August 13, 2018

Ms. Elizabeth Kopits
National Center for Environmental Economics
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 1809T
Washington, DC 20460

Submitted electronically at http://www.regulations.gov

Attn: Docket ID No. EPA-HQ-OA-2018-0107

Re: Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process

The American Coal Council (ACC) submits these comments in response to the Environmental Protection Agency's (EPA) Federal Register Notice of June 13, 2018 of its advance notice of proposed rulemaking (ANPRM) regarding Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process. The ACC has been in existence for 36 years and represents the collective business interests of the American coal industry. Our members include mining companies and suppliers, transportation companies and terminals, electric utilities and industrial coal consumers, and many industry support services providers. Since our member companies touch every aspect of turning one of America's most abundant resources into reliable and affordable electricity for the United States economy, our Association has first-hand knowledge of the direct and indirect impacts of coal-related regulations and a unique, "boots on the ground" perspective. Coal is also integral to the steel-making process and the industrial production of cement, chemicals, and paper. ACC's diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of regulations impacting coal supply and use. While ACC provides these comments from that broad perspective, individual member companies of ACC may submit separate comments on their own behalf that offer additional or other views.

The coal supply chain has been devastated by lower demand and job loss in recent years due to the mounting impact of regulations pointed squarely at our industry. These regulations have significantly increased the cost of coal for electricity generation and industrial use, made it less competitive against other fuels, and resulted in the closure of a large number of coal plants. EPA's regulatory analyses have often distorted or even ignored costs as well as distorted and double-counted benefits. Though it is too late to save the coal power plants already prematurely closed in recent years due to the excessive costs and burdens of regulations imposed and threatened by EPA, ACC appreciates EPA's outreach now to obtain input on its regulatory treatment of costs and benefits. It is critical to retain the remaining existing coal fleet to support a reliable, resilient electricity supply for our nation. It is also critical that EPA's regulatory approach be transparent, pragmatic, and reasonable.

EPA's June 7, 2018 press release about this ANPRM mentioned the analysis of co-benefits as one issue that had caused concerns by stakeholders. EPA has often included the estimated monetized value of non-targeted ancillary emissions – or co-benefits – in addition to the directly-targeted emission when performing its cost-benefit regulatory analysis.

EPA's ANPRM press release stated "Particulate matter was the co-benefit most cited by the Obama EPA. In fact, particulate matter co-benefits accounted for more than 80% of the purported benefits of all of Obama's air rules. The Clean Power Plan (CPP), a rule aimed at carbon dioxide reductions, derived most of its benefits from a reduction in particulate matter."

With this, EPA appropriately identified a key issue that has affected the outcome of a multitude of regulations – disproportionately skewing the benefits to justify them. The implications of the use of co-benefits and other problematic areas of EPA's regulatory cost-benefit analysis are described below.

EPA's Reliance on Co-Benefits

Federal agencies are required to quantitatively assess benefits and costs for significant regulatory actions. This dates to President Clinton's 1993 Executive Order 12866, *Regulatory Planning and Review*.[1] President Obama's Executive Order 13563, *Improving Regulation and Regulatory Review,* further directed that regulatory approaches maximize net benefits including potential economic, environmental, and public health and safety aspects.[2] Despite these and other requirements, there has been little accountability for

[1] President William Clinton, September 30, 1993, Executive Order 12866 "Regulatory Planning and Review". At https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf

[2] President Barack Obama, January 18, 2011, Executive Order 13563, "Improving Regulation and Regulatory Review". At https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review

agency compliance with them. Ironically, this is completely the opposite of what industry contends with on a daily basis to maintain compliance with the accumulated burden of complex and overlapping regulations.

Over the course of the two terms of the Obama administration and its barrage of rules, EPA's regulatory reach expanded and with it EPA increasingly understated the costs of compliance and overstated the benefits of regulations, including through the use of co-benefits. This was a calculated approach to engender support of its policy agenda from the public, media, and congressional members.

