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United States Environmental Protection Agency Proposes Carbon Dioxide Emissions Limits for New Power Plant

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On September 20, 2013, the United States Environmental Protection Agency (EPA) proposed national limits on carbon dioxide (CO₂) emissions for new natural gas-fired stationary combustion turbines and fossil fuel-fired electric utility steam generating units.¹ The proposed rule would establish a “New Source Performance Standard” for CO₂ and is known as the “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units.”² The proposed rule is a revision of an earlier EPA rule, now rescinded, which would have established a single standard of 1,000 lb/MWh³ for both coal and natural gas-fired plants.⁴

Unlike its April 2012 predecessor, the proposed rule adopts separate standards for coal and natural gas-fired plants. New natural gas-fired stationary combustion turbine units over 850 BTU/hr would be subject to a 1,000 lb/MWh emissions limit and those under

- ¹ The proposed rule establishes standards for fossil fuel-fired electric generating units and integrated gasification combined cycle units that burn coal, petroleum coke and other fossil fuels, and for natural gas-fired stationary combustion turbine electric generating units that generate electricity for sale and are larger than 25 megawatts. The proposed rule does not apply to existing units or units undergoing modifications or reconstruction.
- ² Several states, such as California, Minnesota, Montana, New Mexico, New York, Oregon, and Washington, have already adopted measures to limit CO₂ emissions from new power plants.
- ³ “lb/MWh” denotes pounds per megawatt-hour.
- ⁴ The April 2012 proposed rule would have allowed coal-fired units to demonstrate compliance with the 1,000 lb/MWh limit by averaging emissions over a 30-year period.

850 BTU/hr⁵ would be subject to a 1,100 lb/MWh limit. Under the proposed rule, new coal-fired plants can either (i) average emissions over an 84-month period if they meet a gross limit between 1,000 to 1,050 lb/MWh⁶ or (ii) average emissions of 1,100 lb/MWh over a 12-month operating period. The purpose of the longer compliance period is to provide sources with flexibility in phasing in the use of carbon capture and sequestration technologies (CCS).

According to EPA, new natural gas-fired plants can meet the proposed standards without the need for additional pollution control technology. However, new coal-fired plants will have to install CCS to capture and store CO₂ emissions in order to comply.⁷ Industry groups are expected to oppose the proposed rule on multiple grounds, including its commercial and economic viability. In addition to anticipated legal challenges to the proposed rule, legislation targeting the proposed rule has already been introduced in Congress,⁸ with additional anti-rule legislation expected.

A 60-day public comment period will begin once EPA publishes the proposed rule in the Federal Register. Potentially impacted parties should be sure to submit comments to the proposed rule in a timely fashion in order to preserve such arguments for potential future litigation.

EPA is planning to issue CO₂ emissions standards for existing plants by June 2014. According to EPA Administrator Gina McCarthy, such standards will not require existing coal-fired plants to install CCS.

⁵ "BTU/hr" denotes British thermal units per hour.

⁶ EPA is soliciting comment on what the standard should be within the proposed range.

⁷ EPA proposes to verify that captured carbon is geologically sequestered through Greenhouse Gas Reporting Program rules already in place.

⁸ See (i) S. 1514: *Saving Coal Jobs Act of 2013*, (ii) H.R.3140: *Ensure Reliable and Affordable American Energy Act of 2013* and (iii) H.Con.Res.57: *Expressing the opposition of the Congress to the Environmental Protection Agency's proposed rule establishing new source performance standards to limit greenhouse gas emissions from new power plants*.