



November 12, 2015

*Via Electronic Mail Only to:
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The Honorable Ron Johnson
Chairman, Senate Committee on Homeland Security and Governmental Affairs
Washington, D.C. 20510-6250

RE: Written testimony for the Committee on Homeland Security and Governmental Affairs
hearing on November 13, 2015 in Stevens Point, Wisconsin

Chairman Johnson:

Thank you for the opportunity to testify. This written testimony is being submitted in advance of the hearing in Stevens Point, Wisconsin, on November 13, 2015, in compliance with committee rules.

Introduction

My name is Lucas Vebber; I am the Director of Environmental and Energy Policy at Wisconsin Manufacturers & Commerce (WMC). WMC is Wisconsin's chamber of commerce and manufacturers' association. We have nearly 4,000 members throughout the state of all sizes and across all sectors of the state's economy. One in four private sector employees in Wisconsin works for a WMC member company. WMC is dedicated to making Wisconsin the most competitive state to do business.

The EPA rules we are here to discuss today are broad and unprecedented expansions of federal power and will impact a wide variety of our members in very negative ways. Cost estimates put these rules amongst the most costly regulations ever created. They were promulgated without a single vote of Congress. These rules will fundamentally change the regulatory environment here in Wisconsin and throughout the United States and will certainly have vast consequences for our economy for a generation, costing our state tens of thousands of jobs, and weakening our economy at a time we can least afford it.

On behalf of WMC, thank you for taking the time to investigate the real world impacts of these two rules. There is a lot of hyperbole and misinformation as to what exactly these two rules will do, and we appreciate the opportunity to provide the committee with an analysis of the impact these regulations will have if they are allowed to go forward.

Background on Business in Wisconsin

Here in Wisconsin we make things. Wisconsinites take great pride in being a world leader in producing a variety of goods, whether agricultural or manufactured. Our workforce of highly skilled professionals is renowned around the world for our ability to produce everything from fine cheeses to heavy mining equipment.

Last month was manufacturing month here in Wisconsin. Manufacturing is consistently amongst our top employment sectors here in Wisconsin. Manufacturing was responsible for over \$55 billion worth of economic output last year alone. The average salary in the manufacturing sector is \$54,400 per year which is \$10,000 higher than the average pay for Wisconsin private-sector workers. Additionally, workers in the manufacturing sector in our state are more likely to receive health insurance benefits than their counterparts in other areas of our economy. To say manufacturing drives our state would be an understatement. And it's our state's manufacturers and agriculture industries that will be especially hard hit by these rules. Whether through indirect regulatory compliance costs or directly driving up the cost of business through energy rate price increases – these rules will have a significantly negative impact on businesses here in Wisconsin.

Given the legal and agricultural experts who will be providing testimony at today's hearing, my focus will largely be on the impacts these rules will have on our state's manufacturing industry and impacts on consumers. While my primary focus today is to discuss how these rules will impact our home state of Wisconsin, I will also address my comments to the rules as they apply generally.

Waters of the United States (WOTUS)

The crux of this rule hinges on what is defined as a state water and what is a federal water. This rule proposes to fundamentally alter the definition of "Waters of the United States" in a way that would result in a significant expansion of federal regulatory authority under the Clean Water Act (CWA). Federal jurisdiction under the WOTUS rule would be expanded to cover a wide variety of waters traditionally unregulated by the CWA, and left to the states or local governments. The rule contains a great deal of poorly defined terms that will, presumably, be left up to agency interpretation, and needlessly subjects businesses and private property owners to a whole host of new regulatory hoops that they must jump through.

One of the stated goals by EPA in creating the WOTUS rule was to ensure "that waters protected under the Clean Water Act are more precisely defined, more predictably determined, and easier for businesses and industry to understand."¹ Ironically, the actual rule goes in the opposite direction; creating uncertainty and confusion every step of the way. The uncertainty created by this and the potential for an increased regulatory burden is problematic not only for manufacturers but for agricultural producers, land owners, as well as local and state governments.