A prominent example of the issue of co-benefits occurred with EPA's Mercury and Air Toxics (MATS) rule promulgated in 2011 to require coal power plants to reduce mercury and other emissions. Compliance would require installing control systems or shutting down. States, industry, and business groups initiated legal challenges to the regulation, and in 2015 the Supreme Court ruled against EPA. By that time, however, many power plants had already either shut down or spent large amounts to comply with the rule, which had remained in effect while the case was winding its way through the courts.

EPA projected MATS costs at $9.6 billion per year, which at the time would have made it the most expensive rule ever. EPA projected that these high costs would be far outweighed by the even higher benefits, which it calculated to be up to $90 billion per year including the co-benefits of particulate matter reduction. However, without the co-benefits, only $4 to $6 million of direct benefits per year was associated with reducing mercury and air toxics. On the basis of inclusion of only these direct benefits, that translates to $1,600 in costs for each $1 in benefits.

EPA's use of the co-benefits of reductions in particulate matter, in addition to mercury and other emissions which were the target of the MATS rule, was neither necessary nor appropriate from a regulatory standpoint. EPA already regulates particulate matter under other provisions of the Clean Air Act (CAA).

This is where the "double-counting" criticism comes in. How many times should a particle of particulate matter be counted by EPA? And with regard to EPA's estimated health benefits, if a premature death is counted as avoided due to the benefits of one environmental regulation, should that same premature death be counted again as avoided under another? The benefits of EPA's analyses for a variety of rules have been criticized as projecting similar reductions in terms of fewer deaths, heart attacks, asthma attacks, and missed work days because they are largely tied back to the calculation of the co-benefits of one thing regulated elsewhere – particulate matter.

There has been considerable analysis and thought given to EPA's use of co-benefits over the years, including a 2011 evaluation by Anne Smith, Ph.D., of NERA Consulting on EPA's use of particulate matter in its regulatory assessments going back to 1997. The

evaluation was based on a review of 57 CAA Regulatory Impact Analyses (RIA) made since EPA issued the first $PM_{2.5}$ national ambient air quality standard (NAAQS), and it found EPA used $PM_{2.5}$ co-benefits to justify nearly all of its non-particulate matter CAA rules.[3] Among Dr. Smith's conclusions were the following:

- Consideration of co-benefits for a separately-regulated pollutant is not supported by benefit-cost analysis (BCA) theory, and EPA's excessive reliance on them undercuts the broader practical value of RIAs, which is to provide structured and transparent information to help avoid and reduce redundant and ineffective regulations.[4]
- Co-benefits from a pollutant that EPA already regulates under separate rulemakings should not be allowed to serve as a component of the total benefits reported in the Executive Summary of RIAs for rules that target different public health or welfare concerns. The current practice of doing so subverts the practical values of preparing RIAs, leads to unnecessary regulatory complexity, and incentivizes use of less credible methods of risk estimation. Co-benefits should not be reported as part of the total benefits estimates in an RIA, nor should they be included in public announcements of the benefits of a new regulation.[5]

EPA went on to issue many new regulations and continued its practice of the use of co-benefits, including with the Clean Power Plan proposed in 2014 and finalized in 2015. This rule targeted reduction of greenhouse gases/CO_2 from existing power plants and also included the benefits of reductions in non-CO_2 emissions already regulated by EPA, to help justify the rule's enormous cost and lack of meaningful climate benefits.

EPA's Aggressive Assumptions about Technology Feasibility and Availability, and Compliance Deadlines

EPA's regulatory analyses and benefit estimates have been the subject of concern and criticism because they often make assumptions about the ability of industry to comply with requirements that are not technologically feasible, widely available commercially, or cost effective. They also often make unrealistic assumptions about the timing of deadlines for compliance.

