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U.S. Environmental Protection Agency
Attention Docket ID No. EPA-HQ-OAR-2013-0602
EPA Docket Center, U.S. EPA
Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generation Units, Proposed Rule, Docket ID No. EPA-HQ-OAR-2013-0602; FRL-9910-86-OAR, 79 Fed. Reg. 34,830 (June 18, 2014)

Dear Sir or Madam:

The American Petroleum Institute (API) hereby submits the attached comments on the Environmental Protection Agency's (EPA's) proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generation Units, Docket ID No. EPA-HQ-OAR-2013-0602; FRL-9910-86-OAR, 79 Fed. Reg. 34,830 (June 18, 2014).

API represents over 600 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. U.S. carbon dioxide emissions are near 20-year lows, and a major reason for that progress is the development and use of America's abundant natural gas resources. Natural gas will continue to play a key role in the US economy and in the power sector, ensuring that the US remains competitive in a global economy. Natural gas fired generation is an efficient source of energy that is reliable, scalable, and versatile in its ability to provide base-load power as well as back-up power for renewable generation.

API has strong interests in this unprecedented Clean Air Act rulemaking because our members are adversely affected by the proposed rule in several ways.

First, potentially higher energy costs and challenges to the reliability of consistent energy supply arising out of the proposed rule's inappropriate constraints on the utility sector's choice of fuel and design will injure the members of both the utility and refining sectors. Petroleum refineries are the nation's second-highest industrial consumer of energy. [Reference] In order to provide the nation critical fuels, petroleum products, and chemicals in a cost-effective manner, access to reliable and affordable energy is critical. Furthermore, some of API's members own, operate, or will construct or modify cogeneration sources that may be considered to be electric generating units (EGUs) within the meaning of this proposed rule.

Second, some of API's members produce petroleum coke ("petcoke"). Petcoke is a valuable product that has a number of industrial applications, including energy production, and EPA is proposing to subject petcoke-fired EGUs to the same standards as coal-fired EGUs. As the primary producers of petcoke, the API has a substantial and direct interest in EPA regulations that will dramatically alter demand for, and ultimately the viability of, the use of petcoke for energy production.

Third, API has a significant interest in the proposed rule because EPA has entered into a settlement agreement, like the one that resulted in this proposed rule, concerning the regulation of greenhouse gas (GHG) emissions from the refinery sector under the Clean Air Act's New Source Performance Standard (NSPS) provisions. Significant differences exist between the utility and the manufacturing and energy development sectors, such as refineries and oil and gas development. Nevertheless, we remain concerned that EPA may adopt similar approaches to those proposed in this rulemaking in potential future GHG NSPS rulemakings for other source categories. We therefore provide these comments in part to identify the myriad errors made in the proposed rule so that EPA does not repeat those errors should it propose a NSPS for GHG emissions from refineries or other sectors beyond utilities over our strong objections.

Complementary Comments:

First, API supports and endorses the comments submitted jointly by the American Petroleum Institute and the following associations (the "Association comments"): The American Chemistry Council, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Wood Council, Brick Industry Association, Corn Refiners Association, Council of Industrial Boiler Owners, Electricity Consumers Resource Council, National Association of Manufacturers, National Association of Home Builders, National Lime Association, National Oilseed Processors Association, Portland Cement Association, The Fertilizer Institute, and U.S. Chamber of Commerce.

API also supports and endorses the comments submitted by Mr. Stuart L. Sessions, President of Environomics, Inc., on the co-benefits that EPA estimates in the regulatory impact analysis for the proposed existing source performance standards (ESPS) regulation for power plants.

API is a member of the Partnership for a Better Energy Future, a coalition of business organizations representing over 80 percent of the U.S. economy. API also supports and endorses the comments submitted by that Partnership.

The following comments amplify and expand on some of the comments raised in the Association comments.

Authority:

First and foremost, EPA must comply with the Clean Air Act. The literal and proper interpretation of the Clean Air Act prohibits EPA from regulating greenhouse gas (GHG) emissions from a source category under Section 111(d) if that source is already regulated under Section 112. Further, as explained more fully in the Association comments, Section 111 requires a finding that the pollutant poses a "substantial threat to human health or the environment." EPA has failed to meet this burden.

EPA is proposing a dramatic, unprecedented, and unauthorized change to the scope and application of the NSPS program under the Clean Air Act that will have long-term implications for energy and environmental policy in the United States. In short, EPA is effectively mandating fuel and generation unit design choices for new EGUs constructed in the United States. The Clean Air Act enables EPA only to regulate pollution, not dictate fuel or design choices by industry, much less to the point of declaring coal- and petcoke-fired EGUs to be obsolete or banning new construction outright. Congress never intended for the Clean Air Act to authorize EPA's extraordinary policy decisions to phase out entire sources of energy as proposed in this rulemaking. Yet, EPA seeks to assert regulatory authority over not only pollution, but energy as well.

Defining the Best System of Emission Reduction

If EPA moves forward with this proposal, EPA should require states to choose a source-based best system of emission reduction (BSER). In setting the stringency of its guidelines under Section 111(d), EPA and states should exclusively take into account reductions from measures deployed at reasonable cost within the fence line and under the control of distinct subcategories of directly regulated sources. Further, the guidelines should be based on measures that can be achieved without redefining the source and should not mandate fuel or feedstock choices. Of course, BSER must be adequately demonstrated. 40 C.F.R. sec. 60.20, *et seq.* specifically requires EPA to (1) provide descriptions of the best systems of emission reduction which in EPA's judgment have been adequately demonstrated; (2) provide information on the degree of emission reduction achievable with each system, together with cost and environmental effects of applying the systems to existing facilities.

