

House of Representatives  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

January 28, 2016

Submitted via: <http://www2.regulations.gov>

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Comments on Proposed Rule: Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS;  
Docket ID No. EPA-HQ-PAR-2015-0500

Dear Administrator McCarthy:

As members of the Pennsylvania Senate and House of Representatives, both Democrats and Republicans, we are writing to express our deep concerns and opposition to the proposal published by EPA in the Federal Register of December 3, 2015, setting forth changes to the Cross-State Air Pollution Rule ("CSAPR"). As currently drafted, this proposal involves radical and apparently inequitable and unnecessary reductions in the nitrogen-oxide ("NOx") ozone season allowance budget applicable to Pennsylvania's existing power generation facilities, which would have far-reaching and adverse impacts upon Pennsylvania's non-rate-based coal and coal refuse fired competitive wholesale electric generation industry, the owners, operators, employees and the industries and services which support those generation facilities and the Pennsylvania communities which they serve.

We understand that EPA's goal is to move toward attainment of the 2008 ozone national ambient air quality standard ("NAAQS"), and we are supportive of that objective. We also understand the need for regional cooperation in such efforts - and, indeed, Pennsylvania has done its part over the past several decades as a member of the Northeast Ozone Transport Region reducing emissions of both NOx and volatile organic compounds (the two major precursors of ozone) from stationary sources.

However, for the reasons explained below, we believe that EPA's latest proposal to impose a 73.7% reduction in the ozone season NOx emission budget from Pennsylvania existing power plants starting in 2017 is (1) based on modeling which selectively uses outdated and unrepresentative data overstating Pennsylvania's contribution to ozone issues in downwind states; (2) ignores the reality that Pennsylvania already measures attainment of the 2008 national ambient air quality standard for ozone

at each of the monitoring stations operated by the local, state and federal regulators in the Commonwealth; (3) fails to properly assess, and require appropriate controls at, the sources at the “downwind” states (e.g., Connecticut) which contribute to the ozone monitors that continue to measure non-attainment of the 2008 ozone standard, particularly on high electric demand days (HEDD); (4) provides inadequate time (less than one year) for generation plants to come into compliance, likely causing the shutdown of substantial generation capacity, and yet fails to provide any consideration or analysis of electric grid reliability issues; (5) does not accurately reflect the financial burden of control costs associated with facilities located within the PJM wholesale electric market, (6) will result in the shutdown of additional coal-fired electric generating units, and (7) will result in the shutdown of coal-refuse fired facilities that current provide important environmental benefits through reclamation of abandoned coal refuse piles (piles which themselves contribute significant air and water pollution).

The proposed CSAPR rule amendment is based on modeling which uses outdated and unrepresentative data overstating Pennsylvania’s contribution to ozone issues in northeastern states. The proposed rule is largely based on modeling which draws from data in the 2011-2013 timeframe, and uses this modeling to, in effect, ascribe to Pennsylvania a large percentage of responsibility for ozone conditions in states such as Connecticut. The Federal Register notice highlights 12 non-attainment regions that the rule purports to seek to bring into compliance with the 2008 ozone NAAQS. (80 Fed. Reg. at 75737). But if EPA were to update its modeling based on 2014-15 data, our understanding is that the number of nonattainment regionals falls to just 3. In other words, the model is overstating and “solving” a mistakenly-defined problem.

Further, the EPA modeling on which the proposed NOx emission allocations are premised does not account for the expected improvements in NOx emissions from mobile sources resulting from implementation of Tier 3 gasoline. As EPA is well aware, mobile sources are the largest component of the NOx inventory in the northeast, including northern New Jersey, New York and Connecticut (“NJ-NY-CT”) metro area – the I-95 corridor area. It is precisely in that area that most of the monitors showing ozone nonattainment that are allegedly driving this CSAPR proposal are located. The Tier 3 gasoline rule, which was adopted in 2014 and goes into effect in 2017, requires a reduction in the sulfur content of gasoline sold nationwide, allowing the catalytic units to work more efficiently, so as to “significantly reduce motor vehicle emissions, including nitrogen oxides (NOx), volatile organic compounds (VOC), directly particulate matter (PM2.5), carbon monoxide (CO) and air toxics.”<sup>1</sup> Importantly, these reductions will come from every existing gasoline powered on-road mobile source with a functioning catalytic convertor. Curiously, however, in the latest proposed rulemaking, EPA’s discussion of the modeling that purportedly underpins its new CSAPR proposal does not mention or account for the substantial reduction in mobile source NOx emissions that are expected in 2017 and subsequent years as a result of the Tier 3 gasoline requirement. It almost appears that EPA is attempting to rush forward to impose stringent reductions on some power generation facilities before the benefits of Tier 3 gasoline toward achieving attainment of the ozone NAAQS can be recognized. Such an approach reflects bad science, bad energy policy and bad economic policy.

