LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6301

(202) 225–6371
www.science.house.gov

December 19, 2013

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Administrator McCarthy,

Science is a valuable tool to help policymakers navigate complex issues. However, when inconvenient facts are disregarded or when dissenting voices are muzzled, a frank discussion becomes impossible. The Environmental Protection Agency (EPA) cannot continue to rush ahead with costly regulations without allowing time for a real-world look at the science.

We are concerned about the Agency's apparent disregard for the concerns of its science advisors. On December 3, 2013, Chairman Smith wrote to you about the troubling findings of the Science Advisory Board's (SAB) Work Group highlighting problems with the science that underlies the proposed New Source Performance Standards (NSPS) for power plants.[1] The Work Group showed that EPA rushed ahead with its costly power plant proposal without waiting for the advice of its independent science advisors and that the underlying science lacked adequate peer review.[2]

These discoveries raised serious questions about EPA's proposed rule and clearly merited further review. However, when these concerns were raised, a senior official in the EPA Air Office sought to distance the Agency from the criticisms leveled by the SAB Work Group. Specifically, the EPA claimed that the NSPS is not "setting any requirements on sequestration and not providing any analysis as such because we don't speak to the sequestration."[3] The claim that the rule doesn't need to address storage concerns highlights your Agency's continued lack of transparency and consistent attempts to avoid accountability.

---

[1] Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric utility Generating Units (Sept. 20, 2013).
[2] Memorandum from SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science to Members of the Chartered SAB and SAB Liaisons, Nov. 12, 2013.
[3] *SAB Suggests Dropping Review Of CCS In Utility NSPS After EPA Pushback*, InsideEPA, Dec. 5, 2013 (quoting Peter Tsirigotis, Director, Sector Policies and Programs Division, Office of Air and Radiation, US EPA).

While the Agency admitted that there are some unanswered scientific issues regarding carbon capture and storage (CCS) systems, the official noted that "most of those things are outside of this rulemaking."[4] Because long-term geologic storage encompasses new science and lacks a proven regulatory framework,[5] EPA attempted to avoid the obvious questions regarding storage of carbon. In particular, EPA deflects the concerns raised by its science advisors by claiming that the charges of inadequate peer-review relate to studies beyond the scope of the NSPS proposal. In other words, EPA wants people to believe that the rule's regulatory footprint only covers carbon capture, without addressing what happens to the captured carbon.

The Agency's distinction rings hollow. The new mandates in the NSPS rule will create regulatory burdens and litigation risks that could make carbon dioxide from power plants no longer economically viable for use in enhanced oil recovery (EOR) operations. But since EOR is currently the only way to comply with the new power plant rule,[6] this would impede both the practical operation of the rule and erect unnecessary barriers to the use of EOR. As you know, the Committee has already raised concerns with the Agency's premature declaration of "adequate demonstration" of CCS under the Clean Air Act; unintended burdens on EOR further complicate the analysis.

In order to operate as intended, the proposed NSPS rule demands that carbon captured by CCS technology be made available for use in EOR. In fact, EPA notes in the proposed rule that "the cost of 'full capture' CCS without EOR is outside the range of costs that companies are considering for comparable generation and therefore should not be considered [a Best System of Emissions Reduction] for CO2 emissions for coal-fired power plants."[7] Further, EPA recently argued before the U.S. Supreme Court that its Clean Air Act authority should "ensure that the reductions that had to take place were done in the most cost-effective manner possible."[8]

The importance of being able to use carbon dioxide from power plants in EOR operations was confirmed at the Science Committee's October 29, 2013, hearing on the NSPS proposal. The hearing identified a range of concerns about whether the CCS technology necessary to comply with the proposed rule is commercially ready. In response to our concerns, we were assured that the use of carbon dioxide in EOR operations would be an important part of the way that the NSPS rule would function. For example, Kurt Waltzer, of the Clean Air Task Force, stated that "wide use of carbon dioxide captured from power and industrial plants is vital to expanded use of [EOR] in the U.S. that will increase U.S. oil production and decrease dependence on foreign oil."[9]

Furthermore, testimony in our October hearing made the point that the cost of CCS related operations will be an important part of whether the rule, and the President's larger climate

---

[4] *Id.*

[5] In fact, no one has ever successfully obtained the necessary permit to permanently store carbon dioxide under EPA's Class VI injection wells. Consequently, Enhanced Oil Recovery (EOR) is currently the only means of satisfying the terms of the NSPS mandate.

[6] See *supra* at n. 4.

[7] Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric Utility Generating Units (Sept. 20, 2013), prepublication version at 30-31.

[8] Transcript of US EPA, et al. v. EME Homer City Generation, L.P., et al., (U.S. Dec. 10, 2013)(No. 12-1182)(argument of Deputy Solicitor General on behalf of EPA) at 32.

[9] *EPA Power Plant Regulations: Is the Technology Ready?*, Subcomm. On Env. Of the H. Comm. On Science, Space, and Technology, 113th Cong. (Oct. 29, 2013) (testimony of Kurt Walzer at 2).

initiatives, can operate effectively. Charles McConnell, from Rice University and a former Assistant Secretary of Energy in the Obama Administration, explained that the President's carbon-related objectives "can only be achieved through the broad global deployment of low cost, commercially viable technology for capturing and permanently and safely storing/utilizing CO_2 from all fossil energy sources."[10]

Indeed, the most widely cited example of a CCS development project—the Kemper County, Mississippi project—is predicated on integrating carbon capture with state-of-the-art use of the carbon for EOR purposes. When you testified before our Committee on November 14th, the only domestic project you could name was, in fact, this same project. Although there have been significant delays and cost-overruns, as with any untested technology, we believe the Kemper County project holds promise and will advance our understanding of the science and economics of CCS. However, given the prohibitions of the Energy Policy Act of 2005 (EPAct),[11] this project alone cannot form the basis of adequate demonstration under the Act. Moreover, the encumbrances the NSPS rule unnecessarily places on EOR operations further calls into question whether Kemper can be the basis for such a regulation.