A prominent example is the New Source Performance Standard (NSPS) for greenhouse gases/CO_2 emissions reductions from new power plants proposed by EPA in 2014 and finalized in 2015. EPA imposed a standard that required carbon capture and storage

---

[3] Anne E. Smith, Ph.D., NERA Economic Consulting, "An Evaluation of the $PM_{2.5}$ Health Benefits Estimates in Regulatory Impact Analyses for Recent Air Regulations", December 2011, p. 1. At http://www.nera.com/content/dam/nera/publications/archive2/PUB_RIA_Critique_Final_Report_1211.pdf

[4] *Id at p. 32.*

[5] *Id at p. 33.*

(CCS) technology to be employed on all new coal plants, while the standard set for new natural gas plants could be met with existing technology and did not include a CCS requirement. CCS technology was not yet developed enough to be deemed technologically or commercially feasible in utility scale application. This rule's unfortunate impacts included stopping plans for new coal power plants, inhibiting U.S. coal technology advancement, and blocking U.S. industry from developing and exporting technology solutions as done successfully in the past.

The following quote from Thomas Kuhn of the Edison Electric Institute was made in response to a Senate inquiry of April 2015 seeking input on concerns with the regulatory process. It is illustrative in multiple ways, two of which are relevant to ACC's comments in this section. It shows how the playing field in the Clean Power Plan was tilted away from coal and towards natural gas and other generation sources. It also shows the tight deadline for compliance EPA set forth in this massive and unprecedented regulation.

> "EPA's proposed guidelines for reducing GHG emissions from existing power plants under section 111(d) of the Clean Air Act (CAA) is potentially the most wide-ranging and impactful regulation affecting the electric power industry ever issued by the federal government….One major concern with the proposed guidelines is that reductions assumed by 2020 do not recognize the time required to design, site, permit and build the necessary infrastructure, including natural gas plants and pipelines, and transmission and distribution lines."[6]

EPA's Inadequate Assessment of Costs and Cumulative Impacts

The coal industry has a long history of regulation, and our sector as well as many others have often disagreed with EPA's projections of costs to comply with regulations. As EPA's regulatory reach increased in terms of both the number and scope of regulations in recent years, this has become even more concerning. The implications cut across industries and reach directly to American consumers who ultimately pay the costs.

In November 2012, a review of costs and benefits of EPA regulations on the economy was performed by ndp consulting.

---

[6] Senator Ron Johnson, Chairman, Committee on Homeland Security and Governmental Affairs, United States Senate, "Direct from the Source: Understanding Regulation from the Inside Out", December 17, 2015, p. 24. At http://www.cirt.org/resources/Documents/Direct%20From%20the%20Source%20Understanding%20Regulation%20From%20the%20Inside%20Out%20(Final%20Draft%20-%20Distribution).pdf

The table below from the review shows the differences in the cost projections by EPA and industry for six regulations.[7]

Rule	Current Status and Affected Industries	EPA: Estimated Annualized Costs and Capital Expenditures	Industry: Estimated Annualized Costs and Capital Expenditures
Utility MACT	Final rule. Expected to be complied by 2015/2016. The rule affects coal- and oil-fired electric power plants across all states. Compliance costs affect electricity consumers in all manufacturing sectors and commercial and residential segments in all states. The EPA is currently reconsidering the limits for new units only.	$9.6 billion annualized costs per year by 2016; $35 billion upfront capital spending.	$11.9 billion annualized costs per year by 2015; $84 billion–$130 billion capital spending for Utility MACT and CAIR combined.
CSAPR/Clean Air Interstate Rule (CAIR)	Final rule. The U.S. Court of Appeals overturned the CSAPR on August 21, 2012. The EPA is currently appealing the decision. Compliance costs affect electricity consumers in all manufacturing sectors and commercial and residential segments in 28 eastern states.	$3.6 billion annualized costs per year in 2015 for CAIR; no estimate on capital spending.	$14 billion–$18 billion annualized costs per year by 2020 for combined CSAPR and various rules; no estimate on capital spending.
Boiler MACT	Final rule pending proposed reconsideration. Delay of effective date. The U.S. District Court for the D.C. Circuit vacated the EPA's notice. Compliance costs affect mainly manufacturing sectors.	$1.9 billion annualized costs for major sources per year in 2013; $5.1 billion capital spending.	$2.7 billion annualized costs per year in 2013; $14.3 billion upfront capital spending.
CCR	Proposed rule. Expected to be final in July 2013, compliance by 2015. The EPA is proposing national rules to manage coal ash from coal-fired power plants. Compliance costs affect electricity consumers in all manufacturing sectors and commercial and residential segments in all states.	$1.5 billion annualized costs per year; $23 billion upfront capital spending.	$7.6 billion annualized costs per year; $33.4 billion upfront capital spending.
Cooling Water Intake Structures	Expected final rule in 2013. Compliance costs affect electricity consumers in all manufacturing sectors and commercial and residential segments in all states.	$0.3 billion–$4.6 billion annualized costs per year; no estimate on capital spending.	$8 billion annualized costs per year; $149 billion upfront capital spending.
Ozone NAAQS	Proposed rule. Effective date is unknown. The EPA rule affects emissions from cars, power plants, industrial facilities, electric utilities and other sources. Compliance costs affect users in all sectors in all states.	$19 billion–$90 billion annualized costs per year by 2020.	$1 trillion annualized costs per year.