The fact is that Pennsylvania has already achieved considerable NOx reduction and is measuring attainment of the 2008 ozone standard at all regulatory agency operated ozone monitoring sites in Pennsylvania is a clear demonstration of the efforts in Pennsylvania. It is also noteworthy that additional emissions reductions will be required from the Pennsylvania non-utility coal and coal refuse fired electric generation facilities, as well as the other major stationary sources in Pennsylvania,

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<sup>1</sup> See EPA fact sheet: <http://www3.epa.gov/otaq/documents/tier3/420f14009.pdf> .

beginning on January 1, 2017, through the second round Pennsylvania Reasonably Available Control Technology (RACT II) which was adopted in the Fall of 2015 and is currently pending final publication. This reduction has not been included in the emissions inventory being used for EPA modelling to substantiate the proposed reductions. Additionally, across Pennsylvania, new and modified sources are treated as if they are in ozone nonattainment areas and are required to implement lowest achievable emission rates (LAER) limitations even though all of the monitors in Pennsylvania currently measure attainment of the 2008 ozone NAAQS. It is not by accident that Pennsylvania's monitors are currently demonstrating attainment of the 2008 ozone NAAQS.

We believe EPA must perform a more detailed analysis, based on 2014-2015 data, as to why certain monitors in the congested NJ-NY-CT region (particularly in Connecticut) continue to indicate ozone concentrations above the NAAQS. EPA needs to determine if those particular non-attainment monitors would attain the NAAQS even if there were no transport from upwind states. Our understanding is that a number of the days on which the Connecticut monitors show non-attainment issues coincide with the high-energy use days when local CT sources (e.g., industrial site generation, peaker plants, etc.) came on line. If that is the case, EPA must look to what controls should and must be placed on such much closer and immediate NO<sub>x</sub> sources before seeking to impose restrictions on more distant facilities in Pennsylvania which are already adhering to its RACT and RACT II mandates.

The result of EPA's skewed selection of data and resulting modeling is imposition of a disproportionate and inequitable burden on Pennsylvania's facilities, workers, and economy. The proposed rule would impose a 73.7% reduction in the allowance reduction for existing units compared to the previously finalized CSAPR 2017 ozone season NO<sub>x</sub> budget. The previously finalized CSAPR Phase 2 (2017) ozone season budget provided a base of 50,874 NO<sub>x</sub> allowances for Pennsylvania's existing units. The proposed CASPR rule reduces that to just 13,370 allowances. Every other state around Pennsylvania, including New York, faces substantially lesser reductions. Indeed, New Jersey and New York (who are part of the most serious ozone non-attainment area) face only 40% and 52% reductions, respectively.

The proposed CSAPR rule shockingly fails to evaluate the real world impact of the proposed precipitous allowance reductions. According to data, contained in the EPA Clean Air Markets Division ("CAMD") website and compiled by the Pennsylvania Department of Environmental Protection, the 2014 ozone season NO<sub>x</sub> emissions from the CAIR ozone season affected units in Pennsylvania were 44,552 tons. Assuming full implementation of the Pennsylvania RACT II standards during the ozone season, emissions for the same plants operating using the same heat input of fuel would be calculated to be 25,275 tons. Even if one were to optimistically estimate that some plants would do better than the recently adopted RACT II emission rates, it is clear that EPA proposed base ozone season allowance budget for existing units of 13,370 (not counting new unit set asides) will force the shutdown of a number of the remaining coal and coal-refuse fired electric plants across the Commonwealth starting as soon as the summer of 2017. Some analyses we have seen indicate that more than 7,000 MW of generating capacity will either likely shutdown or be at substantial risk of shutting down under EPA's proposal.