¹ "What the Clean Water Rule Does," Environmental Protection Agency, available at <http://www2.epa.gov/cleanwaterrule/what-clean-water-rule-does>

i. What it means for Wisconsin

It is not very clear at all what benefits this rule would have to a state like Wisconsin. Our state, more so than most other states, more broadly defines “waters of the state” in our laws and regulations. That is, we already cover, at the state level, a good deal of the waters that the federal government is proposing to regulate federally. For example, Wisconsin DNR Secretary Cathy Stepp noted in comments to EPA that Wisconsin “remains one of the few states that currently regulate isolated, non-federal wetlands...”² This rule results in a duplicative and confusing regulatory framework that will certainly be difficult for businesses to navigate – far from creating the “certainty” that EPA has promised.

Our state has a long history of embracing our outdoor heritage and natural environments. Whether for recreation or sport Wisconsinites take great pride in our lakes, rivers and streams. The rule creates a duplicative regulatory framework which creates a great deal of confusion for Wisconsinites who are seeking to comply with the law. Under WOTUS, for the first time ever, roadside ditches and ephemeral streams would be subject to federal CWA jurisdiction in our state. Given the far-reaching nature of the proposed rule, manufacturers in Wisconsin face a seemingly unlimited number of permitting and regulatory challenges under this new framework. This uncertainty makes it difficult for our employers to site a new facility in our state or expand and grow their existing operations.

WOTUS does nothing to improve environmental regulation in Wisconsin. There will be no new environmental benefits and adding new layers of regulatory burdens will only cause confusion and lead to increased compliance costs on Wisconsin employers, harming our economic viability. Given the lack of any tangible benefit, and the significant cost possibilities, it seems unconscionable that such a rule would be allowed to move forward.

ii. Procedural Concerns

This rule was developed with little, if any, consultation with the various states. Wisconsin was not contacted by EPA while they were developing this rule. As our DNR noted, “As co-regulators of our state’s water resources, we believe that a thorough and robust consultation is both warranted and imperative for any rule package to move forward.”³ Certainly that did not happen here, and the result is a confusing and duplicative federal rule package that will have wide-ranging impacts for businesses and private property owners.

Further, this rule was implemented without consulting Congress. The costs and resulting duplicative layers of regulation that this rule created certainly could have been limited if not completely avoided with any level of engagement with elected policymakers.

Fortunately for businesses here in Wisconsin and nationwide, the sixth circuit issued a nationwide stay on this rule while litigation moves forward – giving a brief reprieve from what is surely one of the largest expansions of federal authority to ever come to be without

² “Comments on Proposed Waters of the United States,” Cathy Stepp, Wisconsin DNR Secretary, Letter to EPA, November 14, 2014, available at regulations.gov

³ See *supra* “Comments on Proposed Waters of the United States”

Congressional action. Additionally, we'd like to thank the Chairman and the bipartisan majority of U.S. Senators who supported S. 1140 – the Federal Water Quality Protection Act – when it came before the Senate just a week ago.

Clean Power Plan (CPP)

The CPP requires states to achieve significant reductions in CO₂ output from fossil-fuel based power plants by the year 2030. This 1,500 page rule provides states with mass-based (total tons emitted statewide) or rate-based (pounds per megawatt hour generated) measures as a way to determine compliance. States are to use three “building blocks” to develop plans to achieve such compliance.

States are required under the CPP to submit a plan to reach these goals by September of 2016. Alternatively, if states can show they are making substantial progress on a state implementation plan (SIP) by that date, they can seek a two-year extension to file their final plan. If states do not submit a plan or fail to show substantial progress by September 2016 they will be subject to a federal implementation plan (FIP). This plan is not yet final, as EPA is accepting public comment until January of 2016. It is expected that a final federal implementation plan will not be available until next summer, leaving very little time before some states may be forced to begin implementation.

This timeline is completely, and perhaps deliberately, unreasonable. This is why a majority of states have filed litigation *against* the rule and, similar to the WOTUS rule, are seeking to stay implementation of the CPP while the courts consider that challenge. For the reasons below, this plan is problematic and will have a devastating impact not only here in Wisconsin but throughout the nation. I will layout the specific impacts this rule is expected to have here in our state, and then discuss some of the broader policy concerns with the CPP that will impact us nationally.

i. What it means for Wisconsin

Here in Wisconsin we are facing a higher than average emission reduction target. Wisconsin is a heavy coal user – generating roughly 60% of our state's baseload power from coal sources.⁴ It has provided our state with a reliable, efficient, and cost-effective means of generating electricity. Our state has made significant investments in coal technology over the past several decades, while at the same time our air quality has improved dramatically by virtually any measure.