It was noted by ndp consulting that for the Utility MACT (aka MATS), Boiler MACT, and CCR (aka Coal Combustion Residuals), EPA estimated $63.1 billion in upfront capital

[7] ndp consulting, "A Critical Review of the Benefits and Costs of EPA Regulations on the U.S. Economy", November 2012, p. 12-13. At http://www.nam.org/Issues/Energy-and-Environment/EPA-Overregulation/A-Critical-Review-of-the-Benefits-and-Costs-of-EPA-Regulations-on-the-U_S_-Economy/

expenditures while industry estimates were 125% higher, at $142 billion.[8] As can be seen above, the differences in costs for the Ozone NAAAQs were huge.

The differences between EPA and industry cost estimates are discussed at length by ndp consulting in its review and the following summarizes the major issues: (1) EPA's assumptions about the capacity of the industry to comply are more aggressive; (2) EPA underestimates the actual impact of the cost burden on the industry by assuming long-term amortization of capital requirements which downplays the upfront capital costs; (3) EPA excludes compliance costs for other rules when those rules are in doubt or under legal risk, although cumulative costs would better represent the true costs of multiple regulations; and (4) EPA's estimates do not include the cost impacts of its regulations on the broader economy.[9]

Any one of these four factors would be a big consideration and concern. Taken together, they compel further EPA review of best practices for cost-benefit analyses.

Summary and Conclusion

The American Coal Council has previously submitted comments to EPA in response to rulemakings including for power sector greenhouse gas/CO_2 reductions per the Clean Power Plan and NSPS previously referred to herein. More recently, we have submitted comments as EPA reviews and undertakes additional action on the Clean Power Plan, Coal Combustion Residuals, and Effluent Limitations Guidelines.

ACC also previously filed comments on March 17, 2015 on the NAAQS for Ozone regulation, following proposal by EPA in late 2014. Those 2015 comments continue to be relevant. They discussed many of the same areas of concern addressed in our comments to EPA today as well as others pertinent to the regulatory analysis of costs and benefits.

ACC appreciates the opportunity to comment on EPA's current ANPRM on Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process. This is a critical first step by EPA to reassessing its Regulatory Impact Analyses. ACC supports and looks forward to policy and regulatory remedies that will result in reasonable, appropriate, and transparent methodologies to value costs and benefits. Our country, our economy, and our citizens and businesses will benefit from this long overdue component of regulatory reform.

---

[8] ndp consulting, "A Critical Review of the Benefits and Costs of EPA Regulations on the U.S. Economy", November 2012, p.13. At http://www.nam.org/Issues/Energy-and-Environment/EPA-Overregulation/A-Critical-Review-of-the-Benefits-and-Costs-of-EPA-Regulations-on-the-U_S_-Economy/

[9] *Id at p. 13, 15.*