Given the importance EPA places on using EOR to offset the incredible costs of CCS technologies,[12] we are confounded as to why the NSPS rule includes language that would impose new regulatory burdens on EOR operators who seek to use carbon captured from power plants. Specifically, the proposal would require EOR operators to meet new reporting obligations under Subpart RR of the Greenhouse Gas (GHG) reporting rules.[13] Although these Subpart RR reporting rules have always been voluntary, the NSPS would make them mandatory for EOR operators. With this new requirement the EPA quietly declares war on EOR.

This new Agency mandate—placed only on carbon captured to satisfy the NSPS rule for power plants—creates a variety of new regulatory costs. For example, Subpart RR reporting requires that operators draft and obtain EPA approval for monitoring, reporting, and verification (MRV) plans. Not only will such MRV plans be costly to create and administer, the process for approving these plans is likely to result in litigation that will add both costs and delays for EOR operators.

All of these burdens are being imposed on an industry unrelated to power plants and with no clear justification. As EPA noted in the 2010 final GHG rule, the reporting mandates do not directly advance public health.[14] These unnecessary additional costs and delays would be avoided if EPA continued to allow EOR operators accepting power plant CO_2 to report under Subpart UU, which EPA identified in its final GHG reporting rule as the more appropriate for EOR operators.[15]

---

[10] *EPA Power Plant Regulations: Is the Technology Ready?*, Subcomm. On Env. Of the H. Comm. On Science, Space, and Technology, 113th Cong. (Oct. 29, 2013) (testimony of Charles D. McConnell at 3).
[11] 42 U.S.C. § 15962(i). *See also* Letter from Chairman Lamar Smith to Administrator McCarthy, Nov. 6, 2013.
[12] Standards of Performance for Greenhouse Gas Emission from New Stationary Sources: Electric utility Generating Units (Sept. 20, 2013), prepublication version at 30-31.
[13] *Id.* at 279.
[14] Instead, the Agency claimed that the "greatest benefit of mandatory reporting…will be realized in developing future GHG policies." Mandatory Reporting of Greenhouse Gases: Injection and Geologic Sequestration of Carbon Dioxide; Final Rule, 75 Fed. Reg. 75,060 (Dec. 1, 2010) at 75,075.
[15] *Id.* at 75,076.

Further, the NSPS mandates that the EPA imposes on EOR operators are not the only new regulatory burdens operators must shoulder. The NSPS rule must be placed in the context of other rules EPA is pushing through. For example, the Office of Management and Budget has completed its review of an EPA final rule that addresses whether compressed carbon dioxide should be treated as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). We understand that this rule would potentially grant conditional exclusions to particular types of carbon dioxide streams.

While, such a rule seems sensible, it may in fact create substantial uncertainties. For example despite their constructive and commercially important use in EOR, EPA's rule may classify these carbon dioxide streams as "solid waste." Practically speaking, that would mean exposing EOR operators to potential liability under RCRA. If the Agency merely creates a narrow carve-out for Class VI storage wells, it may fail to protect the use of carbon dioxide incidentally stored or injected for EOR purposes. The Agency must ensure that RCRA doesn't create additional obstacles to the use of anthropogenic carbon for EOR activities. The EPA cannot afford to ignore the complex consequences of its rules in real-world applications. Ultimately, the American people will bear the burden if the Agency ignores the cumulative effects of the rule-making web EPA continues to weave.

It is unacceptable that the Agency's power plant rule would create new obstacles to the very technology that the rule purports to advance. Accordingly, we look forward to your explanation regarding the justification for including the new reporting requirements in the proposed rule. We also request any analysis prepared by EPA on the costs associated with this specific provision and how those costs may affect the economic viability of the use of power plant CO_2 in EOR operations. Clearly, this rule covers the entire system of emissions reductions, and as such, EPA must address both the feasibility of new capture technologies and the unanswered concerns about storage of captured carbon.

The EPA's proposed power plant regulations will put Americans out of work and will make electricity more expensive and less reliable. It is misleading and dangerous for EPA to quietly dismiss inconvenient facts and ignore the real-world consequences of its costly regulations. Americans deserve honesty.

Thank you for your prompt attention to this matter.

Sincerely,

Lamar Smith
Chairman

Rep. Dana Rohrabacher
Vice Chair

Rep. Ralph M. Hall

Rep. F. James Sensenbrenner, Jr.

Rep. Frank D. Lucas

Rep. Randy Neugebauer

Rep. Michael T. McCaul

Rep. Paul C. Broun

Rep. Steven M. Palazzo

Rep. Mo Brooks

Rep. Randy Hultgren

Rep. Larry Bucshon

Rep. Steve Stockman

Rep. Bill Posey

Rep. Cynthia Lummis

Rep. David Schweikert

Rep. Thomas Massie

Rep. Kevin Cramer

Rep. Jim Bridenstine

Rep. Randy Weber

Rep. Chris Collins

cc: David T. Allen, Chair, Science Advisory Board.
James R. Mihelcic, Chair, Science Advisory Board Work Group on EPA Planned Actions
Rep. Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology