State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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May 6, 2014

Ms. Gina McCarthy, Administrator
Attn: Docket ID No. EPA-HQ-OAR-213-0495
EPA Docket Center
U.S. EPA
Mail Code 2822T
1200 Pennsylvania Ave. NW
Washington DC 20460

RE: New Source Performance Standards (NSPS) for Greenhouse Gas Emissions from Stationary Sources: Electric Utility Steam Generating Units.

Dear Administrator McCarthy:

The Wisconsin Department of Natural Resources (WDNR), in conjunction with the signatory Commissioners of the Public Service Commission of Wisconsin (PSCW), is submitting these comments regarding new source performance standards (NSPS) regulating power plant carbon dioxide (CO_2) emissions as proposed by the U.S. Environmental Protection Agency (EPA) on January 8, 2014 *(79 FR 1430)*. The NSPS regulation, if promulgated as proposed, would establish separate CO_2 standards for coal-fired generating units and natural gas-fired combustion turbines. A number of primary concerns regarding the NSPS proposal for new electric power plants are addressed below. In addition, the WDNR, under separate cover, is submitting technical comments to discuss these and other concerns in greater detail.

We must emphasize that the comments set forth in this letter should not be interpreted as the State of Wisconsin's endorsement of this initiative. We note there are significant legal and policy issues regarding EPA's authority to regulate CO_2 emitted from new fossil fuel electric power plants. Therefore, these comments do not waive any future legal claims that the State may have regarding the promulgation or enforcement of the regulations.

Our most significant concern is that EPA, in its proposal, vastly overstates the viability of carbon capture and sequestration (CCS). At this time, CCS is not achievable for new coal-fired generating units in Wisconsin and throughout the utility sector as a whole. This is because carbon sequestration sites remain vastly unproven by EPA's own admission. Further, carbon sequestration sites simply are not available in fourteen states, including Wisconsin. Given the lack of CCS viability, the proposed rule would effectively prohibit construction of new coal-fired generation in Wisconsin and many other states. As a result, electric utilities will be forced to continue operating existing coal-fired generating units past their normal lifetimes instead of replacing them with new, more efficient generation. This condition could actually impede the reduction of electric utility CO_2 emissions. EPA should not set an NSPS that prohibits siting new coal generation in this manner.

EPA's conclusion regarding CCS is problematic for several other reasons. EPA's proposal to use CCS for CO_2 control is inconsistent with the plain language of the CAA. The NSPS is proposing a requirement that is more stringent than has been found feasible or cost-effective under best

available control technology (BACT) determinations for coal-fired generating units in Wisconsin and, to our knowledge, anywhere in the country. This includes one of the most recently built and most efficient power plants in the country, the Elm Road facility in Wisconsin which began operation in 2009. Further, an NSPS more stringent than would be determined under BACT for the same source does not appear to be the intent of the CAA. If this were the case, why would there be a BACT program under the CAA?

The NSPS is also inconsistent with the CAA in that Section 111 requires an NSPS to be based on technology that is achievable and cost-effective now for coal-fired generation throughout the utility sector as a whole. To satisfy these criteria, EPA must show that CCS is achievable and cost-effective at any potential site where new coal-fired generation can be located. This includes showing that CCS is viable when replacing existing coal-fired generating units with new generation at the same location and using the same fuel. EPA fails to make this demonstration in replacing existing coal-fired generating units in Wisconsin or any other state lacking sequestration capacity.

From a technical perspective, EPA's analysis of CCS is problematic in that it does not account for the cost to transport CO_2 from utility plants to proven sequestration sites located more than 50 miles away. Since Wisconsin does not have even a single proven sequestration site, transporting CO_2 out-of-state for sequestration is the only option. The cost of such transport would be substantial. An analysis by Wisconsin using Department of Energy cost methods determined that a pipeline network from Wisconsin to the Illinois Basin (the nearest potential sequestration site) would cost between $550 million to $1 billion. Such an investment would be cost-prohibitive and have a real and detrimental effect on Wisconsin ratepayers. To address this issue, when setting the NSPS, EPA must first fully consider and quantify the costs of transporting CO_2 from where existing coal-fired generating units are currently operating to proven sequestration sites.

Further, after accounting for the cost of CO_2 transport, states like Wisconsin that lack proven sequestration sites will be at a competitive disadvantage when it comes to energy resources. This condition would be detrimental to Wisconsin's generation portfolio, which is predominantly coal, and our strong manufacturing economy. Moreover, this result is also contrary to the CAA. In the preamble to the proposed rule, citing *Sierra Club v. Costle*, 657 F.2d 298 (D.C. Cir App 1981), EPA recognized that an NSPS standard cannot create an advantage for one state over another. Therefore, an NSPS that mandates the use of CCS will clearly put states without carbon sequestration capacity, such as Wisconsin, at an economic disadvantage which, as noted, is contrary to the CAA.

We are also concerned that the requirements and costs imposed under this rule have the potential to impact the reliable delivery of electricity throughout Wisconsin. This problem is compounded if utilities are forced to rely primarily on natural gas in replacing coal-fired generation. If the concerns identified in this letter are left unaddressed, a significant portion of electricity generation in Wisconsin may be unavailable without identified, adequate and economical alternative sources to replace the lost generation.

Finally, the proposed NSPS standard should not apply to the following source categories: (1) types of generation that were not evaluated in setting the NSPS standard, including solid fossil fuel generation smaller than 550 MW and developing generation technologies; (2) simple cycle combustion turbines; and (3) efficient combined heat and power (CHP) plants. Also, the NSPS standard should not apply to biomass fuels fired in any combination with fossil fuels. Rather,

biomass fuels are a renewable resource in Wisconsin and should be creditable towards meeting any fossil fuel CO_2 standard.

Because EPA's proposed NSPS would have significant consequences for the people and industry of Wisconsin, we urge EPA to consider our concerns and adopt the corrections and adjustments needed to promulgate an NSPS rule that is realistic, achievable, and legally defensible. We thank you for this opportunity to provide comment.

Sincerely,

Cathy Stepp Secretary Wisconsin DNR	Phil Montgomery Chairperson Wisconsin PSC	Ellen Nowak Commissioner Wisconsin PSC

cc:
Bob Norcross, Administrator, Division of Gas and Energy, PSCW
Pat Stevens, Administrator, Division of Air, Waste and R&R