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January 21, 2016

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VIA ELECTRONIC MAIL & ELECTRONIC SUBMISSION

Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Proposed Model Trading Rules – Docket ID No. EPA-HQ-OAR-2015-0199

Dear Administrator McCarthy,

As a nonprofit health advocacy organization dedicated to clean air in Alabama, Gasp strongly supports the EPA Clean Power Plan. The health impacts attributable to air pollution and climate change are not only a concern to Gasp, but these health impacts should concern all citizens. Gasp is specifically concerned with the State of Alabama's lack of planning for a state implementation plan and the role equity and environmental justice will play in the state and federal implementation plans.

I. Alabama regulators are not currently planning to comply with the Clean Power Plan.

Alabama's most populated city, Birmingham, is home to some of the dirtiest air in the nation. Over the past decade, Alabama's coal-fired power plants produced an average of 76,3000,00 tons of carbon pollution each year. The second largest carbon emitting coal-fired power plant in the entire country is Miller Steam Plant, which is owned and operated by Alabama Power Company, a subsidiary of Southern Company.¹ Miller Steam Plant also ranks 7th in the country for mercury emissions.²

This month, Ron Gore, the Air Division chief for the Alabama Department of Environmental Management (ADEM) asserted that ADEM is

¹"America's biggest polluters: Carbon dioxide emissions from power plants in 2007". (2009, November). Environment America. Retrieved from <http://www.environmentamerica.org/reports/ame/americas-biggest-polluters-carbon-dioxide-emissions-power-plants-2007>

²"Dirty kilowatts: America's top 50 power plant mercury polluters." (March 2010). EIP Report. Retrieved from http://www.environmentalintegrity.org/news_reports/documents/EIP_Top50USPowerPlantMercuryEmitters2010.FINAL042910_000.pdf

postponing work toward drafting a plan until mid- to late spring³. Gore has said, “We’re optimistic about a stay [of the Clean Power Plan]. We don’t see any sense in working on it now until there’s a ruling [by the D.C. Circuit] on that,” adding that ADEM staff members have met for early discussions with three of the largest utilities in the state that would be affected by the carbon limits.”⁴ To Gasp’s knowledge, to date, ADEM has not met with any key stakeholders other than the utilities.

On January 21, 2016, the United States Court of Appeals for the District of Columbia decided not to stay the Clean Power Plan. Accordingly, ADEM’s strategy has wasted valuable time in which vulnerable communities and stakeholders throughout Alabama could have participated in developing a state implementation plan since the Clean Power Plan went into effect in December of 2015.

II. Alabama regulators do not adequately consider environmental justice in rulemaking and decisionmaking.

In the final rule, the EPA encourages states to conduct their own analyses of community considerations when developing their plans⁵. Specifically,

“[i]n sections VIII.D–E of this preamble, the EPA explains that states *need to engage meaningfully with communities and other stakeholders during the initial and final plan submittal processes*. Meaningful engagement includes *outreach to vulnerable communities*, sharing information and soliciting input on state plan development and on any accompanying assessments such as those described above, and selecting methods for engagement to support communities’ involvement at critical junctures in plan formulation and implementation.”⁶

In no uncertain terms, EPA has stressed the importance of community engagement, specifically highlighting vulnerable communities. ADEM’s current “wait and see” strategy is not only imprudent, but also by speaking only with utilities, ADEM is already not taking seriously their role in the state implementation process of the Clean Power Plan.

It further concerns Gasp that ADEM already does not adequately consider vulnerable populations in its decisionmaking and rulemaking. ADEM has a definition⁷ for environmental justice that is not nearly as

³ Marr, C., *Alabama Delays Clean Power Plan Work, Hoping for Stay*, Bloomberg BNA, Jan. 11, 2016, <http://www.bna.com/alabama-delays-clean-n57982065985/>

⁴ *Id.*

⁵ Standards of Performance for Greenhouse Gas Emissions from Existing Sources: Electric Utility Generating Units, 80 Fed. Reg. 205 (October 23, 2015) (to be codified at 40 CFR pt. 60) at 64916.

⁶ *Id.* at 64916 (emphasis added).

⁷ ADEM defines environmental justice as “The meaningful involvement and consideration of all people – regardless of race, color, national origin, or income –

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inclusive or protective as the EPA's definition⁸. To date, the Jefferson County Department of Health (JCDH), which implements the Air Pollution Control Program pursuant to Alabama Code § 22-28-23, has adopted no definition of environmental justice⁹. Accordingly, where two agencies tasked with enforcing the Clean Power Plan do not adequately define or have processes set up for ensuring environmental justice, it is very concerning that the community engagement aspect of the state implementation plan will not be fulfilled. Where vulnerable communities are not considered by regulators in Alabama and the state is already dragging its feet for crafting a plan and meaningfully involving stakeholders other than the utilities, Gasp has little confidence that ADEM can develop an adequate state implementation plan.

III. The Model Training Rule must be more equitable

The Clean Power Plan calls on states to make a plan to reach carbon pollution targets set by EPA through 2030. In its proposed federal implementation plan, EPA has included a Model Trading Rule, and it assures states that their implementation plans will be "presumptively approvable" if they incorporate that rule. Given the aforementioned deficiencies in ADEM's state implementation plan process, outreach and environmental justice

with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. (Adopted by ADEM in August 2007)."

⁸ EPA defines environmental justice as "Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair Treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies. Meaningful Involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decisionmaking process; and (4) the decision-makers seek out and facilitate the involvement of those potentially affected"

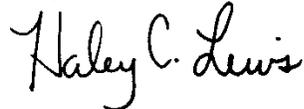
⁹ EPA found JCDH does not have an Environmental Justice Policy. Currently, JCDH does not consider environmental justice issues during the issuance of a permit. Demographics, cumulative effects and pre-existing burdens are not routinely evaluated as part of the permitting process. U.S. Environmental Protection Agency, Jefferson County Department of Health Title V and New Source Review Program Review, (Dec. 23, 2005), available at http://www.epa.gov/region4/air/permits/programevaluations/JeffersonCoAL_FinalReport.pdf at 6.

program, it concerns Gasp that ADEM would benefit from a presumption of approval for the Model Trading Rule.

EPA's Model Trading Rule gives away virtually all the value in a market-based system to polluters. This massive transfer of wealth comes directly at the cost of every public interest served by any state government. Gasp strongly encourages the EPA to not close the door on our future by establishing default settings in a Model Trading Rule that offers polluters virtually all tradeable allowances for free. At the very least, we encourage EPA to give itself the option of assigning the value of its Model Trading Rule to purposes for public interest, including investments in energy efficiency and clean energy in low-income communities and in just transition for communities recovering from dirty industries as we move toward a clean energy economy. Equity must be at the center of a just transition to a clean economy.

Gasp enthusiastically welcomes the benefits that will be realized from the Clean Power Plan. Because our state agencies do not adequately consider environmental justice in their rulemaking and decisionmaking, and because ADEM is currently delaying work on a state implementation plan, Alabama would directly benefit from a strong federal implementation plan that adequately safeguards vulnerable communities. As is the case too often, the EPA is Alabama's best hope for environmental justice.

Respectfully submitted,



Haley Colson Lewis
Programs Manager



Michael Hansen
Interim Executive Director