



April 17, 2019

U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

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Attn: Docket ID No. EPA-HQ-OAR-2018-0794

Re: National Emissions Standards for Hazardous Air Pollutants; Coal- and Oil-Fired Electric Utility Steam Generating Units–Reconsideration of Supplemental Finding and Risk and Technology Review

The American Coal Council (ACC) submits these comments in response to the Environmental Protection Agency’s (EPA) Federal Register Notices of February 7, 2019 and February 28, 2019 regarding its proposed rule, National Emissions Standards for Hazardous Air Pollutants; Coal- and Oil-Fired Electric Utility Steam Generating Units–Reconsideration of Supplemental Finding and Risk and Technology Review. The ACC is a nonprofit trade association in its 37th year representing the collective business interests of the American coal industry. Our members include coal suppliers, transportation companies, terminals, utilities and independent power providers, industrial consumers, and support services suppliers. Since our member companies touch every aspect of turning one of America’s most abundant energy 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. Our 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.

EPA is proposing to reverse its 2016 supplemental cost finding for the Mercury and Air Toxics Standards (MATS) for coal and oil fired electric generating units (EGU). MATS is the common term for the National Emissions Standards for Hazardous Air Pollutants

(NESHAP) for coal and oil fired EGUs. EPA's April 2016 supplemental cost finding was made in response to the United States Supreme Court's June 2015 ruling against EPA. That ruling found EPA had not adequately considered cost in relation to benefits in its promulgation of MATS. EPA's 2016 response in the supplemental finding concluded that its consideration of cost did not change EPA's determination that it was appropriate and necessary to regulate HAP.

EPA now proposes to reverse this supplemental finding and determine that it was not appropriate and necessary to regulate HAP from coal and oil EGUs because the cost of the regulation was not justified by the HAP-related benefits, and ACC agrees.

EPA also now proposes not to delist EGUs from Clean Air Act Section 112 (c) and not to rescind MATS. ACC does not challenge these EPA positions at this point in time, since the impact of MATS has already reverberated through the power sector and the coal industry.

MATS-RELATED IMPACTS TO COAL

The effects of MATS and other EPA regulations have resulted in a permanent loss of market demand for coal. Power sector coal consumption has decreased by about 40%, from a high of more than one billion tons in 2007 to less than 640 million tons in 2018, according to the U.S. Energy Information Administration (EIA).¹ Nearly 40% of the power sector coal fleet operating in 2010 has retired or announced retirement. This is 654 generating units in 43 states totaling almost 121,000 megawatts (MW) as tracked by the American Coalition for Clean Coal Electricity, and about two-thirds of the closures are due to past EPA policies and regulations.²

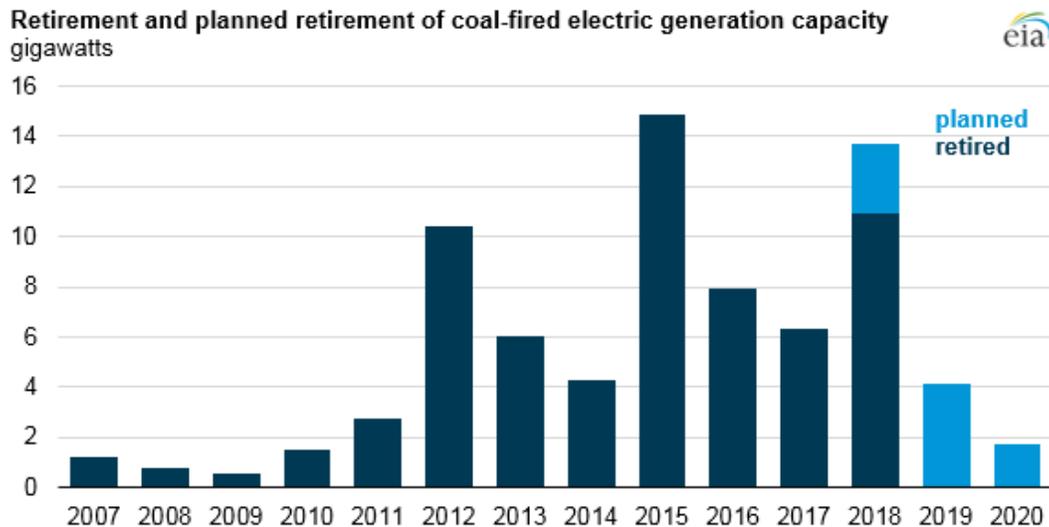
Since the MATS regulation was not stayed during the more than three-years it was under legal challenge, the power sector was put in the position of having to make plans to comply with the April 2015 implementation deadline. The utilities' decisions to install controls or close the affected coal units were largely already made before the Supreme Court's 2015 ruling.

