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## ENERGY AND ENVIRONMENT CABINET

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October 16, 2014

The Honorable Gina McCarthy, Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
Mail Code 28221T  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**RE: Docket ID No. EPA-HQ-OAR-2013-0603**

Dear Administrator McCarthy:

On behalf of Governor Steve Beshear, the Energy and Environment Cabinet of Kentucky submits the following comments in response to EPA's proposed rulemaking, *Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units (EGUs)*<sup>1</sup>.

For this rulemaking, EPA established emission limits recognizing that unit-specific characteristics require unit-specific emission limitations<sup>2</sup>. Therefore, EPA's proposed requirement of a two (2) percent reduction at each individual EGU through application of best operating practices and equipment upgrades is practicable. This is in contrast to EPA's approach for establishing emissions limitations in its other proposed GHG rules under Section 111 of the Clean Air Act.<sup>3</sup> For example, in its January 8, 2014, 111(b) rulemaking,<sup>4</sup> EPA established emissions limits that are simply not practically achievable for new coal-fired EGUs. Likewise, in its rulemaking for existing sources under 111(d), the EPA used a six (6) percent heat rate improvement under the first building block that is not technically or economically achievable.

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<sup>1</sup> 79 FR 34960

<sup>2</sup> 79 FR 34962, Table 1

<sup>3</sup> EPA notes, "[...] that this rulemaking overlaps in certain respects with two other related rulemakings: The January 2014 proposed rulemaking for CO<sub>2</sub> emissions from newly constructed affected EGUs, and the rulemaking for existing EGUs that the EPA is proposing at the same time as the present rulemaking." 79 FR 34966

<sup>4</sup> 79 FR 34970

Additionally, the Cabinet identifies a serious concern and flaw in the proposed rule for modified and reconstructed sources. The proposed rule requires a source to remain subject to a Section 111(d) plan after it becomes a modified source.<sup>5</sup> This approach is inconsistent with the intended treatment of modified and reconstructed sources in Section 111 of the Clean Air Act.

The Clean Air Act clearly defines “new source” and “existing source” and establishes separate subsections in Section 111 to provide statutory authorization in determining separate standards of performance for new and existing sources. Section 111(a)(2) defines “new source” as any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations); and Section 111(a)(6) defines the term of “existing source” as any stationary source other than a new source. It should be noted that Section 111(d) only applies to existing sources. As defined, modified and reconstructed sources are considered new and not subject to the requirements of a Section 111(d) plan after becoming a modified source.

If you have questions or need clarification regarding our comments, please contact Ms. Karen Wilson, Chief of Staff, or Mr. John Lyons, Assistant Secretary, at (502) 564-3350.

Sincerely yours,



Leonard K. Peters  
Secretary

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<sup>5</sup> 79 FR 34965