

**DAILY NEWS**

OMB Review Of EPA Power Plant NSPS Tees Up Industry Lobbying On CCS

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The White House's just-launched review of EPA's draft final rule to limit greenhouse gas (GHG) emissions from new power plants opens the door to new industry efforts to get the administration to drop or soften a widely expected but controversial mandate requiring new coal plants to install partial carbon capture and sequestration (CCS).

[The agency announced May 8](#) that it had sent the new source performance standards (NSPS), along with a draft final rule addressing modified sources, to the Office of Management & Budget (OMB) for review.

"We expect to finalize this rule for new power plants and guidelines to reduce carbon pollution from existing and modified power plants in mid-summer," alongside its proposed federal implementation plan for the standards, EPA says.

EPA's proposed NSPS, published in January 2014, sets a GHG limit of 1,100 pounds of carbon dioxide per megawatt hour (lbs/MWh) for new coal plants, meaning they would have to capture roughly 30 percent of their carbon. For gas plants, the proposal sets a limit of 1,000 lbs/MWh for large plants and 1,100 lbs/MWh for small units.

In the modified and reconstructed proposal, EPA also separates large units from small ones and sets technology-based standards.

Both the new and modified source rules are moving forward under section 111(b) of the Clean Air Act while the existing source performance standards (ESPS) is being drafted under section 111(d).

An environmentalist says it makes sense that the agency would advance its two 111(b) rules together and "stagger" those with the ESPS, which will be reviewed later, even though all three are expected to be finalized at the same time.

While the existing source rule is likely to have a bigger impact on emissions, the new source rule is a legal foundation for the ESPS because it is needed to create the category of regulated sources.

But industry and other critics have long charged the proposed coal standard is unlawful because CCS technology is not "adequately demonstrated" as the Clean Air Act requires. The critics will almost certainly sue, an effort that if successful could doom the existing source rule as well.

More than a dozen state attorneys general, for example, have [already indicated](#) that they believe any final rule is unlawful because EPA missed a one-year statutory deadline to issue a final rule in January.

Now that the final rule is under review at OMB, industry lobbying is likely to intensify -- though some top critics are pessimistic about their prospects. The American Coalition for Clean Coal Electricity, which represents coal companies, power producers, states and others, said in a statement that it is not "optimistic that OMB will be anything more than a rubber stamp" for EPA.

One environmentalist says the administration's commitment to the climate rules makes the "relationship different" than the one the administration has with industry. But even though groups expect the administration to be supportive of their push for a strict rule, "we'll go in and talk to them," the source says. "We haven't yet asked for a meeting."

Legally Vulnerable

While sources on all sides of the issue say they have heard no indication that EPA has dropped its CCS requirement, the agency earlier this year [analyzed scenarios](#) for doing so amid growing agency concern that the rule is legally vulnerable because several demonstration projects EPA was citing to justify its plan were stymied.

For example, the Kemper CCS plant in Mississippi is facing significant delays and major cost overruns. One informed source stressed earlier this year that EPA had made no decisions on whether to walk away from the heart of the rule and called it "a big political question. I just don't know whether they're prepared to live with [the] criticism."

But top administration officials, including EPA Administrator Gina McCarthy and Energy Secretary Ernest Moniz have both publicly emphasized the technology's viability -- especially at the lower capture levels the agency's

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proposed standard requires.

An official with SaskPower's Boundary Dam CCS project told a meeting of the Energy Department's National Coal Council in Washington, D.C., last month that facility had recently come online and is working "better than expected."

The environmentalist knew of no specific EPA decision on CCS in the document that went to OMB but cited the Boundary Dam project to argue the technology is viable.

Still, critics are signaling they plan to strongly challenge the agency's underlying justifications. For example, the Center for Regulatory Effectiveness suggested in a [March options paper](#) that the agency issue an "interim" rule that sets a standard for new coal plants that is just shy of CCS while conducting a peer review on the state of carbon capture technology.

Also Rep. Ed Whitfield (R-KY), chair of the House Energy & Commerce Committee power panel, stated publicly in March that he doubted EPA would drop CCS while promising to introduce legislation that would allow "supercritical" boilers to comply with the NSPS rather than CCS.

Meanwhile, several other sources do not expect EPA to drop CCS from the NSPS.

One industry source says, "I've heard nothing new -- no changes from when first proposed, i.e., no new coal-based power to be built without CCS to meet the standard" despite few CCS plants operating, under construction or in advanced planning.

Another environmentalist adds, "I don't have any reason to suspect that CCS technology is not the [best system of emissions reduction] for a new coal plant."

'Fatally Flawed'

But a source with the U.S. Chamber of Commerce says while "EPA tends to be pretty stubborn about its legal opinions . . . there is a growing sense that even they recognize the NSPS is fatally flawed due to the immaturity of CCS. And because [the] NSPS is a legal domino that could take down the ESPS with it, it would not be surprising to see them make significant changes to it."

Also, John Novak of the National Association for Rural Electric Cooperatives told *Inside EPA* May 8 that moving to a softer standard for coal plants would put the NSPS on a more solid legal footing and shore up the ESPS.

"I think this rule is key because they need a 111(b) rule before they can finalize a 111(d) rule," he says, adding that the proposed rule for modified and reconstructed units is "schizophrenic" and would not sufficiently serve as a prerequisite for the ESPS on its own.

Novak adds that EPA has the authority to revisit the NSPS in later years, and that if EPA is "serious" about developing the technology for both coal and gas plants, it would wait until later rules to impose CCS mandates.

"The natural gas plants that we build today are going to have the same problem because we're not going to achieve the climate goals" only by switching from coal to gas generation, he said. -- Dawn Reeves (dreeves@iwpnews.com) and Lee Logan (llogan@iwpnews.com)

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