a. State Goals

Despite our continuously improving clean air and our ability to consistently generate reliable and affordable energy, the EPA has decided we must do more. Depending on if our state complies with a mass-based or rate-based approach, we would be forced to achieve a 34% or 41%

⁴ “Wisconsin Energy Facts,” Institute for Energy Research, available at <http://instituteforenergyresearch.org/media/state-regs/pdf/Wisconsin.pdf>

reduction in CO₂, respectively.⁵ There is a great deal of uncertainty surrounding the CPP but virtually everyone agrees that to meet EPA's goals, our state will need to invest heavily in renewable energy resources. Economics 101 tells us that new construction means new costs. New costs get passed along to energy users and this, in turn, drives up the cost of doing business. This makes our members less competitive in an every-changing global marketplace.

b. 2012 Baseline

Using 2012 as a baseline is arbitrary and needlessly punishes Wisconsin. Natural gas prices in 2012 were low compared to other years, resulting in lower-than-normal coal power usage. Emission rates were thus lower that year than almost any other. Using a single year as the baseline, much less using a year that was an outlier amongst all others, unfairly and unreasonably harms our state. EPA should have used a 3 or 5 year average to get a real picture of CO₂ output in the various states.

c. Increased Costs, Less Competitive Economy

Affordable energy is essential to any economy. This is especially true for Wisconsin, in which, as I said earlier, manufacturing is consistently one of our top business sectors. Wisconsin's manufacturers accounted for only 0.15 percent of all electricity customers in Wisconsin in 2012, but consumed about 33 percent of total electricity. For industrial users in Wisconsin, the average monthly electric bill is around \$31,000. Some of our members use \$1 million or more in a given month. The increases to come as a result of the CPP will make our state less viable, not only nationally, but against ever-growing international competition.

Energy costs are a significant consideration for businesses looking to establish a new location or expand an existing one; we hear this time and time again. As these costs go up, the CPP will result in lost jobs in our state. It is difficult to predict exactly how many jobs, as Wisconsin has not yet developed a SIP and the FIP will not be finalized until next summer. However a Wisconsin-specific study by Suffolk University's Beacon Hill Institute and the Wisconsin-based John K. MacIver Institute for Public Policy found that nearly 21,000 jobs would be lost over the next 15 years.⁶ Further, our state would see a drop in disposable income of \$1.82 billion over that same time span.⁷ It's important to note that this study was conducted on the draft rule, and that the final rule actually got more stringent for Wisconsin – which would mean even more jobs loss and even less disposable income.

d. Reliability Concerns

Finally, the CPP will make electric delivery in Wisconsin less reliable. The Public Service Commission of Wisconsin thoroughly studied and modeled the draft CPP rule over the past year – and although the rule did change, the results of their modeling are still very informative. The

⁵ "Clean Power Plan: State at a Glance," Environmental Protection Agency, available at <http://www.epa.gov/airquality/cpptoolbox/wisconsin.pdf>

⁶ "The Economic Effects of the New EPA Rules on the State of Wisconsin," Beacon Hill Institute/John K. MacIver Institute for Public Policy

⁷ *Id*

CPP will require Wisconsin to rely more heavily on renewable energy. Renewables are less reliable – if the sun is not shining as bright or the wind dies down, other generation sources have to ramp up. Natural Gas is really the only source that is able to ramp up and down quickly enough to adjust to the demands of the grid. However, the final rule makes this nearly impossible. As PSC Chairperson Ellen Nowak noted as part of the filing for an extraordinary writ when the final rule was announced in August, “the Final Rule encourages natural gas plants to operate at capacities of 75% or higher, leaving very little capacity that is free to respond to rapid demand changes on the grid.”⁸

As the coming weeks and months unfold, we will learn more about the specifics of how Wisconsin intends to deal with the CPP. Right now there is a great deal of uncertainty as to what the exact impacts will be. Still, as I noted, there are a few things that we know with certainty: The CPP will fundamentally alter Wisconsin’s energy generation facilities in ways that will drive up costs for consumers and negatively impact reliability. These factors will make our businesses, especially high-energy using manufacturers, less competitive against both national and international competition, costing us jobs. Higher energy costs will also rob our citizens of disposable income, resulting in a weaker economy overall. The CPP is very bad for Wisconsin.

