

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

MARY FRANCES REPKO, DEMOCRATIC STAFF DIRECTOR  
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June 21, 2022

The Honorable Michael S. Regan  
Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Administrator Regan:

I write today to share my concerns with the Environmental Protection Agency's (EPA) so-called "Good Neighbor Plan" proposal, the *Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard*, and respectfully request EPA not move forward with this proposed regulation.<sup>1</sup> West Virginia is among the 26 states affected by this proposal to address alleged ozone transport. The proposal would tighten nitrogen oxide (NO<sub>x</sub>) emissions limitations on power plants and impose new emissions standards on domestic industrial facilities that make critical materials for the first time.

The proposal is just one in a suite of planned regulatory actions – part of EPA's so-called "Electric Generating Unit (EGU) Strategy" – that will add new burdens and costs to the electricity and industrial sectors alike, raising costs for ratepayers, consumers, and state and local governments.<sup>2</sup> This planned onslaught of new regulations – of which the Good Neighbor Plan is a central, but not sole component – could not come at a worse time. Americans are already experiencing skyrocketing energy prices,<sup>3</sup> and reliability organizations are warning of potential summer blackouts.<sup>4</sup> Household budgets are squeezed by rising costs for gasoline, natural gas, groceries, and other necessities. Because the full set of proposals that comprise the Administration's "EGU Strategy" have not been released, the true, cumulative costs of EPA's plans are being shielded from public scrutiny.

That said, we know that this Good Neighbor Plan – even in isolation – will have significant impacts if finalized. According to EPA's Regulatory Impact Analysis (RIA), the proposed rule

<sup>1</sup> 87 Fed. Reg. 20,036 (Apr. 6, 2022), Docket ID No. EPA-HQ-OAR-2021-0668.

<sup>2</sup> Ethan Howland, *EPA plans sweeping regulatory strategy for power plants covering air, water and land pollution*, UTILITYDIVE (Mar. 11, 2022), <https://www.utilitydive.com/news/epa-plans-coal-power-plant-actions-air-water-waste-rules/620238/>.

<sup>3</sup> Nigel Chiwaya, JoElla Carman & Danica Jefferies, *Inflation in America: Track where prices are rising*, NBC (June 16, 2022), <https://www.nbcnews.com/data-graphics/inflation-tracker-how-much-prices-rising-us-consumers-n1296378>.

<sup>4</sup> North American Electric Reliability Corporation, *2022 Summer Reliability Assessment* (May 2022), [https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC\\_SRA\\_2022.pdf](https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf).

will eliminate jobs and drive up electricity prices for the citizens of my state of West Virginia.<sup>5</sup> EPA projects that the proposal will eliminate 11,200 jobs nationwide in operating and maintenance activities and fuel extraction jobs in 2025 and reduce future coal industry jobs by 1,000 in 2028.<sup>6</sup> The Agency was unable to calculate job losses in the industrial sectors affected by the proposal, which means these job loss figures are, if anything, underestimates. The RIA also shows that this rule will crush power generation from coal by 38 trillion kilowatt hours – or a decrease of 7.77 percent by 2025 – at a time when the electricity supply is already facing shortfalls in the near term.<sup>7</sup> Those significant impacts on jobs and power generation will inevitably decrease grid reliability and reduce access to cheap, affordable fuel, leaving ratepayers on the hook for higher prices. This includes citizens of West Virginia, who will be forced to pay five percent more on their electric bills in 2025 according to EPA’s analysis.<sup>8</sup>

The proposal was also developed without appropriate technical justification, which is especially apparent in the NO<sub>x</sub> standards outlined for large industries. As the Steel Manufacturers Association noted in public testimony, EPA “presumes that companies will be able to reduce EAF (Electric Arc Furnace) NO<sub>x</sub> emissions to levels far below those achieved by the best performing units” and alleges this level of emissions control can be “accomplished through the use of select catalytic reduction – a technology that is fundamentally incompatible and therefore has never been determined to be feasible to control NO<sub>x</sub> Emissions from EAFs.”<sup>9</sup> While this is just one example, I urge EPA not to move forward with this regulation when there are fundamental misunderstandings on whether and how emissions reduction technology has been shown to work at facilities, especially in an economically feasible manner.

