

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY**

HEARING CHARTER

EPA Regulatory Overreach: Impacts on American Competitiveness

Thursday, June 4, 2015
9:00 a.m. – 11:00 a.m.
2318 Rayburn House Office Building

PURPOSE

The Committee on Science, Space, and Technology will hold a hearing entitled *EPA Regulatory Overreach: Impacts on American Competitiveness* on Thursday, June 4, 2015, in Room 2318 of the Rayburn House Office Building. The hearing will examine the U.S. Environmental Protection Agency's (EPA) recent regulatory agenda, the lack of scientific and technical justification for these regulations, and their impact on American competitiveness in the global economy.

Witnesses will provide testimony on several proposed and final rules that have significant legal and economic implications for the American people. In particular, witnesses have been asked to focus their testimony on the Clean Power Plan, the National Ambient Air Quality Standards (NAAQS) for Ozone, and the Waters of the United States, recently rebranded the "Clean Water Rule" by EPA.

WITNESS LIST

- **Mr. Bill Kovacs**, Senior Vice President, Environment, Technology and Regulatory Affairs, U.S. Chamber of Commerce
- **Mr. Bob Kerr**, President, Kerr Environmental Services Corp.
- **Dr. Jerome Paulson**, FAAP, Chair, Council on Environmental Health Executive Committee, American Academy of Pediatrics
- **Mr. Ross Eisenberg**, Vice President, Energy and Resources Policy, National Association of Manufacturers

BACKGROUND

The EPA has recently proposed and finalized various regulations that will have significant impacts on the American people and businesses.

On June 2, 2014, EPA proposed the Clean Power Plan with the intent of regulating carbon emissions from existing source electricity generating units.¹ Under Section 111(d) of the Clean Air Act, EPA proposes that states formulate implementation plans to limit carbon

¹ Clean Power Plan Proposed Rule, U.S. EPA, available at <http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule>.

emissions.² The scope and manner in which the rule has been conceived by the agency has been met with considerable opposition from the states and industry groups.³ The final rule for the Clean Power Plan is anticipated to be submitted this summer.

The Clean Power Plan would require states to meet requirements for carbon emissions from electricity generating units.⁴ EPA proposes that states meet these requirements through four building blocks: improving the efficiency of coal steam electric generating units on an average of six percent, using combined cycle natural gas units up to a 70 percent capacity factor, constructing more zero and low-emitting power sources, and implementing energy efficiency measures to limit annual electricity demand by 1.5 percent annually.⁵ Recently, the U.S. Energy Information Administration produced a report at the request of Chairman Smith that found that EPA's Clean Power Plan would force the retirement of a significant number of coal-fired power plants, increase electricity prices, and decrease American GDP.⁶

On November 25, 2014, the agency proposed a rule for ozone NAAQS, which would considerably tighten the ozone standard.⁷ EPA's own regulatory impact analysis reports that this rule would cost up to \$15 billion annually.⁸ However, industry groups have found that EPA's analysis vastly undercuts the costs and believe that this rule could be the most expensive ever enacted by the agency.⁹ EPA's proposed ozone rule would set more stringent standards, lowering the standard from the current 75 parts per billion (ppb) to a range of 65 to 70 ppb.¹⁰ The Clean Air Act requires EPA to review the NAAQS every five years. EPA is proposing new standards based on the advice of the Clean Air Scientific Advisory Committee.¹¹

² Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34,830 (June 18, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-06-18/pdf/2014-13726.pdf>.

³ U.S. Chamber of Commerce, Comments on Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generation Units, Dec. 1, 2014, available at https://www.uschamber.com/sites/default/files/12.1.14-comments_to_epa_on_proposed_carbon_emission_standards_for_existing_power_plants_clean_power_plan.pdf; Comment From the Attorneys General of the States of Okla., W. Va., Neb., Ala., Fla., Ga., Ind., Kan., La., Mich., Mont., N.D., Ohio, S.C., S.D., Utah, Wyo. on Proposed EPA Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units available at <http://www.ok.gov/oag/documents/EPA%20Comment%20Letter%20111d%2011-24-2014.pdf>.

⁴ U.S. EPA, EPA Fact Sheet: Clean Power Plan National Framework for States, available at <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602fs-setting-goals.pdf>.

⁵ *Id.*

⁶ U.S. Energy Information Administration, Analysis of the Impacts of the Clean Power Plan, May 2015, available at <http://www.eia.gov/analysis/requests/powerplants/cleanplan/pdf/powerplant.pdf>.

⁷ Proposed Rule for National Ambient Air Quality Standards for Ozone, U.S. EPA, available at <http://www.epa.gov/airquality/ozonepollution/pdfs/20141125proposal.pdf>.

⁸ U.S. EPA, EPA's Proposal to Update the Air Quality Standards for Ground-Level Ozone, By the Numbers, available at <http://www.epa.gov/groundlevelozone/pdfs/20141125fs-numbers.pdf>.

⁹ Nat'l Assoc. of Manufacturers, Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone, Feb. 2015, available at [http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-\(NERA\).pdf](http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-(NERA).pdf).

¹⁰ Nat'l Ambient Air Quality Standards, 79 Fed. Reg. 75,234 (proposed Dec. 17, 2014) (to be codified at 40 C.F.R. pts. 50, 51, 52, et. Al.) available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-17/pdf/2014-28674.pdf>.

¹¹ *Id.*

On May 27, 2015, EPA released the final rule expanding the definition of the “Waters of the United States” under the Clean Water Act.¹² While the agency clarified certain aspects of the rule, the final definition represents a tremendous expansion of EPA jurisdiction with regard to the Clean Water Act. While EPA’s final rule does not regulate ditches to the same extent in the proposed rule, it does clearly define Clean Water Act jurisdiction over tributaries to traditionally navigable waters, waters adjacent to jurisdictional waters within a minimum of 100 feet within the 100-year floodplain up to a maximum of 1500 feet of the ordinary high water mark, prairie potholes and other isolated waters, as well as waters with a significant nexus within the 100-year floodplain of a traditional navigable water.¹³

Since the Clean Water Act’s inception, EPA and the U.S. Army Corps of Engineers have promulgated a series of rules defining the agencies’ jurisdiction over certain “Waters of the United States.” EPA and the Army Corps are promulgating the current rule in response to various Supreme Court decisions setting forth tests to determine the scope of the “Waters of the United States” definition.

¹² U.S. EPA, Press Release, *Clean Water Rule Protects Streams and Wetlands Critical to Public Health, Communities and Economy*, May 27, 2015, available at <http://yosemite.epa.gov/opa/admpress.nsf/0/62295CDDD6C6B45685257E52004FAC97>.

¹³ U.S. EPA, Fact Sheet Clean Water Rule, May 27, 2015, available at <http://www.epa.gov/cleanwaterrule>.