



A HEALTH WRECK FOR AMERICA'S CHILDREN

May 3, 2011

A 56 page discussion draft circulated on April 29, 2011 (dubbed the “Electric Power Regulatory Coordination Act of 2011”) would halt implementation of the nation’s clean air laws for the nation’s single largest source of air pollution: fossil fueled power plants. The abstruse legal language set out in the 56 page document is sharply pointed to poke holes in the fabric of our nation’s clean air laws. If it became law, the discussion draft would enable delays in which damaging health harms due to power sector air pollution would persist, imposing a heavy health burden on America’s children:

In the first two years alone, the pollution allowed under the discussion draft is associated with over 34,000 deaths, 220,000 asthma attacks, and 1.5 million missed work and sick days, health-harming impacts that would be prevented by timely implementation of EPA’s proposed clean air standards for the nation’s most toxic pollutants.

For over a decade, the discussion draft categorically bars EPA from taking action to (1) limit power plant emissions of arsenic, chromium, and acid gases, (2) protect human health imperiled by interstate air pollution transport discharged by coal-fired power plants, (3) reduce the haze pollution in America’s premier national parks, and (4) finalize proposed emission standards to reduce power sector sulfur dioxide pollution, which transforms into lethal particulates.

The discussion draft would halt the application of clean air protections under two landmark Supreme Court cases, *Massachusetts v. EPA* and *Environmental Defense v. Duke Energy*, to power plant pollution by, for example, prohibiting significant reductions in climate-disrupting pollution from the nation’s existing coal plants for over a decade; these facilities are the nation’s single largest source of climate pollution, discharging 1.8 billion tons of carbon dioxide annually and 4.9 million tons daily.

And while some power companies are seeking to erode bedrock clean air protections, other major utilities are well-positioned to deliver healthier air for America:

- ❖ Dick Kelly, Chairman of the Edison Electric Institute, Xcel CEO and Chairman: **“Pursuing emission reductions for several years positions us to meet future environmental goals, and we have a variety of tools which we can do that with”; “we do have the foundations for a very, very successful future.”** [Dec. 1, 2010 Investor Meeting]

- ❖ William Johnson, President and CEO, Progress Energy on the proposed merger of Duke Power and Progress: **“As a result of these combined actions, we believe the new company will be well positioned to meet the new EPA MACT regulations expected later this year and in to 2012. We still have much work to do to comply with these rules, which could require significant additional capital investment and additional announced plant closures. However, we are further down the road on compliance than many other companies with large coal fleets. We should also benefit by combining best practices in our fleet modernization efforts.”** [Jan. 10, 2011 Investor Meeting]

- ❖ Peter Darbee, Chairman, President and CEO, PG&E Corp.; Jack Fusco, President and CEO, Calpine Corp.; Lewis Hay, Chairman and CEO, NextEra Energy, Inc.; Ralph Izzo, Chairman, President and CEO, Public Service Enterprise Group, Inc.; Thomas King, President, National Grid USA; John Rowe, Chairman and CEO, Exelon Corp.; Mayo Shattuck, Chairman, President and CEO, Constellation Energy Group: **“The electric sector has known that these rules were coming. Many companies, including ours, have already invested in modern air-pollution control technologies and cleaner and more efficient power plants. For over a decade, companies have recognized that the industry would need to install controls to comply with the act's air toxicity requirements, and the technology exists to cost effectively control such emissions, including mercury and acid gases.”** [Dec. 8, 2010 Wall Street Journal letter to the editor]

A number of the nation’s largest power companies are financially well positioned to comply with these important health protections. In 2010, the top ten power companies by generating capacity [MWh] had a combined \$28.4 billion in profits and \$7.5 billion in cash balances.

| PROVISION | DESCRIPTION | IMPACT |
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| TITLE I | | |
| Sec. 101 “Alternative Compliance Program” | <ul style="list-style-type: none"> Authorizes owners of existing coal plants to decline to comply with new clean air and environmental protections by electing one of the alternatives identified below and receiving a permanent exclusion from new clean air and environmental protections. The owner elects the alternative by January 1, 2014 and identifies whether by December 31, 2020 it will (1) permanently retire the unit or (2) replace/repower the unit with natural gas, biomass, renewable fuel, or advanced coal-fueled technology. | This provision creates a loophole from healthy air protections, allowing existing coal-fired power plants that would otherwise have to reduce toxic air pollution, sulfur dioxide, and other health-harming pollution to receive a categorical exclusion from clean air compliance for over five years (from January 2012 under the Transport Rule, and from January 2015 under the air |

