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Richard L. Revesz

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Will Batson
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Batson,

Thank you for the opportunity to testify before the Subcommittee on Energy and Power on October 22, 2015. Below please find my response to the additional question for the record posed by the Honorable Frank Pallone.

- 1. At the end of the hearing, Congressman Olson asked Ms. Wood about the Good Neighbor Provision in the Clean Air Act and whether it supports the Clean Power Plan. In response, Ms. Wood said: "The Good Neighbor Provision is part of the NAAQS program, the National Ambient Air Quality Standard provision. It is part of section 110 of the Clean Air Act. It is different. And what that provision covers is the attainment of National Ambient Air Quality Standards. And the way that States can do that is much more broad than under section 111, which is the standards of performance for sources. So it can encompass many more things than a standard of performance can. It is not as limited to the source or limited to an emission rate. It works differently. It is a completely different program."**

Do you agree with Ms. Wood's assessment? Please explain.

I disagree with the suggestion that EPA has less freedom to employ flexible emission-reduction strategies under Section 111(d) of the Clean Air Act than it does under Section 110(a)(2)(D)(i)(I), commonly known as the Good Neighbor Provision. While Ms. Wood insists that Section 111(d) "works differently" from Section 110, the Clean Air Act in fact requires that the two sections *work similarly*: Section 111(d) instructs the EPA Administrator

to follow “a procedure similar to that provided by section [110]” when working with states to create standards of performance for existing sources.¹

The Good Neighbor Provision is designed to prevent “any source” in an upwind state from “contribut[ing] significantly” to nonattainment of the National Ambient Air Quality Standards in a downwind state.² In implementing this provision, EPA has repeatedly taken a flexible, cost-minimizing approach to emission reduction. In the NO_x SIP Call, promulgated during the Clinton Administration;³ the Clean Air Interstate Rule, promulgated during the George W. Bush Administration;⁴ and the Cross-State Air Pollution Rule (CSAPR), promulgated during the Obama Administration,⁵ the agency set statewide emission budgets that regulated plants could achieve collectively, through emission trading or other means. The Supreme Court upheld CSAPR in 2014, calling it a “permissible, workable, and equitable interpretation of the Good Neighbor Provision.”⁶

Like CSAPR and its predecessors, the Clean Power Plan takes a flexible approach to the regulation of power plants, allowing emission reductions to occur where they can be achieved most cost-effectively. Nothing in the text of Section 111 forecloses this eminently sensible strategy.

Thank you once again for the opportunity to testify and to respond to this additional question.

Warm regards,



Richard L. Revesz

¹ 42 U.S.C. § 7411(d)(1).

² 42 U.S.C. § 7410(a)(2)(D)(i)(I).

³ Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone, 63 Fed. Reg. 57,356, 57,358, 57,456 (Oct. 27, 1998).

⁴ Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call, 70 Fed. Reg. 25,162, 25,162, 25,229 (May 12, 2005).

⁵ Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 Fed. Reg. 48,208, 48,210 (Aug. 8, 2011).

⁶ EPA v. EME Homer City Generation, LP, ___ U.S. ___, 134 S. Ct. 1584, 1610 (2014).