ii. Cost/Benefit Analysis

EPA has consistently provided an over-the-top and somewhat incoherent cost-benefit analysis when talking about the CPP. By EPA’s own estimates, this rule will cost the American economy billions of dollars. EPA estimated a cost of \$7.3 billion to 8.8 billion per year by 2030 – although they offset this with a quantification of benefits to the climate and public health of between \$55 billion and \$93 billion per year. EPA claims for every \$1 of cost, the public will see \$7 in benefits.⁹

EPA has a history of providing overly-positive cost-benefit estimates or even completely ignoring the economic impacts of their regulations; something the Supreme Court of the United States chided them for while striking down a different regulation just last summer.¹⁰ A recent study completed by NERA Economic Consulting found this rule will cost Americans up to \$292 billion, and is expected to raise energy prices in 47 states, with 28 states facing increases of 20 percent or more.¹¹ These numbers are astronomical and would wreak havoc on our economy.

iii. Procedural Concerns

As I have noted previously, this rule was put forward without a single vote in Congress. In fact, like the WOTUS rule, the only action Congress has taken on this issue is a bi-partisan effort to

⁸ “Declaration of Ellen Nowak, Chair, Wisconsin Public Service Commission,” attached to Petition for Extraordinary Writ, In Re West Virginia, et. al., dated August 7, 2015, Paragraph 14.

⁹ “FACT SHEET: Clean Power Plan Benefits,” Environmental Protection Agency, available at <http://www2.epa.gov/cleanpowerplan/fact-sheet-clean-power-plan-benefits>

¹⁰ See Michigan v. Environmental Protection Agency, 576 U.S. ____ (2015).

¹¹ “Energy and Consumer Impacts of EPA’s Clean Power Plan,” NERA Economic Consulting, available at <http://www.americaspower.org/sites/default/files/NERA%20CPP%20Final%20Nov%207.pdf>

stop it.¹² A rule of this magnitude, which will significantly and undeniably alter the American energy landscape for generations, should not have been crafted by regulators. This type of change absolutely deserved Congressional scrutiny and debate. These kinds of decisions require much more public input than is available through an agency rulemaking process.

iv. Air Quality and Health Impacts

Much has been made by EPA in their public statements regarding the potential health benefits of the CPP. First, I would note, the National Ambient Air Quality Standards (NAAQS) exist to ensure air quality – that’s the appropriate place to ensure healthy air. Second, there has been shown to be a significant correlation between wealth and health, and the economic impacts of this plan could potentially have a detrimental impact on the health of Americans.

a. NAAQS

The NAAQS exist to define clean air. There are currently six criteria pollutants regulated by the NAAQS: Carbon Monoxide, Lead, Nitrogen Dioxide, Ozone, Particulate Matter, and Sulfur Dioxide. These criteria pollutants are set by the EPA according to sections 108 and 109 of the Clean Air Act:

Those two Clean Air Act sections require the EPA Administrator (1) to list widespread air pollutants that reasonably may be expected to endanger public health or welfare; (2) to issue air quality criteria for them that assess the latest available scientific information on nature and effects of ambient exposure to them; (3) to set primary NAAQS to protect human health with adequate margin of safety and to set secondary NAAQS to protect against welfare effects (e.g., effects on vegetation, ecosystems, visibility, climate, manmade materials, etc); and (5) to periodically review and revise, as appropriate, the criteria and NAAQS for a given listed pollutant or class of pollutants.¹³

CO₂ is not a criteria pollutant, nor should it be. Every person in this room is producing CO₂ right now. To the extent that EPA feels the definition of clean air needs to be changed to protect public health, they ought to work within the NAAQS, not creating a whole new level of regulation for power plants that is simply unworkable – as they have done here.

b. Health Impacts

EPA estimates that the CPP will result in the avoidance of 2,700 to 6,600 premature deaths and the prevention of 140,000 to 160,000 asthma attacks in children.¹⁴ In announcing the Clean Power Plan, EPA Administrator McCarthy said on June 2, 2014, “The first year that these

¹² See “Clean Power Plan immediately faces 24-state lawsuit, bipartisan challenge in Congress,” Washington Times, October 23, 2015, available at <http://www.washingtontimes.com/news/2015/oct/23/two-dozen-states-file-lawsuit-against-clean-power-/?page=all>

¹³ “Air Quality Criteria for Lead (2006) Final Report,” Environmental Protection Agency, available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823>

