

Proposed New Source Performance Standards Comments on Endangerment Finding Reconsideration

Comments in Support of Reconsideration of the Endangerment Finding

1.) American Coal Council:

“However, that finding was for six greenhouse gases which EPA found in the aggregate to endanger public health or welfare. EPA has never made a finding that CO₂ alone endangers public health or welfare, and certainly not for CO₂ from fossil generating units.”¹

2.) American Petroleum Institute:

“As we explained in those earlier comments, API believes that faithful adherence to the CAA’s procedures for developing performance standards is as important as the standards themselves... we continue to believe that the Agency should revisit the process by which EPA determined whether the source category emits carbon dioxide in amounts that represent a ‘significant contribution’ to endangerment of public health and welfare. Doing so can help ensure that these and any future NSPS are premised on solid and defensible legal foundations.”²

3.) Independent Petroleum Association of America:

“IPAA supports the issues presented in comments submitted by the Texas Pipeline Association (TPA). More specifically, it supports the following key points.

- I. The correct interpretation of Section 111 is that EPA must make a new endangerment finding prior to regulating a new pollutant under the NSPS program.
- II. EPA may not circumvent the endangerment finding requirement by employing a "rational basis" standard that is not in Section 111.

Consequently, like TPA, IPAA urges EPA to reject and withdraw the erroneous interpretation that EPA may skip the endangerment finding step in this context and that EPA should clarify that a statutory prerequisite for regulation of a new

¹ American Coal Council, “Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units”; 6. Filed: March 18, 2019.

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12510&attachmentNumber=1&contentType=pdf>

² American Petroleum Institute, “Comments on the US Environmental Protection Agency’s Proposed Amendments to the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (82 Fed. Reg. 65424 (Dec. 20, 2018)).”; 11. Filed: March 18, 2019. <https://www.api.org/~media/Files/News/Letters-Comments/2019/march/API-EGU-GHG-NSPS-Comments-031819.pdf>

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pollutant under the NSPS program is an endangerment finding for that particular pollutant.”³

4.) Murray Energy:

“EPA must make two findings before it can impose performance standards under the Clean Air Act: (1) an ‘endangerment’ finding that air pollution from a source category ‘may reasonably be anticipated to endanger public health or welfare’; and (2) a ‘contribution’ finding that the source category ‘causes or contributes significantly’ to that endangering air pollution. EPA has not made either finding.”⁴

5.) Utility Air Regulatory Group (UARG):

“Only if it validly makes both findings in a section 111(b) listing may EPA establish performance standards to address the specific pollution from the source category emitting that pollutant. EPA promulgated the 2015 NSPS without having made these threshold statutory findings, and EPA should not repeat that error in this rulemaking.”⁵

6.) Tennessee Valley Authority:

“As to the endangerment finding that EPA is required to make under CAA § 111(b)(1)(A), TVA believes that a “standard of performance” is, by definition, tied to specific pollutants for which an endangerment finding has been made. Any other reading would give EPA unfettered authority to regulate any air pollutant emitted by that source regardless of whether it endangers “health or welfare.” EPA could rely, at least partially, on its 2009 endangerment finding for six greenhouse gases in the “aggregate” that are emitted from automobiles. In adopting that earlier finding, EPA would have to explain how that earlier finding for the “combined

³Independent Petroleum Association of America, “Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Request for Comments on Endangerment Finding Interpretation”; 1. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12512&attachmentNumber=1&contentType=pdf>

⁴ Murray Energy, “Comments of Murray Energy Corporation on EPA’s Proposed Rule: Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 83 Fed. Reg. 65424 (December 20, 2018), EPA-HQ-OAR-2013-0495”; 6. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12539&attachmentNumber=1&contentType=pdf>

⁵ Utility Air Regulatory Group, “COMMENTS OF THE UTILITY AIR REGULATORY GROUP ON THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY’S REVIEW OF STANDARDS OF PERFORMANCE FOR GREENHOUSE GAS EMISSIONS FROM NEW, MODIFIED, AND RECONSTRUCTED STATIONARY SOURCES: ELECTRIC UTILITY GENERATING UNITS; PROPOSED RULE 83 Fed. Reg. 65,424 (Dec. 20, 2018) Docket ID No. EPA-HQ-OAR-2013-0495”; 10. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12621&attachmentNumber=1&contentType=pdf>

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mix” of six greenhouse gases can be applied to the instant situation where the agency proposes to regulate only CO₂.”⁶

7.) Texas Pipeline Association:

“TPA believes that the correct interpretation of Section 111 is that EPA must make a new endangerment finding prior to regulating a new pollutant under the NSPS program.”⁷

8.) National Rural Electric Cooperative Association:

“This regulation should incorporate solid principles in its formulation that can also be carried forward in future Section 111 rulemakings. To this end, EPA should conduct an “endangerment finding” for CO₂ emissions regulated under this proposal.”⁸

9.) US Chamber of Commerce:

“The Chamber submits that EPA must make that separate finding.”⁹

10) Texas Commission on Environmental Quality:

“The EPA is required to make a proper endangerment finding in accordance with FCAA section 111, based on GHG emissions from the relevant source category, and cannot rely on the FCAA section 202 finding as a rational basis to regulate GHG emissions under section 111.”¹⁰

11) Texas Public Policy Foundation:

⁶ Tennessee Valley Authority, “TVA COMMENTS ON U.S. ENVIRONMENTAL PROTECTION AGENCY’S PROPOSED RULE: REVIEW OF STANDARDS OF PERFORMANCE FOR GREENHOUSE GAS EMISSIONS FROM NEW, MODIFIED, AND RECONSTRUCTED STATIONARY SOURCES: ELECTRIC UTILITY GENERATING UNITS (December 20, 2018)”;

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12507&attachmentNumber=1&contentType=pdf>

⁷ Texas Pipeline Association, “Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Request for Comments on Endangerment Finding Interpretation”;

2. Filed: March 15, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12381&attachmentNumber=1&contentType=pdf>

⁸ National Rural Electric Cooperative Association, “Comments on Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units”;

1. Filed March 18, 2019.

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12571&attachmentNumber=1&contentType=pdf>

⁹ US Chamber of Commerce, “Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Proposed Rule, Docket ID No. EPA-HQ-OAR-2013-0495; FRL-9987-85-OAR, 83 Fed. Reg. 65424 (Dec. 20, 2018)”;

18. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12719&attachmentNumber=1&contentType=pdf>

¹⁰ Texas Commission on Environmental Quality, “COMMENTS BY ME TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, THE PUBLIC UTILITY COMMISSION OF TEXAS, AND THE RAILROAD COMMISSION OF TEXAS ON PROPOSED AMENDMENTS TO ME STANDARDS OF PERFORMANCE FOR GREENHOUSE GAS EMISSIONS FROM NEW, MODIFIED, AND RECONSTRUCTED ELECTRIC UTILITY GENERATING UNITS”;

1. Filed: March 19, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12386&attachmentNumber=2&contentType=pdf>

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“Thus, in the instant case EPA was required to make an endangerment finding that carbon dioxide emissions from fossil fuel-fired power plants cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA did not make that finding in its promulgation of the 2015 Rule.”¹¹

“But even following the endangerment finding provisions under Section 111(b) would not save the fate of EPA’s proposed amended version of the 2015 Rule, because the structure of the Clean Air Act requires EPA to regulate these types of emissions under Sections 108-110 of the Act.”¹²

12) American Coalition for Clean Coal Electricity:

“EPA has never found that CO₂ alone endangers public health or welfare, let alone made such a finding for CO₂ emissions from the new EGU source category that was codified at new Subpart TTTT in 2015.”¹³

13) Competitive Enterprise Institute and Science & Environmental Policy Project:

“We filed our petition in 2017, contending that EPA should commence a new rulemaking on the subject of its 2009 finding.”¹⁴

14) American Fuel and Petrochemical Manufacturers:

“Therefore, unless EPA makes a specific determination that: (1) CO₂ emissions, (2) from coal and natural gas-fired EGUs, (3) “cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” it cannot proceed with any of the proposed EGU GHG NSPS rules.”¹⁵

¹¹ Texas Public Policy Foundation, “Comments on Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 83 FED. REG. 65424 (DEC. 20, 2018), Docket ID No. EPA-HQ-OAR-2013-0495.”; 4. Filed: March 15, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12382&attachmentNumber=1&contentType=pdf>

¹² Texas Public Policy Foundation (March 15, 2019); 6.

¹³ American Coalition for Clean Coal Electricity, “American Coalition for Clean Coal Electricity Comments on EPA’s Proposed Rule to Revise CO₂ NSPS”; 12. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12617&attachmentNumber=1&contentType=pdf>

¹⁴ Competitive Enterprise Institute and Science & Environmental Policy Project, “Docket ID No. EPA-HQ-OAR-2013-0495; Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; 83 FR 65424”; 1. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12588&attachmentNumber=1&contentType=pdf>

¹⁵ American Fuel and Petrochemical Manufacturers, “Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Docket ID No. EPA-HQ-OAR-2013-0495; FRL-9987-85- OAR, 83 Fed. Reg. 65424 (Dec. 20, 2018)”; 2. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12500&attachmentNumber=1&contentType=pdf>

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15) GPA Midstream Association:

“Accordingly, EPA must complete a separate significant contribution endangerment determination before regulating any new pollutant, including GHG emissions, from an NSPS source category.”¹⁶

