

January 21, 2016

Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Federal Implementation Plan of the Clean Power Plan (CPP) – Docket number: EPA-HQ-OAR-2015-0199

Dear Administrator McCarthy:

Thank you for the opportunity to provide comments on EPA's the Federal Implementation Plan of the Clean Power Plan (CPP) – Docket number: EPA-HQ-OAR-2015-01999.

WE ACT is a Northern Manhattan, New York community-based organization whose *mission is to build healthy communities by assuring that people of color and/or low-income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices*. For the past 27 years, we have worked to empower, educate and engage our communities in policy advocacy at the local, state and federal level.

Since 2013, WE ACT has advocated for Environmental Justice policies to be considered in all elements of the President's Climate Action Plan, with our most significant efforts and advocacy around the CPP. Through diligent engagement with the EPA's Office of Environmental Justice, Office of Air Quality Planning Standards, and the Office of Management and Budget, our participation in public comment periods, and grassroots advocacy, we have seen evidence of the Agency's efforts to facilitate a deeper integration of Environmental Justice into the final CPP. We recognize and appreciate your efforts.

The finalization of the 111(d) standard for existing power plants requires public engagement with low income, communities of color or other communities vulnerable to climate change, providing incentives for targeting clean energy in low income, communities of color, and providing a baseline proximity analysis as supplement to the rule. These are great steps forward. However, we still have major concerns with the Final Rule and now, the Federal Implementation Plan and Model Rule that has been presented for comment. Here are some of our concerns.

The completeness criteria for the submittal and approval of state plans should require states to conduct an Environmental Justice analysis and evaluation.

We are requesting that states must complete an Environmental Justice analysis (EJ Analysis) as a part of the FIP approval process. An EJ Analysis is a process by which states will study how the development, implementation, and enforcement of environmental laws, regulations and policies will impact – positively or negatively – low income, communities of color, Native American and Indigenous peoples. This process will help hold leadership accountable to make better decisions that protect everyone equally, and provide governmental agencies and other entities a systematic method of assessing data and policy decisions.

This EJ Analysis should – at the least – pinpoint where emissions might increase, where targeted efforts need to be made around energy efficiency, and job creation, where trading of allowances from market based mechanisms should be limited or banned. The completeness criteria for submittal and approval of state plans currently does NOT include (1) the requirement for states to conduct an Environmental Justice analysis, nor (2) engagement with overly burdened and/or vulnerable communities. We request that the FIP and Model Rule do the following:

- Ensure no increases in electricity costs and the burden does not fall on those that cannot afford it.
- Ensuring that facilities that have installed pollution control technology are in fact, using the technology at all times. The FIP suggests that states adopt complimentary measures outside of CAA programming to facilitate compliance. We believe that increased attention and enforcement needs to be paid to ensure regulated sources are using installed pollution control technology.
- As a part of the FIP requirements, states should create a set of indicators (i.e. health, energy use, cost of energy, climate vulnerability, cumulative risk, etc.) that can be used to measure and verify both the positive and negative impact on communities. This type of evaluation should happen at some frequency – possibly at the interim compliance periods - to make sure emission reductions are occurring and investments in clean and renewable energy are occurring in the most impacted areas.

WE ACT does not support either a mass based or rate based approach

The EPA asked stakeholders to comment on whether a rate based or mass based plan should be the basis for the FIP. Because the FIP and the Model Plans promote cap and trade as the only options, we would expect the FIP and Model Rules to place an equal amount of emphasis on other policies and pathways to compliance through expanding renewable energy, exploring Renewable Portfolio standards, energy efficiency resource standards, and Net Metering. In order to mitigate the potential negative effects of states adopting the approaches described in the FIP (i.e. a mass or rate based approach) it should be required that States:

- Work directly with EPA to assess whether and where emission increases may result from plan implementation and mitigate adverse impacts, if any, in overburdened communities.
- Create a monitoring system to document baseline levels of carbon dioxide emissions and toxic co-pollutants, specifically in neighborhoods with multiple regulated sources, Title V or other major and minor permitted sources, or areas that are identified in the highest percentile from the EPA EJ Proximity Analysis.
- Work directly with EPA to determine whether the implementation of the federal plans and other air quality rules are, in fact, reducing emissions and improving air quality in all areas and, or whether there are localized air quality impacts that need to be addressed under other Clean Air Act authorities.
- Disallow any type of trading, allowances or credits should be prohibited from being exchanged in any areas where the air is already compromised.
- Revise the mass-based FIP and model rule to incorporate energy efficiency.

The FIP should use existing definitions of “low income.”

Definitions and criteria for the ‘set asides’ should be done in concert with local/state Environmental Justice organizations. A portion of this set-aside should be targeted to RE projects that benefit low income communities. Defining a low-income community will be different based on the state or region. There are existing definitions of eligibility that have been crafted by Federal agencies to implement different programs – particularly housing, community development, and weatherization – across the country. Definitions should not conflict with ones used by existing federal programs, and should be carefully crafted to ensure that both urban and rural communities can benefit from the program. For example, some already defined populations that might fit into that definition are:

- Stakeholders that already receive Supplemental Security Income or Aid to Families with Dependent Children
- Children and families that have been diagnosed with severe respiratory concerns
- Children and families that reside in multi-family units or public housing
- Children and families living in rural areas that experience high energy costs or low energy reliability, or any other criteria the state – working with Environmental Justice organizations in that state – seems as reasonable criteria.

The EPA should strengthen worker protections and do more to support a just transition.

Under both versions of a FIP, the EPA includes a provision to ensure that the jobs created by investments in energy efficiency and renewable energy are good jobs. It requires renewable energy and energy efficiency projects to demonstrate that their workers received some form of third party certification, including an apprentice-based program or other training programs, to qualify for credits or allowances. The EPA’s model rules encourage, but do not require, states to adopt similar policies. We believe all states should be directed to meet the same standard. We call on the EPA to design the FIP and model rules in ways that more directly support worker transition for those affected by the shift away from coal. For example, a portion of allowances from retired coal plants could be auctioned or sold and the proceeds directed to a fund for dislocated workers in that state. Unused allowances in the three set-aside pools could be treated in the same way.

Ensure that any revenues that might be generated to make homes ‘ready to receive’ weatherization.

Often times, weatherization and energy efficiency measures cannot be completed in the homes of low income energy users because there are health and safety measures in the home that must be addressed before energy efficiency. Low income clients of state weatherization programs – both single family homes and multi-unit dwellings - do not have the funds to take care of this structural issue, such as roof leaks, sewage leaks, need for exhaust fans, and other general house rehabilitation which leaves in a position where they cannot receive weatherization and other energy efficiency measures. We are asking that states,

- Get a better understanding of the number of low income clients that are unable to benefit (i.e. or have been denied) from weatherization and energy efficiency assistance due to health and safety concerns with their current residence
- Identify these areas as a priority for targeted use of any ‘set asides’ (i.e. revenues, etc.) that result from the implementation process

- Facilitate a conversation between state agencies that distribute funding for housing and energy assistance, as well as overly burdened communities to develop a plan to fill the gaps in energy efficiency and weatherization for low income clients, as well as develop ways that current programs or sources of revenue can be re-directed to help fill this gap as well.

Again, we thank you for your efforts to better protect the health of the public and many of the communities we represent. We hope that our comments will help the EPA strengthen the Federal Implementation Plan and Model Rule of the Clean Power Plan, while keeping the needs of Environmental Justice communities in mind.

Thank you for your consideration and if you have any concerns, please contact Cecil D. Corbin-Mark at [\(202\) 495-3036](tel:(202)495-3036) or cecil@weact.org.

Yours in Health,

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