



December 15, 2015

U.S. Environmental Protection Agency
Attention Docket ID No. EPA-HQ-OAR-2015-0734
EPA Docket Center, U.S. EPA, Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Feedback on the Design and Implementation of the Clean Energy Incentive Program,
Docket ID No. EPA-HQ-OAR-2015-0734

Dear Sir or Madam:

The American Chemistry Council, American Petroleum Institute, Council of Industrial Boiler Owners, National Association of Manufacturers, and U.S. Chamber of Commerce (collectively, “the Associations”) appreciate the opportunity to submit the following comments in response to the Environmental Protection Agency’s (“EPA’s”) request for feedback on the design and implementation the Clean Energy Incentive Program (“CEIP”), Docket ID No. EPA-HQ-OAR-2015-0734.

The Associations represent the nation’s leading energy, agriculture, and manufacturing sectors that form the backbone of the nation’s industrial ability to grow our economy and provide jobs in an environmentally-sustainable and energy-efficient manner. Significantly, the Associations both represent, and are reliant upon, electric utilities, which will be directly regulated by the EPA’s Clean Power Plan (“CPP”), 80 Fed. Reg. 64,662 (Oct. 23, 2015), and the state and federal implementation plans designed to achieve the CPP’s emission reduction goals. EPA, in the CPP, asserts unprecedented jurisdiction over electricity production and dispatch. The Associations are key and necessary stakeholders regarding any regulation that impacts energy and which may impact manufacturers directly or indirectly in the future. Several of the Associations have petitioned for judicial review of the final CPP¹ and nothing in these comments is intended to waive any argument that may be made in that petition for review, including but not limited to any motions to stay the litigation.

One of the most significant new issues presented in the final CPP was the inclusion of the CEIP, which is intended by EPA to encourage early investment in certain renewable energy and energy efficiency programs in advance of the CPP’s initial 2022 compliance date.² Because the

¹ See *U.S. Chamber of Commerce et al. v. EPA et al.*, Case No. 15-1382 (D.C. Circuit).

² Some of the Associations are involved in litigation to challenge EPA’s authority under Section 111(d) of the Clean Air Act to, among other things, set performance standards based on EPA’s “building blocks” methodology, which

CEIP was not included as part of the proposed CPP, EPA has established a separate 41-day comment period for the CEIP program.³ The 41-day comment period is insufficient to fully evaluate and comment on the CEIP program. Therefore, the Associations reserve the right to supplement these comments with additional comments in response to EPA’s proposed Federal Implementation Plan. 80 Fed. Reg. 64,966 (Oct. 23, 2015).

As a general matter, to the extent the CPP is implemented as currently contemplated in the final rule, the Associations note the critical importance for flexibility in compliance. Given the strict compliance deadlines and aggressive emission reduction goals that EPA has imposed, EPA should promote flexibility in compliance to the fullest extent possible.

CONCLUSION

EPA must correct the procedural flaws arising from introducing the CEIP for the first time in the final CPP by reopening the comment period on the CEIP, evaluating and responding to comments, and making necessary changes to the CEIP in response to comments. The Associations plan to provide additional comments in response to EPA’s proposed Federal Implementation Plan.

Respectfully submitted,

American Chemistry Council

American Petroleum Institute

Council of Industrial Boiler Owners

National Association of Manufacturers

U.S. Chamber of Commerce

includes: “(1) on-site efficiency improvements by fossil fuel-fired generating units, (2) shifting electricity generation from coal-fired units to lower-emitting gas-fired units; and (3) shifting generation from both coal- and gas-fired units to new renewable energy sources.” *See, e.g.,* Chamber of Commerce et al., Motion for Stay of EPA’s Final Rule, October 23, 2015 at 4.

³ Because EPA did not propose an early action incentive program in the proposed CPP, the CEIP program is not a logical outgrowth of the proposed CPP. *See, e.g., Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994) (“Something is not a logical outgrowth of nothing.”). While the Associations appreciate the fact that EPA has provided this opportunity for comment, it is imperative that EPA fully comply with the Clean Air Act’s rulemaking requirements by responding to comments and making necessary changes to the CEIP. The Associations reserve the right to seek judicial review of EPA’s failure to follow statutory procedures when adopting the CEIP program.