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August 7, 2025

ATTN: DOCKET ID. NO. EPA-HQ-OAR-2025-0124; FRL-12674-01-OAR
Via Electronic Submission to <http://www.regulations.gov>

RE: Docket ID. No. EPA-HQ-OAR-2025-0124; FRL-12674-01-OAR

Proposed Rulemaking for *Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units*

Dear Docket Manager:

The Kentucky Division for Air Quality (Division), on behalf of the Kentucky Energy and Environment Cabinet (Cabinet), appreciates the opportunity to provide the attached comments on the U.S. Environmental Protection Agency's (EPA) proposed rulemaking for *Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units* published in the Federal Register¹ on June 17, 2025 (Repeal Rule). The Division supports EPA's repeal of the Greenhouse Gas Emissions Standards on the technical grounds stated herein, in particular the determinations addressing concerns raised by the Division in the past. However, the Division does not support certain proposals and determinations in the Repeal Rule that rely on administrative action and processes which are not yet complete, that will have far reaching consequences, and for which it is unclear to the Division how the proposed changes, if adopted, will impact the Division outside of this rule's specific standards under Clean Air Act Section 111.

For those reasons, the Division's support for the Repeal Rule on the technical grounds set forth in its comments should not be interpreted as the Division's agreement with all of the rule's proposals and determinations. The Division reserves the right to raise concerns with other findings and proposals contained in the Repeal Rule as they arise in a later rulemaking. The Cabinet will take any action necessary to carry out its statutory mandate to protect human health and the environment in the Commonwealth. Any future submittals will be made in accordance with the conditions set forth in KRS 224.20-145. The Division appreciates EPA's consideration of these comments. If you have questions or comments, please contact me at Michael.Kennedy@ky.gov, at your convenience.

¹ 90 Fed. Reg. 25,752.

Sincerely,



Recoverable Signature

X *Michael Kennedy*

Signed by: Michael Kennedy

Michael Kennedy, P.E., Director
Kentucky Division for Air Quality

Attachments

Kentucky Division for Air Quality's comments for the U.S. Environmental Protection Agency's (EPA) proposed rulemaking for *Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units*

I. Repeal Rule contains proposals, determinations, and statements that are unnecessary to justify rulemaking

By the Division's count, there were thirty-eight (38) proposed findings, conclusions, or determinations upon which EPA sought comment for this rulemaking, many of which could have far reaching impacts into Clean Air Act regulation beyond what is necessary to repeal standards that are currently in place as the Best System of Emission Reduction (BSER). These conclusions may potentially create or require the Administrator to make new unnecessary policy-based determinations.

Initially, to the extent EPA justifies the Repeal Rule by referencing potential findings in rules it has yet to propose, that justification is both improper procedurally and, as is discussed below, unnecessary technically. The Division believes EPA did not commit error when it made the significant contribution finding for the 2015 New Source Performance Standards (NSPS,) and in deciding not to revisit the issue in the Carbon Pollution Standards (CPS). It would not be appropriate to reverse a final prior action based on the post-hoc rationale recited in the Repeal Rule. However, EPA erred in establishing an unachievable BSER for the impacted sources of these rules.

Insofar as the Repeal Rule attempts to inject new policy considerations to justify its proposed action when there is sufficient technical and practical evidence demonstrating Carbon Capture and Sequestration (CCS) and fuel-blending are not BSER, those attempts will only lead to further regulatory uncertainty for the state and regulated community. In addition, future federal administration changes would further polarize rulemakings, leading to additional litigation and delay in improving the ambient air for Kentuckians. The Division supports EPA's effort to resolve litigious issues but disagrees that many of the proposed additional steps will aid in future regulatory certainty.

The Division supports creative problem-solving for complex issues relating to air quality. EPA should not be constrained from considering incentives, such as tax credits, when setting standards to protect human health and the environment. The Division reiterates that it agrees with EPA's determination to repeal the prior finding of BSER for the source categories at issue. However, the Division does not concur with EPA's statements justifying the wholesale repeal of the emission guidelines pertaining to natural gas- and oil-fired steam generating units. The Kentucky General Assembly tasked the Cabinet with maintaining a reasonable degree of purity of air resources in this Commonwealth to ensure maximum employment and full industrial development to protect the public health, the general welfare, and the property and people in this Commonwealth. *See* KRS 224.20-100. The wholesale repeal of all emission guidelines pertaining to these units is inadequately supported in this rulemaking.

