

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

November 15, 2013

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator McCarthy:

We write regarding your agency's recently proposed "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units" signed on September 20, 2013 pursuant to Section 111 of the Clean Air Act (CAA). As proposed, the rule would establish carbon dioxide emission standards for new fossil fuel-fired power plants and require that new coal-fired power plants in the United States install carbon capture and storage (CCS) technologies that are not commercially viable. In this proposed rule, we believe that EPA is proposing to impose standards beyond the scope of its legal authority, and we respectfully request the agency withdraw the proposed rule.

Section 111 of the CAA authorizes EPA to set emissions standards for certain listed stationary sources and pollutants. Under Section 111, however, EPA may only impose emissions standards that would require the use of technologies that have been "adequately demonstrated." In the proposed rule, EPA maintains that CCS technologies for coal-fired power plants have been "adequately demonstrated" based on three government-funded CCS projects under the Department of Energy's Clean Coal Power Initiative (CCPI), including a project under construction in Mississippi, and two planned projects in Texas and California. EPA also cites a fourth small-scale, Canadian government-funded CCS project under construction in Saskatchewan, Canada. During our hearing this week on EPA's proposal, Acting Assistant Administrator Janet McCabe confirmed that the agency uses these four projects as the basis for meeting the statutory requirement that CCS technologies be adequately demonstrated for coal-fired power plants.

While EPA maintains that CCS for commercial coal-fired power plants is "adequately demonstrated" based on these government-funded projects, the Energy Policy Act of 2005 prohibits EPA from setting a performance standard under CAA Section 111 for commercial

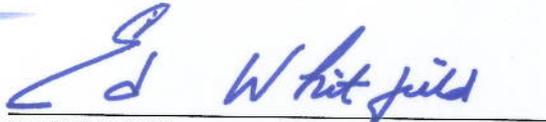
power plants based on the use of technology at CCPI projects. The Energy Policy Act of 2005 specifically prohibits EPA from considering technology used at a facility receiving assistance under the Department of Energy's CCPI, or at a facility that is receiving an advanced coal project tax credit, as being "adequately demonstrated" for purposes of Section 111 of the CAA.<sup>1</sup> Under these provisions of the Energy Policy Act of 2005, EPA's consideration of CCPI projects to determine that CCS for coal-fired power plants is "adequately demonstrated" is prohibited.

In light of these statutory prohibitions, we request that the EPA's proposed rule, which has not yet been published in the Federal Register, be withdrawn. This will ensure that the agency does not propose standards beyond its legal authority. This will also ensure that stakeholders and the public will not have to incur additional costs to respond to a proposal that contravenes applicable law.

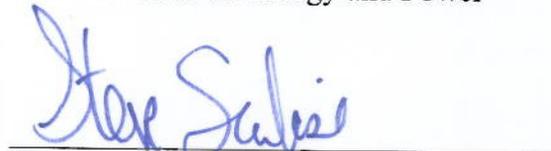
We request that you advise the Committee of the agency's planned actions with regard to this request not later than November 22, 2013. If you have any questions, please contact Tom Hassenboehler or Mary Neumayr of the Majority Committee staff at (202) 225-2927.

Sincerely,

  
Fred Upton  
Chairman

  
Ed Whitfield  
Chairman  
Subcommittee on Energy and Power

  
Joe Barton  
Chairman Emeritus

  
Steve Scalise  
Vice-Chair  
Subcommittee on Energy and Commerce

cc: The Honorable Henry A. Waxman, Ranking Member  
The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power

<sup>1</sup> See [42 U.S.C 15962\(i\)](#) ("No technology, or level of emission reduction solely by reason of the use of 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 111 of the Clean Air Act] . . ."); [26 U.S.C. 48A\(g\)](#) ("No use of technology . . . at one or more facilities with respect to which a credit is allowed under this section, shall be considered to indicate that the technology . . . is adequately demonstrated for purpose of section 111 of the Clean Air Act"); see also H. Comm. on Energy and Commerce, Report on H.R. 1640, "Energy Policy Act of 2005," [H.R. Rept. No. 109-215](#) at 239-40 (July 29, 2005) (July 29, 2005) ("the use of a certain technology by any facility assisted under this subtitle . . . will not result in that technology . . . being considered achievable, achievable in practice, or 'adequately demonstrated' for purposes of [section 111 of the Clean Air Act]").