

May 9, 2011

Ms. Regina McCarthy
Assistant Administrator
Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC, 20460

Re: Emission Standards Under Clean Air Act Section 111(d)

Dear Ms. McCarthy:

We write to you as the heads of environmental agencies for states that participate in the Regional Greenhouse Gas Initiative (RGGI) to offer our support and preliminary recommendations as EPA develops guidelines for state programs to reduce emissions from power plants under Clean Air Act section 111(d). The Clean Air Act has provided an effective framework for achieving cost-effective reductions in emissions of many different pollutants and we commend EPA for its measured approach to the regulation of greenhouse gas (GHG) pollution under the Act to date. EPA now has an opportunity to use its authority under section 111 of the Clean Air Act in an efficient and flexible manner to encourage and empower states to develop GHG emission reduction programs that will enable the transition to a lower-emitting and more efficient power sector while creating jobs across the United States.

The states involved in RGGI are demonstrating that environmental protection can go hand-in-hand with economic development and job creation. In operation since 2009, RGGI is the first *cap-and-invest* program in the United States – it *caps* GHG emissions from the power sector and reduces those emissions over time. The states participating in RGGI are *investing* the proceeds generated from auctioning emission allowances in developing the clean energy economy in the region. The RGGI participating states are using those proceeds to fund energy efficiency and renewable energy programs that put their residents to work and reduce electricity bills for homeowners and businesses across our region.¹ Many of the RGGI investments also have a multiplier effect as they leverage additional public and private investments. As EPA proceeds with its section 111 rulemaking, it should strive to create a regulatory framework that empowers all states to reap similar benefits.

Section 111 requires EPA to set emissions standards for new sources under section 111(b) and to establish guidelines for state regulation of existing sources under section 111(d). We do not comment on

¹ On February 28, 2011, RGGI Inc. issued a report documenting the investment of RGGI proceeds, which explains how the RGGI participating states have invested the proceeds in energy efficiency, renewable energy, job training and community-based clean energy programs, creating thousands of jobs in the process. *See* http://www.rggi.org/rggi_benefits.

the new source standards under section 111(b) other than to urge EPA to adhere to its traditional approach of setting numerical standards that are applicable to each new or modified power plant. This approach provides certainty that each new source of GHG emissions is clean and efficient, thereby reducing emissions from the covered sector over time as old facilities are replaced with new facilities. The remainder of this letter presents our recommendations on the section 111(d) guidelines.

Recommendations for EPA Guidelines under Section 111(d)

EPA's section 111(d) guidelines should set clear emission goals and empower RGGI states, and states with their own or regional market-based regulatory programs, to take advantage of and build on such programs, so long as those programs achieve or exceed the emission targets of the federal guidelines. Providing states with the flexibility to utilize existing state and regional programs to comply with the section 111(d) guidelines reduces the possibility of redundant and overlapping federal and state programs directed at the same sources and same emissions. This approach will reduce the regulatory burden on industry and enable efficient commitment of limited state resources, while achieving at least an equivalent level of environmental benefit. It is also consistent with the language of section 111(d) that provides for state implementation plans similar to those developed under section 110.

1. The Section 111(d) guidelines should achieve emission reductions

In developing the guidelines that form the floor for state action, EPA should strive to reap the emission- and cost-reducing benefits of market forces. For example, EPA could evaluate incorporating averaging into the standards it sets, allowing source owners to average emissions across a fleet of sources. Flexibility mechanisms will enable EPA to set the guidelines at a more protective level than can be achieved with more rigid one-size-fits-all emission standards.

EPA should also explore ways to reduce emissions from the power sector over time as technology evolves, older inefficient plants are retired or repowered, and more carbon-free renewables are sited. EPA could accomplish this in part by providing states with guidance on how to consider the "remaining useful life" of existing plants, as provided by Section 111(d).

2. Demonstrating equivalency of state programs

EPA should provide clear direction to the states on demonstrating the equivalency of state programs. EPA's guidelines should identify the tools that states can use to demonstrate that state emission reduction programs will achieve equal or greater reductions in pollution than the base standards set by EPA. Those tools may include modeling to show, for example, that mass-based state limitations (tonnage based caps) will achieve emission reductions equal to or greater than the application of federal emission rate-based standards.

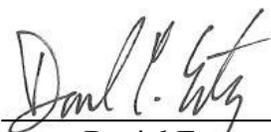
EPA should make clear in the guidelines that states have substantial flexibility in establishing state programs under section 111(d). Although EPA should not try to define the range of types of standards that states can implement, it should provide some general direction regarding the types of state programs that may qualify. For example, EPA should provide guidance on whether and when states may

include emission reductions from sources that are not covered by the section 111(d) guidelines because they are different sectors, smaller size or are in a different jurisdiction.

Conclusion

We encourage EPA to complete this rulemaking on the schedule set forth in the settlement announced in December 2010. We look forward to continue working with EPA to develop a regulatory program that empowers states to achieve substantial emissions reductions of greenhouse gases, in addition to other pollutants, in a cost-effective manner through the application of innovative emissions reduction programs.

Very truly yours,



Daniel Esty
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Connecticut Department of
Energy and Environmental
Protection



Collin O'Mara
Secretary
Delaware Department of
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Robert M. Summers
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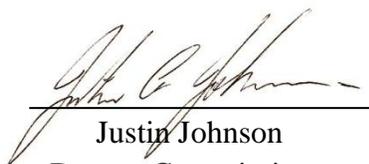
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cc: Air and Radiation Docket and Information Center, a-and-r-Docket@epa.gov
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