II. CCS is not adequately demonstrated as BSER

The Division concurs that ninety percent (90%) CCS is not appropriate as the BSER for certain new and existing fossil fuel-fired electric generating units (EGUs) because it is not adequately demonstrated and its costs are unreasonable. As it has stated in previous Comments to EPA, the Division notes:

[CCS] is currently only used at a handful of facilities, only one of which is in the United States. CCS only exists due to federal funding...[t]he Cabinet assisted in funding a small CCS demonstration project at an EGU in Kentucky. The cost to operate and maintain the project proved to be exorbitant compared to the amount of CO₂ captured and making full scale deployment unaffordable and unrealistic.²

Furthermore, there are currently no Class VI wells in the Commonwealth of Kentucky that could be used for CCS. The Commonwealth does not have primacy over the Class VI well program and it is unlikely any well could be permitted in the state prior to 2035. This infrastructure is out of the control of the regulated entities under EPA's 2024 Final Rule and simply does not exist.

While the use of CCS shows future potential, it has not become any more realistic or deployable since the Cabinet submitted the above Comments in 2023. Additionally, costs across all sectors continue to rise and tax credits available to facilities are no longer viable. This means costs originally calculated are underestimated.

III. Fuel-switching and “Beyond the Fence Line” requirements exceed EPA’s statutory authority

The Division supports EPA’s repeal of the forty percent (40%) co-firing as the BSER. Requiring EGUs to fuel-switch to other types of fuel, such as natural gas or hydrogen, conflicts with the Supreme Court ruling in *West Virginia v. EPA*, 597 U.S. 697 (2022). “Congress did not give EPA authority to adopt a regulatory scheme that ‘cap[s] carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity.’” *Id.* at 735. Furthermore, the infrastructure needed to implement required fuel-switching, as well as CCS, necessitates infrastructure that is “beyond the fence line” of the EGU and is not controlled by the EGU. The Division stated in its prior Comments:

[I]t is inappropriate for the Division [for Air Quality] to put emission standards into permits based on infrastructure that is speculative and yet to be constructed...Whether the pipeline infrastructure is built for the purposes of NG [natural gas], hydrogen, or CCS is irrelevant, the timing and capital required for completion are beyond the control of the EGU.³

The Division agrees that it is unlikely the infrastructure necessary for ninety percent (90%) CCS could be deployed by the January 1, 2032, compliance date, and requests that EPA take these comments into consideration before finding that CCS at a lower rate of capture would constitute BSER. The Division further agrees that 40 percent natural gas co-firing is not the BSER for existing medium-term coal-fired steam generating units, as the infrastructure needed to achieve compliance is unlikely to be completed by the time contemplated by the CPS.

² Cabinet’s submitted comments dated August 8, 2023, on EPA’s *Proposed Rulemaking for New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule* (Docket ID. No. EPA-HQ-OAR-2023-0072; FRL-8536-02-OAR).

³ *Id.*

IV. States need broader State Plan timelines and flexibility

The process needed for submission of State Plans, plan revisions, and EPA review should follow timelines similar to those required for states to develop State Implementation Plans under Clean Air Act Section 110. The process for public participation and review by the State Legislature is primarily the same, requiring a significant amount of time. In addition, even more public participation may be required if the meaningful engagement procedures, as proposed in the new Subpart Ba, remain unchanged by EPA. The Subpart Ba regulations, currently under reassessment by EPA, should be finalized before any new Emissions Guidelines or requirements include those procedures.

States also need flexibility in methods of compliance, such as the option for states to include trading or averaging in State Plans so long as the state demonstrates equivalent emissions reductions. Further consideration should be given to the availability of construction planning and potential supply issues that have recently been problematic for companies in obtaining equipment.

V. Grid reliability must be maintained

If CCS and fuel-switching are the BSER, the lack of required infrastructure and needed grid transmission changes will negatively impact grid reliability during increased periods of demand. Recent extreme weather events resulted in unprecedented generation failures by electric utilities in Kentucky. The growing regularity of similar events that suddenly increase demand coincides with the growth of energy intensive data centers within Kentucky and throughout the regional transmission hubs. According to the North American Electric Reliability Corporation's (NERC) 2024 Long-Term Reliability Assessment, "[t]he trends point to critical reliability challenges facing the industry: satisfying escalating utility growth, managing generator retirements, and accelerating resource and transmission development."⁴

EPA did not adequately consider the full accounting of sources that are going to be retiring and the full impact to the stability to the electric grid due to weather events, retirements and potentially stranded assets, lack of infrastructure, and future demand growth in its 2024 Final Rule. Therefore, the Division supports further analysis and review than previously used to support the determination by the Administrator.

⁴https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_Long%20Term%20Reliability%20Assessment_2024.pdf, page 6.