

United States Senate
WASHINGTON, DC 20510

June 8, 2023

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

Dear Administrator Regan:

We write to express serious concerns with the limited opportunities for public engagement in the rulemaking process for the Clean Power Plan 2.0 announced by EPA in the *Federal Register* last month.¹ In the proposal, the EPA announces new legal interpretations and presents sweeping claims about the future availability of technologies and infrastructure used to power our electric grid. As drafted, the proposal runs afoul of the statutory limits on the EPA's authority under Section 111 of the Clean Air Act clearly articulated by the Supreme Court in *West Virginia v. EPA*. And even if EPA did have authority to impose the generation-shifting that the EPA proposes, which it does not, the record that the Agency relies on to attempt to justify its "best system of emission reduction" determinations is speculative and unsubstantiated.

Despite the breadth of the proposal and the novel legal and factual bases presented therein, the EPA has provided scant opportunity for public input. At a minimum, the EPA must extend the comment period by 60 days and create a more inclusive schedule of in-person public hearings in areas of the country that would be mostly directly impacted in order to comment fully on the proposal.

Through the currently announced rulemaking process, the EPA has provided minimal opportunity for public input. In the most recent proposal, only one virtual public hearing was announced along with 60 days of public comment. The EPA's engagement on the Clean Power Plan 2.0 contrasts starkly with past rulemakings of the power sector under Section 111 of the Clean Air Act. For example, there have always been multiple public hearings associated with power sector regulations, and comment periods have been as long as 165 days for the proposed Section 111(d) rule in 2014 and 192 days on the proposed repeal of the Clean Power Plan in 2018. For the Affordable Clean Energy rule and associated repeal of the Clean Power Plan, EPA held a public hearing in Chicago, Illinois and in Charleston, West Virginia, respectively, along with public listening sessions in Kansas City, Missouri; Gillette, Wyoming; and San Francisco, California. Hearings should be similarly held in areas affected most significantly by this proposal.

¹ *New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule*, 88 Fed. Reg. 33,240.

The Agency's decision to limit severely opportunities for public input in comparison to past rulemakings is especially troubling because the Clean Power Plan 2.0 is a much broader effort with more expansive effects. It is actually *five* sets of regulations in one. In the Agency's summary of the proposal, the EPA stated there are five distinct proposals included in this behemoth *Federal Register* notice: a repeal of the Affordable Clean Energy rule; two new proposed regulations under Clean Air Act Section 111(b) to cover new and modified power plants; and two distinct proposed regulations under Section 111(d) to cover existing power plants. Moreover, the direct costs and impacts far exceed those presented by the Agency. The EPA has attempted to attribute nearly all of the economic and transformative energy impacts of the proposal to the partisan, disastrous Inflation Act alone. The American people and the communities we represent must have adequate time to review, reflect, and comment on the proposal and its far-reaching impacts.

Please respond to this request no later than June 30, 2023.

Sincerely,



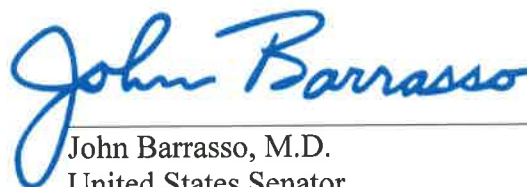
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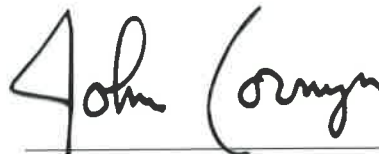
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