Consistent with current practice, BSER should be set with consideration of feasibility and cost, including factors such as safety, age of facilities, available space, etc. Compliance flexibility should be given to the sources as described in the recommendations addressing Flexibility and the Voluntary Compliance Options. If EPA moves forward, we recommend that EPA adopt a methodology that recognizes previous actions to improve efficiency and make investments in facilities that have resulted in quantifiable emissions reductions. A source-based set of emission reduction guidelines can achieve significant emission reductions in a legally robust manner, especially when combined with voluntary State programs for incorporating activities that avoid additional emissions, as recommended below. This is important because EPA and the states do not have clear legal authority to go beyond the source to define BSER. GHG reduction opportunities that may be available outside the fence line clearly lie outside the source's control, and the means do not yet exist to consistently evaluate and measure emissions reductions due to these activities, nor to transfer credit for those reductions efficiently to sources so they can meet their compliance obligations. Finally, as EPA has determined in analogous contexts, it may not "redefine" the source by requiring the use of fuels that the source or the existing source infrastructure cannot already accommodate or other material design changes within the fence line.

Treatment of Cogeneration

If EPA moves forward, EPA should indicate that industrial cogeneration (also known as combined heat and power) sources should be explicitly excluded from the ESPS rulemaking. If not excluded altogether, appropriate credit needs to be provided to the sources for the steam generated and applicability should never extend to self-consumed power by the EGU or the thermal host site (i.e., Section 111(d) should not apply to power that is not sold to the grid). API recommends that combined heat and power and cogeneration units located at refineries

not be subject to the EGU Section 111(b) or Section 111(d) rules. EPA should recognize that sources cogenerating steam for use at the source and also producing electricity for the grid are already combining two processes into an inherently efficient approach. If for some reason those cogeneration sources are not fully exempted, it is necessary to credit them for the steam produced along with the electricity generated.

API believes that it is not EPA's intention to regulate industrial cogeneration units. API believes the criteria for determining which cogeneration should be excluded from rule applicability are those industrial cogeneration units whose primary purpose is to produce thermal energy (e.g. units that have a majority output of thermal energy and are clearly designed to provide the majority of that thermal output to the manufacturing host). Further EPA should not regulate industrial cogeneration units that produce at least 50 percent thermal energy to a host facility. API also recommends EPA consider a 20 percent threshold consistent with the definition of net energy output, where units with at least 20 percent of the total gross energy output consists of useful thermal output on a rolling 3 year basis would not be considered an affected source.

API urges EPA to adopt the following language for § 60.5795 (b)(2), in lieu of the proposed language:

§ 60.5795 What affected EGUs must I address in my state plan?

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(2) A stationary combustion turbine that has a base load rating greater than 73 MW_{thermal} (250 MMBtu/h), was constructed for the purpose of supplying, and supplies, more than 50% of total energy output, including MW_{electricity} and MW_{thermal} to a utility distribution system on a 3-year rolling average basis, combusts fossil fuel for more than 10.0 percent of the heat input during a 3-year rolling average basis, and combusts over 90% natural gas on a heat input basis on a 3-year rolling average basis.

Precedence for Refining

While API realizes the proposed ESPS is targeted toward fossil fuel-fired EGUs, we emphasize that there are fundamental and overarching distinctions between EGUs and other source categories in the manufacturing sector (such as refining) that preclude the use of a similar approach to addressing GHG emissions. GHG emissions from individual manufacturing source categories such as refining are at least an order of magnitude lower than those from EGUs, significantly altering the cost-benefit and endangerment and significance equations. Moreover, other source categories are impacted by a much broader range of factors, such as industry economics, geography, federal and State incentives, transportation networks, ownership structures, foreign competitors, profit margins, and customer bases. Unlike power generators, the domestic refining sector faces heightened global competition. Crude oil and products derived from it are traded on global markets; electricity is not. All of these factors must be considered, necessitating a fundamentally different approach than that taken for EGUs.

Regulating GHG emissions from refining is neither prudent nor necessary. Refineries have already taken aggressive, voluntary actions to reduce GHG emissions through energy efficiency initiatives—the only available option to reduce GHG emissions from most manufacturing source categories. Aside from raw materials, energy use is the single largest cost to many refining operations. Thus, a commitment to identify and implement cost-effective energy efficiency initiatives has been a primary driver of the continued competitiveness of domestic refining.

Conclusion

The development and use of America's abundant natural gas resources have been a boon for the U.S. economy and have contributed to a significant decline in U.S. carbon dioxide emissions to near 20-year lows. Nonetheless, we cannot support the proposed ESPS GHG rule. The rule threatens potentially higher energy costs and challenges to the reliability of consistent energy supply. The proposed rule is arbitrary, capricious, and unlawful for the reasons set forth above and contained in the joint Associations comments. As a result, EPA should immediately withdraw the proposed rule. Should EPA regulate GHGs under the NSPS program, it should first issue an ANPR in order to foster an open, unbiased dialogue with all affected and interested parties, without the threat of imminent applicability of the rule.

Sincerely,

Howard J. Feldman