

Legal Issues Related to EPA's Proposed Standards for Existing EGUs

1. Section 111(d) allows EPA to issue guidelines for existing units to which a standard would apply if the unit were "new" - upon what authority does EPA rely to go beyond the sources to which its proposed "new" source standards would apply, which EPA has defined as only the steam electric generating unit or combustion turbine?
2. Section 111(d) allows EPA to issue guidelines that are based on the "best system of emission reduction" - yet EPA's proposal assumes that emissions from existing Subpart KKKK NGCC units will increase in nearly every state, and that emissions overall will increase in certain states. How is that consistent with the requirements of the statute?
3. No national renewable portfolio standard has ever been enacted by Congress, yet EPA's "building block" approach assumes that each state should achieve emission rate goals based on incremental renewable resources. What is the basis for this assumption, and upon what authority does EPA rely to include requirements for non-emitting renewable sources in establishing its goals for existing emission units?
4. The statute provides that state standards of performance should take into account differences among the units in the existing fleet, yet EPA has proposed reducing emissions rates at existing coal-fired units based on a uniform average improvement in heat rate. May states examine the available heat rate improvements based on the characteristics of their existing EGUs and adjust the goal accordingly?
5. Upon what authority does EPA rely to shift generation from coal-fired units to NGCC or nuclear units? How is this consistent with existing state requirements for utilities to supply energy at the lowest reasonable cost?
6. The statute also provides that the remaining useful life of existing units should be taken into account in establishing state standards. May states examine their existing fleet and propose alternative standards and compliance time frames based on the remaining useful life of units, particularly those units recently equipped with controls to comply with other EPA standards like MATS?
7. EPA also assumes that states will achieve reductions through end-use energy efficiency programs, yet neither EPA nor the state environmental agencies have the authority to regulate consumer end use efficiency. How would such programs be developed and implemented consistent with the requirements of Section 111(d)?
8. EPA's displacement of the output of steam electric generating units with NGCC treats sources subject to Subpart Da differently than those subject to Subpart KKKK. Upon what authority does EPA rely to justify this disparate treatment?
9. Assuming a state elects to include reductions from an RPS in its planning, EPA's "assignment" of states to different regions for purposes of its RPS goals appears arbitrary. Can states self-select comparable regions in order to more closely align such

goals with the state's own prior investigation of the availability and affordability of renewable resources?

10. Energy policy determinations regarding the proper resource mix are matters entrusted to state utility and energy planning commissions. What express language in the Clean Air Act has Congress enacted that allows EPA to usurp this traditional area of state regulation?

11. If EPA's proposed standard for new sources is challenged and overturned, there will be no standard with which "new" source must comply. Without such a standard, how can EPA's proposed program for existing sources continue in effect? Would the existence of a standard for only "modified and reconstructed" sources be sufficient to satisfy the statutory prerequisite?

12. If the 111(d) statute applies only to existing sources, then how can the development and application of the BSER, along with the subsequent design of state implementation plans, be allowed to rely upon the development of future "new" generation that would otherwise be regulated by 111(b) standards or that are not regulated by the Clean Air Act at all (RE/EE initiatives)?

13. Upon what authority does EPA rely to suggest that Section 111(d) allows it to impose requirements upon the states to adopt legislation or regulatory requirements that mandate specific amounts of renewable resources or energy efficiency programs?