While EPA (after some prodding) gave consideration to grid reliability issues in the Clean Power Plan rule promulgated last year, it does not appear that any such consideration has been given with respect to this CSAPR proposal. To proceed without a clear understanding of how the proposed rule will affect the availability of electricity, particularly during the peak electric demand periods of the summer, would be irresponsible. EPA should and must confer with state utility regulators, PJM and the Federal Energy Regulatory Commission to evaluate how this rule will affect grid stability and reliability, and assure that

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it any revised rule is implemented in a manner that assures near-term and long-term availability of adequate, affordable electricity to our citizens.

Currently, coal and coal refuse-fired generation facilities continue to play an important role in terms of generation of affordable energy and jobs in Pennsylvania. We are seriously concerned about the impact of a poorly-justified rule on the ability of those facilities to operate and continue to provide associated services, jobs and benefits.

Beyond that, we note that special consideration is warranted toward how coal refuse-fired plants are considered in any such regulation. Pennsylvania's environment and economy suffer from the adverse legacy of coal mining, including coal refuse piles. In Pennsylvania, more than 5,000 abandoned, unreclaimed mining areas (which include coal refuse piles) cover approximately 184,000 acres. Coal refuse piles left over from legacy coal mining and processing are scattered across the landscape next to communities, rivers and streams and sometimes fill entire valleys. In both the anthracite and bituminous coal regions, coal refuse piles are sources of acid mine drainage, bearing acids, sediment and metals-laden runoff that pollute our streams and downstream states' watersheds including the Chesapeake, Delaware, and Ohio River basins, to name only a few. These same coal refuse piles are also recurrent sources of uncontrolled fires that pollute our air. As noted in the Pennsylvania Department of Environmental Protection's Citizens Advisory Council Transition Report (2015), Pennsylvania faces a documented abandoned mine land inventory of \$16.1 billion in remediation costs. Of this amount, reclaiming coal refuse piles alone represents a fiscal burden of approximately \$2 billion or more for the Commonwealth. By comparison, federal abandoned mine land (AML) funding grants fell by 15% last year, and in 2014 only provided around \$50 million toward abatement of such hazards.

The 15 existing coal refuse-fired power plants in Pennsylvania together consume approximately 12 million tons of coal refuse annually, converting "valleys of the moon" to reclaimed and reusable land. In Pennsylvania, coal refuse-fired plants have removed more than 205 million tons of coal refuse and have additionally reclaimed and remediated thousands of acres by using the resulting beneficial use ash.

In short, while coal refuse-fired plants contribute a small fraction of the NOx emissions described in the CSAPR rule, they provide an enormous contribution to environmental restoration and improvement across the Commonwealth. EPA should recognize the vast regional differences in coal refuse piles as a fuel, and the technologies necessary to allow this material to be used as fuel, as well as recognize the unique environmental benefits resulting from these plants, and ensure that any CSAPR rule is framed to ensure that they will have a genuine opportunity to continue to operate in wholesale electric markets and provide those benefits to Pennsylvania and its downstream neighbors.

Please review and reconsider the CSAPR proposal in light of the concerns we have expressed. It is imperative that any final rule be well-justified, fair, and workable. The current proposal falls far short of those objectives.

Sincerely,



John A. Maher, Chairman  
Environmental Resources and Energy Committee



Matt Gabler, Member  
Environmental Resources and Energy Committee



Martin Causer, Member  
Environmental Resources and Energy Committee



Garth Everett, Member  
Environmental Resources and Energy Committee



Becky Corbin, Member  
Environmental Resources and Energy Committee



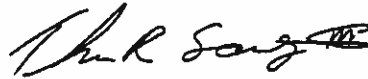
Carl Metzger, Member  
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Kathy Rapp, Member  
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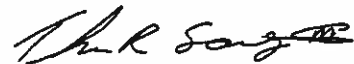
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Jim Marshall, Member  
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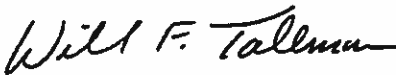
Thomas Sankey, Member  
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Ryan Mackenzie, Member  
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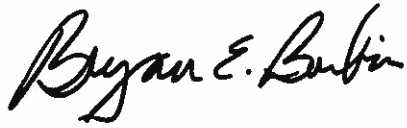
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Frank Burns, Member