16) National Association of Manufacturers:

“We have consistently urged the EPA to establish that, for any and all 111(b) or (d) standards of performance that pertain to any GHGs, the Agency must first make a separate significant contribution endangerment finding based on the specific GHG emissions for the category. Such a finding must be a necessary precursor to regulation of a source category.”¹⁷

17) North Dakota Department of Health:

“EPA cannot promulgate a new source performance standard (NSPS) for CO₂ emissions from fossil-fueled electric utility generating units (EGUs) under Section 111(b) of the federal Clean Air Act (CAA) unless and until it has made the statutorily required "endangerment finding" with respect to CO₂ emissions from this source category.”¹⁸

18) Concerned Household Electricity Consumers Council:

“In the 2018 NSPS Rule, EPA adopted arguments set out in the 2015 NSPS Rule that set out what can be called a layered defense of its position on the Section 111 endangerment finding issue. It claimed (1) that no new endangerment finding was required because it had made one for the same source category (but not the same pollutant) many years ago; (2) if a new endangerment finding were required, it could adopt the 2009 Endangerment Finding for mobile sources lock, stock and

¹⁶ GPA Midstream Association, “Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Request for Comments on Endangerment Finding Interpretation”; 2. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12615&attachmentNumber=1&contentType=pdf>

¹⁷ National Association of Manufacturers, “Proposed Amendments to Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (EGUs); Docket ID EPA-HQ-OAR-2013-0495”; 2. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12699&attachmentNumber=1&contentType=pdf>

¹⁸ North Dakota Department of Health, “Comments of the North Dakota Department of Health on U.S. EPA’s Proposed Rule: Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified and Reconstructed Stationary Sources: Electric Utility Sources: Published 83 Fed. Reg. 65,424 (December 20, 2018) (Docket ID No. EPA-HQ-OAR-2013-0495)”; 1. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12689&attachmentNumber=1&contentType=pdf>

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barrel; and (3) if that was not sufficient, it was making the requisite finding for Section 111 purposes by then and there declaring it to be so. None of these arguments withstands scrutiny.”¹⁹

{CHECC}Recommendations Based on Science Arguments.

CHECC fully endorses the recommendations of these scientists because recent research has definitively validated that: once certain natural factor (i.e., solar, volcanic and oceanic/ENSO activity) impacts on temperature data are accounted for, there is no “natural factor-adjusted” warming remaining to be attributed to rising atmospheric CO₂ levels. That is, these natural factor impacts fully explain the key cyclical patterns and linear trends in all relevant temperature data sets over the last 50 or more years. At this point, there is no statistically valid proof that past increases in atmospheric CO₂ concentrations have caused what have been officially reported as rising, or even record setting, Global Average Surface Temperatures (GAST.)

Moreover, additional new research findings demonstrate that data manipulation/adjustments by government agencies to the previously reported GAST data have rendered the entire data record now totally inconsistent with published credible temperature data sets and useless for any policy analysis purpose. These new results, that demonstrate that GAST data are invalid and useless, conclusively invalidate the claims based on GAST data of “record warming” in recent years and also invalidate the two other “lines of evidence” on which EPA claimed to base its 2009 CO₂ Endangerment Finding.

In addition, 11 typical climate alarmist claims have each been invalidated by specialists in each of the areas simply relying on the most credible, relevant empirical data.

The two invalidated CO₂ Endangerment Findings, combined with NEPA and other regulations, are now driving numerous crippling state and federal CO₂-related decisions. - - - -

Clearly, to stop this fundamentally misguided regulatory process, based on the science-based evidence alone, the 2009 and 2015 GHG Endangerment Findings must be put through a rigorous reconsideration process. In addition, by necessary

¹⁹ Concerned Household Electricity Consumers Council, “COMMENT OF THE CONCERNED HOUSEHOLD ELECTRICITY CONSUMERS COUNCIL ON EPA’S REVIEW OF STANDARDS OF PERFORMANCE FOR GREENHOUSE GAS EMISSIONS FROM NEW, MODIFIED, AND RECONSTRUCTED STATIONARY SOURCES: ELECTRIC UTILITY GENERATING UNITS”; 2. Filed: March 19, 2019. See also pages 25-26 <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12379&attachmentNumber=1&contentType=pdf>

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implication, EPA should not issue any replacement for the CPP, or move forward with the ACE Rule or 2015 or 2018 NSPS Rules. In addition, EPA should not allow future CO₂ emissions to impact its view as to the proper vehicle MPG standards. CO₂ is a beneficial gas.¹⁹

19) National Mining Association:

“EPA Should Conduct a Proper Analysis of Whether GHG Emissions From New Coal-Fired EGUs Cause or Contribute to an Endangerment of Public Health or Welfare.”²⁰

20) North American Coal Corporation:

“These comments are submitted for two reasons: (1) to suggest that the U.S. Environmental Protection Agency (EPA) is mistaken to rely on prior endangerment findings to regulate CO₂ emitted from EGUs...”²¹

21) American Public Power Association:

“Under CAA Section 111, EPA must make a finding that the source category significantly contributes to endangerment before it can regulate a new pollutant from the source category. APPA is not challenging the 2009 Endangerment Finding. The Association is not recommending the Agency make a new endangerment finding. Instead we offer our legal analysis in response to EPA’s request from comment on what is required when the Agency decides to regulate a new pollutant, such as CO₂ from a source category that has been previously listed by EPA.”²²

²⁰ National Mining Association, “Comments of the National Mining Association on Proposed Rule, “Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units,” 83 Fed. Reg. 65,424 (Dec. 20, 2018)”; 40. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12714&attachmentNumber=1&contentType=pdf>

²¹ North American Coal Corporation, “Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units Docket ID No. EPA-HQ-OAR-2013-0495 Comments of the North American Coal Corporation”; 2. Filed: March 8, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12342&attachmentNumber=1&contentType=pdf>

²² American Public Power Association, “COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION ON THE ENVIRONMENTAL PROTECTION AGENCY’S REVIEW OF STANDARDS OF PERFORMANCE FOR GREENHOUSE GAS EMISSIONS FROM NEW, MODIFIED AND RECONSTRUCTED STATIONARY SOURCES: ELECTRIC UTILITY GENERATING UNITS; PROPOSED RULE”; 4. Filed: March 18, 2019. <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12618&attachmentNumber=1&contentType=pdf>

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22) Portland Cement Association:

“Section 111 Requires Both A Source-And Pollutant-Specific Endangerment Determination.”²³

23) Patrick Morrisey, Office of the Attorney General, State of West Virginia et al.:

“Nevertheless, our comments also highlight some considerations that we believe are necessary to confirm that the EPA remains faithful to the Clean Air Act’s text and cooperative federalism regime before promulgating significant regulations in this area—and thus ensure that the final rule stands on the strongest legal footing.”²⁴

24) San Miguel Electric Cooperative and South Texas Electric Cooperative:

“Additionally, the EPA should also continue to evaluate whether, provided that § 111(b)(1)(A) does not require a source- and pollutant-specific endangerment finding in all cases, the EPA should, nonetheless, interpret that language to require such findings for CO₂ when it is regulated as a “greenhouse gas” (“GHG”) because of the numerous unique features of GHGs. Unlike other pollutants regulated by the EPA under the CAA, the effects of GHGs are not localized. The result of this is that any domestic reduction in GHGs can be offset by an increase in GHG emissions elsewhere. Additionally, the EPA should also continue to evaluate whether, provided that § 111(b)(1)(A) does not require a source- and pollutant-specific endangerment finding in all cases, the EPA should, nonetheless, interpret that language to require such findings for CO₂ when it is regulated as a “greenhouse gas” (“GHG”) because of the numerous unique features of GHGs. Unlike other pollutants regulated by the EPA under the CAA, the effects of GHGs are not localized. The result of this is that any domestic reduction in GHGs can be offset by an increase in GHG emissions elsewhere.”²⁵

²³Portland Cement Association, “EPA-HQ-OAR-2013-0495, Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units”; 2. Filed: March 18, 2019.

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12697&attachmentNumber=1&contentType=pdf>

²⁴Patrick Morrisey, Office of the Attorney General, State of West Virginia et al., “Comments of the States of West Virginia, Alabama, Arkansas, Georgia, Indiana, Kansas, Louisiana, Montana, Missouri, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Utah, Texas, and the Mississippi Department of Environmental Quality, on the proposed rule entitled Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Sources: Electricity Generating Units (Docket No. EPA-HQ-OAR-2013-0495).”; <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12600&attachmentNumber=1&contentType=pdf>

²⁵ San Miguel Electric Cooperative and South Texas Electric Cooperative, “Proposed Rule for Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (EGUs) Comments of San Miguel

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25) Lignite Energy Council:

“This language appears to require a source- and pollutant-specific endangerment finding. That is, before EPA can regulate the emissions of a pollutant from a category of sources, it must first find that the emissions of that pollutant from the sources in that category “may reasonably be anticipated to endanger public health or welfare.” This has not, however, been the EPA’s interpretation in the past.”²⁶

Electric Cooperative and South Texas Electric Cooperative”; 6. Filed: March 18, 2019.

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12616&attachmentNumber=1&contentType=pdf>

²⁶ Lignite Energy Council, “Proposed Rule for Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (EGUs) Comments of the Lignite Energy Council”; 6. Filed: March 18, 2019.

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2013-0495-12721&attachmentNumber=1&contentType=pdf>