The EIA chart below shows historical and expected coal capacity retirements.³ The highest level of retirements was in 2015 due to the MATS regulation.

¹ U.S. Energy Information Administration, Short-Term Energy Outlook April 2019, Table 6.

² American Coalition for Clean Coal Electricity, "Retirement of Coal-fired Electric Generating Units", February 7, 2019, p. 1.

³ U.S. Energy Information Administration, Today in Energy, December 28, 2018.



Other factors have also impacted coal generation. This includes government subsidies for renewables, and particularly the Production Tax Credit (PTC) for wind resources that must be operating to earn the credit. These resources are often forced into the electricity marketplace by offering power at negative prices so the PTC can be collected. Abundant natural gas may similarly skew the fuels marketplace. EIA reported recently that natural gas prices at the Waha hub in West Texas fell to a record low of -\$4.63 per Million BTU on April 3, 2019.⁴ EIA further noted, “Negative prices indicate that some producers are willing to pay someone to take their natural gas to avoid the costs or penalties of storing, shutting in, or flaring their gas production or to lose revenue by reducing their liquids production.”⁵ ACC points to these factors to provide some context for the burden of coal-related regulations that are impacting both the cost of producing coal and the cost of using it.

The MATS-related closures, other EPA regulations that increased costs and reduced coal EGU competitiveness, and the marketplace context described above have all contributed to the sharp decline in coal production and consumption and the loss of jobs at coal mines and coal power plants. The erosion of the tax base and loss of jobs has major ripple effects for the people and local communities impacted. Many such communities have few other high-paying jobs and lack economic development prospects. Additionally, the rest of the supply chain has experienced significant impacts – transportation companies including rail, barge, and truck, terminals storing and loading coal, and a whole host of companies providing services to the power and coal industries.

⁴ U.S. Energy Information Administration, Short-Term Energy Outlook April 2019, p. 10.

⁵ *Ibid.*

COST OF COMPLIANCE AND USE OF CO-BENEFITS

EPA had 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 translated to \$1,600 in costs for each \$1 in benefits.

EPA's reliance on particulate matter co-benefits, already regulated elsewhere under the Clean Air Act, dramatically skewed EPA's MATS analysis. Unfortunately, the impacts of the rule for the coal industry and coal-fired EGUs were even more dramatic, with far higher coal plant retirements occurring than EPA's projection of 5,000 megawatts.

In 2018, EPA initiated an advance notice of proposed rulemaking (ANPRM) regarding "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process". 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."

EPA has now indicated in this proposal that the analysis of the MATS compliance cost should be compared with the benefits specifically associated with reducing emissions of HAP. EPA proposes to reverse its previous finding that it was appropriate and necessary to regulate HAP emissions from coal- and oil-fired EGUs. ACC finds such a reversal to be important from the standpoint of the Supreme Court's 2015 ruling and compliance with Clean Air Act Section 112, but the harm to industry cannot be reversed.

RESIDUAL RISK REVIEW

The coal supply chain has lost tens of thousands of jobs due to regulatory and policy initiatives. This has major economic and societal impacts. EPA has not addressed or accounted for this in its regulations, even as EPA analyzed other monetized and non-monetized aspects including public health risks.

EPA's residual risk review in this proposal indicates the residual risks of MATS are low and the current standards provide an ample margin of safety to protect public health. In fact, the risks to public health are extremely low, according to the metrics and analysis EPA undertook. Per EPA, the total risk from the entire source category of coal- and oil-fired EGUs is 0.04 excess cancer cases per year, or one excess case in every 25 years. Also, nickel emissions from oil-fired EGUs are the major contributor to even this small risk. This analysis and EPA's other metrics including those for non-cancer risks

demonstrate that the current standards provide an ample margin of safety and public health protection and ACC agrees with EPA that there is no need to make the current standards more stringent.

With so much misinformation about the public health impacts of mercury and other emissions from coal plants, it would be helpful for EPA to undertake a communications program to put these low MATS risks in context. It would also be useful if EPA split out coal from oil in a follow-on to the residual risk analysis, since coal is not the major contributor in the source category yet it was far more of the focus associated with MATS.

CONCLUSION

ACC is appreciative of EPA's reconsideration and review of MATS and the more reasoned regulatory approach in this proposal. While it is too late for coal units already prematurely closed in recent years due to the excessive costs and burdens of MATS and other regulations imposed and threatened by EPA, it is critical now to retain the remaining existing coal fleet to support a reliable, resilient electricity supply for our nation.