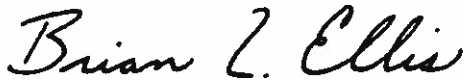
Bryan Cutler, Member



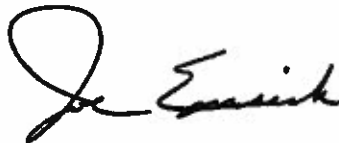
George Dunbar, Member



Chris Dush, Member



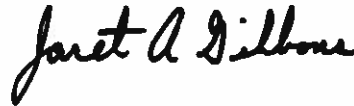
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Joe Emrick, Member



Eli Evankovich, Member




Jaret Gibbons, Member



Mauree Gingrich, Member



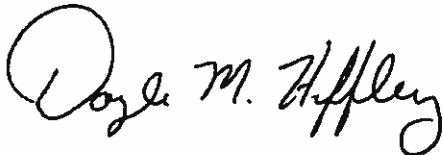
Neal P. Goodman, Member



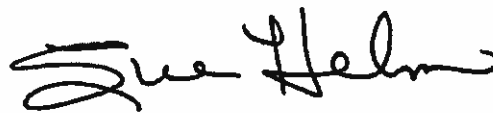
Seth M. Grove, Member



Ted Harhai, Member



Doyle Heffley, Member



Susan C. Helm, Member



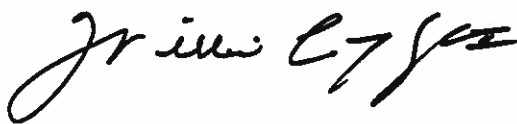
Tim Hennessey, Member



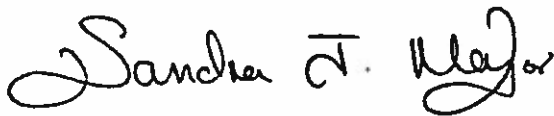
R. Lee James, Member



Kate A. Klunk, Member



William C. Kortz, Member



Sandra Major, Member



Kurt A. Masser, Member



Tedd C. Nesbit, Member



Rich Irvin, Member



Barry J. Jozwiak, Member



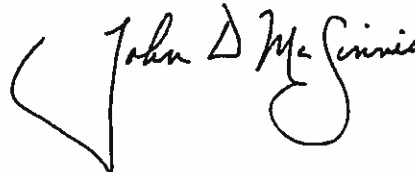
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Joseph A. Petrarca, Member



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Brad Roae, Member



Paul Schemel, Member



Pam Snyder, Member



Tarah Toohil, Member



Mike Turzai, Member



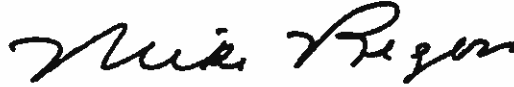
Judy Ward, Member



Jeff Wheeland, Member



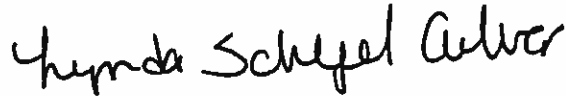
Tina Pickett, Member



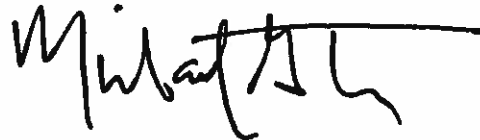
Mike Regan, Member



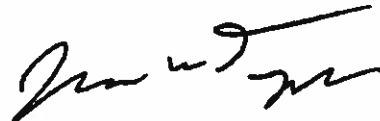
Stan Saylor, Member



Lynda Schlegel-Culver, Member



Mike Tobash, Member



Jesse Topper, Member



Mike Vereb, Member



Parke Wentling, Member



David H. Zimmerman, Member



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A handwritten signature in black ink, appearing to read "Harry Readshaw". The signature is written in a cursive style with a large, prominent initial "H".

Harry Readshaw, Member