



- By proposing binding state emission rate targets, EPA is usurping the States' authority, violating the cooperative federalism principles on which the CAA is based, and raising serious questions regarding state sovereignty under the 10th Amendment.
- A standard of performance under Section 111(d) must be based on compliance measures that can be implemented at the affected EGUs that are subject to regulation. EPA is inappropriately reshaping energy generation and consumption through this process.



- In contrast, EGUs are not manufacturers competing in global markets. In most cases, they operate in regulatory environments that insulate them from competitive pressures, as they are able to pass-through their compliance costs to rate-payers, such as industry facilities.
- Any final rule should explicitly identify CHP as a voluntary compliance option for states.
- EPA proposes to credit all of the electricity produced from a CHP system, but only 75 percent of the useful thermal output. To fully account for the benefits of energy efficiency, the 111(d) Rule should credit 100 percent of a facility's useful thermal output.
- By producing electricity on site, CHP reduces the burden on transmission and distribution lines used to transport power from a central generator. EPA appears to recognize this benefit and includes a 5 percent line-loss credit for affected CHP systems. EPA should increase the discount factor from 5 percent to at least 6 percent to reflect actual average avoided line losses from these systems.

### **EPA is Exceeding its Legal Authority under Section 111(d) of the Clean Air Act**

- The Clean Air Act does not authorize EPA to extend Section 111(d) requirements beyond the affected source category ("outside the fenceline").
  - Section 111(d) requires technology-based standards of performance that could be implemented by the existing facilities in the affected source category – in this instance, fossil fuel-fired EGUs.
  - EPA reaches far beyond the affected source category and requires emissions reductions that can only be met by looking beyond the sources that are the actual subject of the regulation (fossil fuel-fired EGUs) to the rest of the energy sector as well as consumer demand for electricity.
  - Through this approach, EPA is not only exceeding its regulatory authority it is essentially establishing energy policy for EGUs and consumers under the Clean Air Act which was never designed for such purposes.
- The Clean Air Act gives states, not EPA, the authority to impose standards of performance on existing EGUs.
  - EPA's regulatory authority under Section 111(d) is limited to "establishing procedures" by which States establish standards of performance for existing sources.



forest products manufacturing residuals, waste-derived biomass, and how EPA will determine whether trees that may be used for energy are “sustainably-derived.”

- With the lack of clarity of the Framework and policy guidance, EPA should ensure that the states have certainty regarding the use of biomass as a source of renewable energy to meet their targets.
- In the final rule, EPA should recognize the use of biomass-derived fuel as a carbon neutral emission reduction measure and ensure that the states have flexibility in utilizing biomass as a source of renewable energy to meet their targets.
- All emission reduction measures considered carbon neutral in the target-setting analysis, such as biomass energy, should be included as carbon neutral compliance options for states to include in their implementation plans.
  - By relying on state renewable portfolio standard programs to calculate each region’s potential for renewable energy in its target-setting analysis and excluding the biogenic CO<sub>2</sub> emissions from the total renewable energy CO<sub>2</sub> emissions, EPA has implicitly incorporated biomass energy as carbon neutral.
- EPA has developed a comprehensive scientific, technical and legal record through its work on the Framework that strongly supports a clear and simple position recognizing the climate benefits of biomass-derived fuels in the Clean Power Plan.
  - Based on the weight of the scientific evidence and data, EPA should clearly conclude that the use of all forest products manufacturing residuals for energy is carbon neutral.

### **Combined Heat and Power (CHP) Issues**

- Industry CHP facilities should not be regulated under the CPP, but should be recognized as potential contributors to reduction goals on a voluntary basis.
  - Our industrial CHP use provides substantial energy efficiency and avoided GHG emission benefits and is fundamentally different from CHP use in the electric generating sector.
  - Our facilities manufacture a wide variety of value-added forest products, as well as renewable biomass energy, most of which derives from byproducts of the manufacturing process,
  - The industry operates in a highly competitive global market in which manufacturers cannot automatically pass on higher raw material and energy costs to consumers and still remain competitive.



- Although EPA claims it has provided states with ample flexibility to make their own choices on how to comply, the building block approach does not fully consider infrastructure constraints and supply limitations of individual states. For many states, difficulty implementing individual building blocks limits their flexibility for compliance.
- The CPP will force the closure of more baseload coal-fired power generation, raising significant reliability issues; several of the nation's grid operators have already raised such concerns.
- Potential Liability for Industry Facilities
  - Industrial facilities voluntarily taking steps to improve their energy efficiency to help states meet their goals could be subject to legally enforceable requirements.
  - EPA should revise its proposed definition of other “affected entities” to ensure that requirements are only enforceable with respect to affected EGUs.
  - EPA should assure those facilities will not be subject to more demanding requirements in a future NSPS for another sector.

### **Continued Uncertainty Around Biomass/Carbon Neutrality Issues**

On November 19, 2014, after an extensive four-year review, EPA issued its revised draft *Framework for Assessing Biogenic CO<sub>2</sub> Emissions from Stationary Sources* (Framework), 14 technical appendices, and a related policy memorandum to EPA's regional offices. In the policy memorandum, EPA makes a preliminary finding that the use of certain forest-derived industrial byproducts and waste-derived feedstocks for energy is carbon neutral. Bioenergy from these feedstocks and other “sustainably-derived” forest-derived feedstocks may be considered an approvable element in state implementation plans for EPA's Section 111(d) rule for existing utilities. The revised Accounting Framework is still in draft form and unfortunately is more of a menu of options for how the Agency could assess net biogenic CO<sub>2</sub> emissions in different policy contexts. It does not provide answers, only possible approaches and a very generalized equation for arriving at an answer.

