June 3, 2014

EPA Proposes Clean Power Plan

Yesterday, the U.S. Environmental Protection Agency (EPA) released its proposed Clean Power Plan, which requires a 30 percent reduction in carbon dioxide emissions from existing power plants by 2030. The proposal, using 2005 emission levels as a baseline, would establish the first national approach to reducing these emissions from existing power plants.

The Clean Power Plan proposes a set of guidelines the EPA characterizes as building "on trends already underway in states and the power sector to cut carbon pollution from existing power plants, making them more efficient and less polluting." Citing the "unique mix of emissions and power sources" in each individual state, the EPA identifies state-specific rate-based goals for carbon dioxide emissions as well as the framework for states to use when developing their individual implementation plans.

Under the proposed rule, there would be a two-part carbon emission reduction goal structure, with an "interim goal" that a state must meet on average over the 10-year period from 2020 to 2029 and a "final goal" that a state must achieve for 2030 and beyond. According to the EPA, this overall approach is authorized under Section 111(d) of the Clean Air Act. Per the EPA, Section 111(d) requires that the agency identify "the best system of emission reduction" available to limit pollution, with states then being required to implement plans to achieve this reduction.

To attain state-specific goals, the EPA's 645-page proposal provides the states with flexibility to choose from a variety of options. These options, according to the EPA, are based on "four building blocks": more efficient use of fossil fuel power plants; increased use of low-emitting power sources; expanding and using more zero and low-emitting power sources; and using electricity more efficiently. Recognizing that each state has different policy considerations, the proposal allows the states to work alone to develop plans or to work with other states to develop a multistate approach. States can, for example:

- look across the power sector for strategies that get reductions;
- use market-based trading programs;
- invest in existing energy efficiency programs or create new initiatives;
- consider market trends toward improved energy efficiency and a greater reliance on lower-emitting power sources;
- expand renewable energy or nuclear generation capacity; and
- tap into investments already underway to upgrade aging infrastructure.

All states must submit their implementation plans by June 30, 2016. With a showing that additional time is needed, following the submittal of an initial implementation plan, an individual state would be eligible for a one-year extension to June 30, 2017. Submittal of a final multistate plan would be required by June 30, 2018.The EPA is accepting comments on the proposed Clean Power Plan for 120 days following publication in the Federal Register. The EPA will hold four public hearings across the country during the week of July 28 and has indicated that it plans to issue a final rule next June, consistent with President Obama's June 2013 Climate Action Plan and corresponding Presidential Memorandum dated June 25, 2013. The final rule is

expected to face a court challenge.

Please feel free to contact any of the attorneys listed here should you have any questions.