Furthermore, the “benefits” EPA cites are based on opaque and questionable estimates, “monetize[ed] climate benefits” associated with the proposed rule using the “Social Cost of Greenhouse Gases” (SC-GHG).<sup>10</sup> EPA claims in a separate “technical memorandum” the proposed rule will save billions of dollars by avoiding certain impacts of climate change. The memorandum heavily relies on decisions made by the unaccountable “Interagency Working Group on the Social Cost of Greenhouse Gases” (IWG), which has met behind closed doors with no meaningful public input and has continually avoided responding to valid Congressional oversight requests.<sup>11</sup> This lack of transparency and accountability call into question the seriousness and credibility of the SC-GHGs. Until the IWG completes a thorough reanalysis of

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<sup>5</sup> Regulatory Impact Analysis for Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard (Feb. 2022), [https://www.epa.gov/system/files/documents/2022-03/transport\\_ria\\_proposal\\_fip\\_2015\\_ozone\\_naaqs\\_2022-02.pdf](https://www.epa.gov/system/files/documents/2022-03/transport_ria_proposal_fip_2015_ozone_naaqs_2022-02.pdf).

<sup>6</sup> *Id.* at Table 6-8.

<sup>7</sup> *Id.* at Table 4-13.

<sup>8</sup> *Id.* at Table 4-16.

<sup>9</sup> Virtual Public Hearing on the Proposed Rule: Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standards (April 21, 2022), at 250.

<sup>10</sup> Technical Memorandum: Addendum to the Regulatory Impact Analysis: Monetizing Climate Benefits for the Proposed FIP for Addressing Regional Ozone Transport for the 2015 Ozone NAAQS (March 22, 2022), [https://www.epa.gov/system/files/documents/2022-04/2015-fip-climate-benefits-technical-memo\\_04052022.pdf](https://www.epa.gov/system/files/documents/2022-04/2015-fip-climate-benefits-technical-memo_04052022.pdf).

<sup>11</sup> Letter from Hon. Shelley Moore Capito, John Boozman, Pat Toomey, Lindsey O. Graham, Roger F. Wicker, John Barrasso, Mike Crapo, Richard Burr & Rob Portman to Hon. Cecilia Rouse, Shalanda Young & Dr. Alondra Nelson, (May 13, 2022), [https://www.epw.senate.gov/public/\\_cache/files/7/c/7c8ff7dc-3c39-4315-b440-25669556c6e5/A9E8BF89C0EFD5F4A91430F8B5820773.05-13-2022-follow-up-letter-to-iwg-on-sc-ghg-public-release-.pdf](https://www.epw.senate.gov/public/_cache/files/7/c/7c8ff7dc-3c39-4315-b440-25669556c6e5/A9E8BF89C0EFD5F4A91430F8B5820773.05-13-2022-follow-up-letter-to-iwg-on-sc-ghg-public-release-.pdf).



the SC-GHG with robust public engagement and responsiveness to Congress, EPA should not reference the SC-GHG in this or any other rulemaking. In particular, the agency should not do so to justify a rulemaking via co-benefits not explicitly identified in statute, as EPA seeks to use the SC-GHG figures here in a rule regarding criteria pollutants.

Finalizing the proposal would also impede the successful implementation of the *Infrastructure Investment and Jobs Act* (P.L. 117-58). For the first time in the history of the Clean Air Act, EPA is seeking to regulate emissions from certain industrial sources to address alleged ozone transport issues. The affected types of industrial sources covered by the proposal include those in the natural gas, cement, iron, steel, and other sectors vital to our economy – but particularly important to the success of the Infrastructure Investment and Jobs Act (IIJA). By imposing new regulatory costs on domestic producers of key construction materials, the Good Neighbor Plan works at cross-purposes with the Buy America provisions included in IIJA to increase utilization of American-made products, including steel. The IIJA was a historic investment in our nation's infrastructure, but inflation is already hitting the construction sector, quickly increasing prices and diminishing this substantial investment.<sup>12</sup> Imposing even more costs on construction materials will only further exacerbate price inflation and constrain production and use of American-made materials such as steel and concrete.

I urge EPA to not move forward with this proposed regulation that will shutter reliable energy sources, lacks technical justification for emissions controls on large industry, and creates another barrier to infrastructure development. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Shelley Moore Capito". The signature is written in a cursive, flowing style.

Shelley Moore Capito  
Ranking Member  
Committee on Environment and Public Works

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<sup>12</sup> Shannon Pettypiece, *Inflation takes a bite out of Biden's infrastructure ambitions*, NBC (June 6, 2022), <https://www.nbcnews.com/politics/white-house/inflation-takes-bite-bidens-infrastructure-ambitions-rcna31772>.