- Although the Framework and the accompanying memorandum provide a step in the right direction regarding the carbon neutrality of some types of biomass, the forest products industry needs greater certainty regarding the carbon neutrality of our



## Issues

### **Adverse Impacts for Paper and Wood Products Manufacturers**

- Increased Energy Costs
  - While nationally, EPA estimated that its proposal would cost up to \$8.8 billion per year, a recent, more reasonable analysis projected annual costs of \$73 billion under a likely scenario.<sup>1</sup> That analysis also projected total cost of the proposal to be \$366 billion to \$479 billion over a 15-year period.
  - The forest and paper industry spent \$5 billion on electricity and natural gas in 2011, and already faces the prospect of steep cost increases passed on from electric utilities that must comply with other Clean Air Act and Clean Water Act programs.
  - The proposed Clean Power Plan (CPP) focuses on electricity, but the increased use of natural gas by power industry to comply also will put upward pressure on natural gas costs, an important energy source for the industry.
- Harming Industry Competitiveness
  - The industry produces consumer products for sale in global markets, and already faces fierce international competition.
  - These increased costs and uncertainty caused around the treatment of biogenic emissions (see below) will adversely affect U.S. manufacturers of paper and wood products' global competitiveness, and the jobs and other economic and social benefits they provide for their communities.
  - European nations and others fully recognize bioenergy as carbon neutral in their GHG reduction schemes, highlighting the adverse competitiveness impacts of the uncertainty around biogenic emissions.
- Reduced Diversity of Energy Resources Raise Reliability Concerns.
  - A reliable energy supply is critical for manufacturers.
  - In setting the emission rate targets for each state, EPA is making its own judgments about what energy mix is possible for that state or neighboring states; numerous states have already questioned the feasibility of reaching the targets.

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<sup>1</sup> Potential Energy Impacts of the EPA Proposed Clean Power Plan, NERA Economic Consulting, October, 2014, <http://www.americaspower.org/new-study-confirms-major-economic-costs-epa-s-proposed-carbon-regulations>.



**American  
Forest & Paper  
Association**



AMERICAN WOOD COUNCIL

## **Discussion Issues on EPA's Proposed Clean Power Plan**

*Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units.  
79 Fed. Reg. 34,830 (Jun. 18, 2014).*

### **Background/Overview**

On June 2nd, EPA proposed ambitious greenhouse gas (GHG) emission guidelines for existing electric utility generating utilities (EGUs) referred to as the "Clean Power Plan," that states will have to implement and enforce pursuant to Section 111(d) of the Clean Air Act. The proposal includes interim and final rate-based emission reduction goals for each state. Interim standards would apply from 2020 to 2029, with final standards taking effect in 2030 and beyond.

For the proposed rule, EPA has departed from traditional regulatory approaches by developing state-specific emission goals based on "inside the fence line factors" that focus on increasing efficiency at sources directly regulated by the proposal and "outside the fence line factors" such as increased dispatch of natural gas, increased use of low or no emitting energy sources, and decreased energy usage from consumers that involve sources indirectly regulated by the proposal. EPA ostensibly offers the states flexibility in achieving those goals through "portfolio" approaches that would require affected utilities and possible other entities to help the states achieve those goals.

The proposal would raise the cost of energy, further reshape our nation's energy supply, forcing fuel choices on utilities and creating reliability concerns, and potentially impose obligations on renewable energy providers and end-users that state may rely on to meet their emission limits. It is premised on likely unattainable efficiency improvements at EGUs, forced dispatch reallocation to require use of natural gas over coal, dramatically increased investment in renewable generation, and aggressive energy efficiency improvements.

EPA plans to finalize the Clean Power Plan this summer, after which the states will be required to submit an implementation plan to EPA by mid-2016 at the earliest. EPA also plans to propose a model federal implementation plan this summer for states that do not submit or fail to obtain approval of a state plan.

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your administration's response to this unprecedented new regulation will reflect the concerns we have expressed.

Thank you for your consideration and we look forward to working with you in the future. If you have any questions, please contact TJ Struhs at 202-463-2433 or [TJ\\_Struhs@afandpa.org](mailto:TJ_Struhs@afandpa.org).

Sincerely,



Donna Harman  
President and CEO  
American Forest & Paper Association



Robert Glowinski  
President and CEO  
American Wood Council

Enclosure: Clean Power Plan Discussion Issues

Cc: Acting Director Marshall Taylor, South Carolina Department of Health and Environmental Control



**American  
Forest & Paper  
Association**



**AMERICAN WOOD COUNCIL**

February 20, 2015

Governor Nikki Haley  
Office of the Governor  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Governor Haley:

We are writing on behalf of the American Forest & Paper Association (AF&PA) and the American Wood Council (AWC) to express our serious concerns about the proposal and implementation of the U.S. Environmental Protection Agency's Clean Air Act Section 111(d) rule for existing electric utilities in South Carolina. We would like to draw your attention to several problems with these new regulations that stand to harm our industry and other energy consumers.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative - *Better Practices, Better Planet 2020*. The forest products industry accounts for nearly 4 percent of the total U.S. manufacturing GDP, manufactures approximately \$210 billion in products annually, and employs nearly 900,000 men and women.

AWC is the voice of North American wood products manufacturing, representing over 75 percent of an industry that provides more than 360,000 men and women with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC also advocates for balanced government policies that affect wood products.

In South Carolina our industry employs 25,727 individuals and meets a payroll of \$1.7 billion.

The new rule has the potential to increase energy costs, harm competitiveness, and reduce grid reliability. It also fails to provide certainty about the role of carbon neutral energy generated from biomass. Attached is an outline of AF&PA and AWC's specific concerns with the section 111(d) proposal and its implementation. We hope that