¹⁴ See *supra* “FACT SHEET: Clean Power Plan Benefits”

standards go into effect, we'll avoid up to 100,000 asthma attacks and 2,100 heart attacks—and those numbers go up from there.”¹⁵

These numbers certainly have shock value, but it is not clear how they were developed, and whether they actually account for the fact that the CPP itself, under a rate-based approach, could actually lead to higher CO₂ levels being emitted in the United States (discussed *infra*). Further, from 2005 to 2013, CO₂ emissions from energy-related sources are down 10%,¹⁶ which begs the question – if emissions were being reduced without the CPP, why do we need it at all? Further, despite the fact that this rule handcuffs American power generation, countries around the world continue to build significant coal-power infrastructure. Certainly any CO₂ reduction realized here as a result of the CPP will be more than offset globally by the expansion of coal power in developing nations.

Further, insofar as the CPP will result in lower disposable incomes for American families, it could actually have the opposite impact on overall health. As one report notes, “Vulnerable, low-income families, who spend a higher percentage of their incomes on energy, will be harmed the most—and could be forced to forgo necessities such as food, medical care, and prescription drugs. By forcing higher energy prices on American families, the rule will end up making the poor poorer and the sick sicker.”¹⁷

v. No Actual Climate Benefit

It is also important to note that by EPA’s own assertions this plan will have little to no actual impact on climate change or air pollution levels globally. In fact, EPA Administrator McCarthy has said that the real value of the CPP is “in showing strong domestic action, which can actually trigger global action.”¹⁸ Stated another way, “let’s handcuff American industry and hope the competing businesses in other nations don’t try to use their newfound, and EPA-created, competitive advantage.” This is simply unacceptable.

House Science Chairman, the Honorable Lamar Smith of Texas best summed up the absurdity of the climate change benefits of the CPP:

“EPA asserts that the Clean Power Plan will help combat climate change. However, EPA’s own data demonstrates that is false. This data shows that this regulation would reduce sea level rise by only 1/100th of an inch, the thickness of three sheets of paper. This rule represents massive costs without significant benefits. In other words, it’s all pain and no gain. Under the Clean Power Plan,

¹⁵ “Remarks for Administrator McCarthy, Announcement of Clean Power Plan,” Environmental Protection Agency, June 2, 2014, available at <http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/0a8e7164bb15185985257ceb0050c967!OpenDocument>

¹⁶ “U.S. Energy-Related Carbon Dioxide Emissions, 2013,” U.S. Energy Information Administration, October 21, 2014, available at <http://www.eia.gov/environment/emissions/carbon/>

¹⁷ “The Poor and Sick Suffer Under Obama’s Carbon Rule,” Institute for Energy Research, August 13, 2015, available at <http://instituteforenergyresearch.org/analysis/the-poor-and-sick-suffer-under-obamas-carbon-rule/>

¹⁸ “Politifact: Even the EPA says Obama carbon plan will marginally affect climate change, Scott Walker says,” Milwaukee Journal Sentinel, September 21, 2015, available at <http://www.politifact.com/wisconsin/statements/2015/sep/21/scott-walker/even-epa-says-obamas-power-plan-will-have-only-mar/>

Americans will be subject to the constant threat of government intervention. The onslaught of EPA regulations continues.”¹⁹

Further, under a rate-based approach to compliance, states can actually increase overall load and emissions, as long as those emissions are under the goals on a per-megawatt hour basis. That is, the state can potentially increase CO₂ output overall and still hit the target. Given the stated goals of the plan, it seems unclear as to how such a scheme would achieve those goals.

Conclusion

These rules represent a significant overreach of federal authority. For the good of our state and national economies, these rules must be put on hold. We need market-based solutions to continue to drive our economy into the future and provide a reasonable and predictable regulatory environment with affordable and reliable energy for everyone.

Thank you again for the opportunity to submit this testimony to the committee today. I look forward to the opportunity to testify before the Senate Committee on Homeland Security and Government Affairs, and to answering any questions that committee members have.

Sincerely,

Lucas Vebber
Director, Environmental and Energy Policy
Wisconsin Manufacturers & Commerce

¹⁹ “Statement of Chairman Lamar Smith (R-Texas),” Committee on Science, Space, & Technology, September 11, 2015, available at <http://docs.house.gov/meetings/SY/SY18/20150911/103919/HHRG-114-SY18-20150911-SD004.pdf>