg. 48,300, August 15, 2014, (40 C.F.R. Parts 122 and 125)

In August 2014, EPA finalized requirements under section 316(b) of the Clean Water Act for existing power generating facilities and existing manufacturing and industrial facilities that are designed to withdraw more than 2 million gallons per day (mgd) of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes. This rule is known as the Cooling Water Intake Structure Rule or 316(b). Specifically, provision §125.98 requires that the Fish and Wildlife Service (FWS) review and comment on 316(b) reports after the studies and even draft permits are completed. Comments by FWS after the fact could cause EPA to disapprove permits late in the process and causes regulatory uncertainty. This step is cumbersome and raises many concerns. The Association recommends EPA revise the 316(b) rule to relieve the regulatory permitting uncertainty of this provision in the 316(b) rule.

IX. Resource Recovery Conservation Act (RCRA)

A. Coal Combustion Residuals, 80 Fed. Reg. 21,301, April 17, 2015 (40 C.F.R. Part 257 and 261)

The Association recommends modification and repeal of certain provisions in the Coal Combustion Residuals (CCR) rule due to the costs imposed by the rule that exceed its benefits.[21] In addition, modification is warranted due to the enactment of the Waters Infrastructure Improvement for the Nation (WIIN) Act, which established a mechanism for states and EPA to implement the CCR rule through state or EPA administered permit programs.

EPA should modify the CCR rule to allow for tailoring of the rule's groundwater monitoring and corrective action programs based on site-specific conditions. These provisions were included in the 2010 proposal but were not finalized due to the self-

[20] 78 Fed. Reg. 34,450 (June 7, 2013).
[21] 80 Fed. Reg. 21,302 and 21,460 (April 17, 2015).

implementing provision in the CCR rule. The WIIN Act now allows states and EPA to implement the CCR rule through a permit program and allows utilities to cost-effectively meet the rule's requirements based on site specific risk-based considerations.

The passage of the WIIN Act also necessitates a modification in the CCR rule's compliance deadlines to allow states time to implement their state programs. In an April 28, 2017 letter, EPA Administrator, Scott Pruitt announced EPA has "started to developing guidance for states about how EPA expects to review and approve state applications to operate permit programs and allow flexibility in individual permits in lieu of the national standards."[22] Extending the compliance deadlines may allow regulated utilities to avoid premature capital expenditures to meet elements of the rule, that may be implemented differently in a state permit program. Provision in the CCR rule that may benefit from an extending compliance deadlines include, the groundwater monitoring schedules in 40 CFR Part 257.90 (b) and deadlines for assessing compliance with the rule's location restrictions in 40 CFR Part 257.60-64. An extension should be issued prior to the pending October 2017 groundwater monitoring deadline. Further, extension of the CCR rule's compliance deadlines is necessary to reduce the regulatory burden associated with the coordination between the CCR rule and the ELG rule. The Agency announced plans to postpone the compliance dates for implementation of the Final ELG rule. During the CCR and ELG comment period EPA clearly recognized the overlap, close coordination and planning required to ensure owners/operators of CCR units are not forced to make decisions affecting these units under the CCR rule without first understanding the ELG requirements. Therefore, the Association strongly recommends the Agency continue its efforts to closely coordinate these deadlines considering the regulatory review of both rulemakings.

EPA should modify the CCR rule to add a provision allowing the permitting authority the option to determine the point of compliance for groundwater monitoring system based on site-specific conditions and grant the permitting authority the ability to tailor which constituents should be subject to groundwater monitoring based on site-specific considerations.

EPA should repeal the alternative closure provision under 40 CFR Part 257.103. The intent of the alternative closure provision was to prevent the premature closure of power plants when surface impoundments otherwise required to close, is authorized to continue to operate for a limited time if there is no alternative disposal option for the CCR waste. This provision as currently written prohibits the consideration of costs or inconvenience when deciding if there is no alternative disposal capacity available on site or off site.

EPA should add a provision to 40 CFR 257.104(c) to allow a decrease in the mandatory 30-year post closure care requirement. A similar flexibility is available under the Municipal Source Waste Landfill (MSWFL) and RCRA Subtitle C programs.

EPA should repeal 40 CFR 257.50(c) and 257.100 provisions subjecting inactive surface impoundment to regulation under the CCR rule. EPA has the authority under RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

[22] Letter from Scott Pruitt, "Implementing Section 2301 of the WIIN Act", April 28, 2017.

to address any risk from inactive surface impoundments under "imminent and substantial endangerment." EPA and states can address any such risk inactive impoundments may case in a cost-effective manner under existing authorities.

EPA should modify 40 CFR 257.60 (a), the aquifer location restrictions for existing impoundments to allow for site-specific considerations for an alternative compliance options. The CCR rule subjects all existing impoundments to a location restriction, requiring that the base of the unit be five feet above the uppermost aquifer, failure to meet this requirement mandates closure of the unit.

B. Above Ground Storage of Hazardous Substances

In December 2016, the Agency's Office of Emergency Management (OEM) held a stakeholder meeting to begin early engagement with stakeholders as the Agency began to solicit input on the development of regulations to cover the aboveground storage of hazardous substances. The Agency has provided very few details about how it will proceed with this rulemaking. The Association is concerned that the developed regulations will be largely redundant and/or inconsistent with the many varieties of state regulatory programs that already effectively protect releases and discharges from the same types of facilities and substances that the federal program will eventually cover. We are also concerned that the upcoming federal regulations will be unnecessarily proscriptive and not allow for performance-based controls that facility owners/operators will be able to tailor to the unique characteristics of their facilities. Duplicative, inconsistent or proscriptive regulations could inhibit job creation, be unnecessary, or have costs that exceed their expected benefits for facilities subject to these pending federal rules.

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The Association appreciates this opportunity to provide input on EPA regulations that may be appropriate for repeal, replacement or modify under the "Enforcing the Regulatory Reform" EO. Please contact Ms. Carolyn Slaughter at (202) 467-2943 or cslaughter@publicpower.org with any questions.

Sincerely,

Carolyn Slaughter
Director, Environmental Policy
American Public Power Association