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| | <p>The significant term “advanced coal-fueled technology” is not defined in the discussion draft.</p> | <p>toxics standards).</p> |
| <p>Sec. 102 “Well-Controlled Units”</p> | <ul style="list-style-type: none"> • If owners do not elect the alternative in section 101, coal-fired power plants are subject to delineated emission limits for sulfur dioxide, oxides of nitrogen and mercury that are less protective than pending EPA clean air proposals, and EPA is barred from establishing more protective emission standards that take effect before January 1, 2025. See §104(d)(4). • The owner submits a plan by January 1, 2014 to meet the alternative prescribed limits for: (1) 60 percent of its coal capacity by December 31, 2016, (2) 80 percent by December 31, 2018, and (3) 100 percent by December 31, 2020. | <p>These provisions would allow considerably more health-harming pollution than would be authorized under pending clean air protections, allowing over 34,000 deaths, 220,000 asthma attacks and 1.5 million missed work and sick days as a result of the first two years of delay effectuated by these provisions. The delineated emission rates are weaker and achieved significantly later than provided for under the Clean Air Act as EPA’s Transport Rule Phase I and Phase II would take effect in 2012 and 2014 for eastern power plants and the air toxics standards provide for compliance by January 2015 for coal plants nationwide (with a provision for EPA to grant a one year extension). As noted, coal plants under this section are categorically exempted from these protective clean air measures through January 1, 2025.</p> |
| <p>Sec. 103 “Regulation of Hazardous Air Pollutants”</p> | <ul style="list-style-type: none"> • Bars EPA from limiting any hazardous air contaminants other than mercury discharged from coal plants including arsenic, chromium, and acid gases until: <ul style="list-style-type: none"> ○ December 31, 2020, ○ EPA performs a risk assessment of the toxics and | <p>For well over a decade, EPA would be categorically barred from completing action on recently proposed emission limits for the toxic arsenic, chromium and acid gases discharged from coal</p> |

| PROVISION | DESCRIPTION | IMPACT |
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| | <p>determines that regulation is necessary and appropriate, and</p> <ul style="list-style-type: none"> ○ EPA submits a report to Congress based on the risk assessment and Congress has failed to enact legislation for these contaminants by a date two years after the report to Congress is submitted. • Risk-Assessment: <ul style="list-style-type: none"> ○ EPA is required to consider the risks to human health from coal plant toxics emissions only on a pollutant-by-pollutant basis and may not evaluate the overall health impacts due to multipollutant discharges. ○ EPA shall submit its report to Congress based on the risk-assessment by January 1, 2020. • Emission Standards: <ul style="list-style-type: none"> ○ EPA may establish limits on the discharge of these toxic air pollutants only after two years have elapsed after the report to Congress and Congress has failed to enact specific legislation. | plants. |
| <p>Sec. 104 Sulfur Dioxide and Nitrogen Oxide Emissions</p> | <p>Provides that the Clean Air Interstate Rule (CAIR) shall remain in effect and that the proposed Transport Rule and other protections for interstate air pollution are restricted.</p> | <p>These provisions would prevent EPA from finalizing the proposed Transport Rule, resulting in one million tons of additional sulfur dioxide pollution in 2012 and more than one million tons of additional sulfur dioxide pollution in 2014. This harmful pollution is a key contributor to lethal particulates, which cause premature deaths and a host of other serious health ailments.</p> |

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| TITLE II | | |
| Sec. 201 “Regulation of Coal Combustion Residuals” | Not later than 18 months after enactment of this Act, the Administrator shall establish guidelines for regulation of coal combustion residuals that classify such residuals as non-hazardous waste under subtitle D of RCRA. | Compels EPA to classify coal combustion waste as non-hazardous irrespective of the scientific findings regarding its toxicity. |
| Sec. 202 “Performance Standards for Carbon Dioxide” | Prohibits EPA from limiting carbon dioxide pollution from existing coal plants through December 31, 2020 other than to call for an annual boiler efficiency tune up and a periodic energy assessment. | Bars significant reductions in carbon pollution from existing coal plants for a decade regardless of human health impacts. |
| Sec. 203 “Pollution Control Projects and Efficiency Improvements” | Provides that installation of pollution control technologies and improvements in energy efficiency shall not constitute modifications under the Clean Air Act even if there is an overall increase in the amount of air pollution discharged from the plant. | Exempts coal-fired power plants from the time-tested requirement to install modern pollution control equipment when the plant is revamped and increases actual emissions. |
| Sec. 204 “Expedited Review of Federal Authorizations” | Provides that the Department of Energy shall be the lead agency for coordinating all applicable federal authorizations under the Endangered Species Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the National Environmental Policy Act, and the Clean Air Act for replacing, repowering or constructing a new facility at coal-fired electric generating units retired pursuant to section 101 (above). This would encompass federal authorizations for the construction of a new gas plant, biomass plant and “an advanced coal-fueled technology” plant. | Changes long-standing responsibilities for carrying out health and environmental protections by making the Department of Energy the lead agency in lieu of the US Fish and Wildlife Service for the Endangered Species Act, EPA for the Clean Water Act and Safe Drinking Water Act and Clean Air Act, and the Council on Environmental Quality for NEPA. |