

Attachment A

Implementation

1. Indiana strongly supports U.S. EPA's interpretation that its primary role is to provide emission guidelines to states, who then are responsible for the development of standards of performance for sources and subsequent state plans implementing those standards of performance. States should take a leading role in the development of standards of performance because each state differs from one another and thus, states are in the best position to decide what constitutes adequate standards of performance for their affected sources. Under the proposed ACE rule, states will be able to craft plans and standards of performance that closely align with their overall unique needs, rather than a more prescriptive approach that is less flexible. However, Indiana urges U.S. EPA to provide states with adequate direction when it comes to setting standards of performance for sources or drafting a state plan. Indiana appreciates the amount of flexibility that U.S. EPA has included in the proposed ACE rule, but states need to be sure of what exactly is required of them for an approvable state plan. If U.S. EPA does not plan on promulgating any sort of model rule that lays out further guidelines for what constitutes acceptable standards of performance or state plans, then it is imperative that U.S. EPA provide states with clear expectations. Indiana recognizes that, given the potential for different needs among sources and states, flexibility is very much needed, but states also need clear expectations in order to create an acceptable state plan.

2. Indiana believes U.S. EPA should promulgate a Model Rule or include a template or guidance for states to follow as they craft state plans. Under the proposed rule, clear requirements for a state plan aren't laid out. While Indiana understands that the nature of the proposed rule requires certain flexibilities, Indiana believes that U.S. EPA should provide further guidance on some of the aspects of state plans that would be consistent from state to state, such as recordkeeping, monitoring, and verification requirements, in order to clear up confusion. Further, states need to know what would and would not be allowed in state plans. For example, would a state be allowed to implement a two-step process, where the first step involved monitoring a source for a designated period of time and then set a standard of performance based on monitored values? State plans should also be able to include a process for modifying the performance standard, if necessary.

3. U.S. EPA needs to provide clarification on which units are considered affected units under the proposed ACE rule. Many states have questioned what the definition of an affected unit is under the proposed ACE rule. In some areas of the rule, U.S. EPA states that coal-fired units are the only sources affected, but in other areas of the rule, all fossil fuel-types are included in the definition of an affected unit. Many states have natural gas boilers that may or may not be affected and it is important that U.S. EPA specify very clearly what an affected unit is under the proposed ACE rule.

4. In the proposed ACE rule language, U.S. EPA uses language that is unnecessary and don't apply to the proposed rule. For instance, in the rule language, U.S. EPA states that standards of performance that are imposed on affected EGUs as a part of a state plan must be quantifiable, non-duplicative, permanent, verifiable, and enforceable. By using the term non-duplicative, it

creates unnecessary confusion because there are currently no greenhouse gas (GHG) rules that apply to existing coal-fired power plants. Therefore, standards of performance set on affected EGUs wouldn't be running the risk of duplicating previous requirements with regard to GHG. U.S. EPA should remove the requirement for the standard of performance to be non-duplicative.

5. Indiana believes that, in the proposed ACE rule, U.S. EPA needs to set explicit timing requirements for every step of the process. While Indiana appreciates that U.S. EPA has set explicit timing requirements for state plan submittals and U.S. EPA's response of approval/denial for state plans, other aspects of the proposed rule are vague when it comes to timing. For instance, the draft rule language explains that state plans need to include increments of progress if compliance for a source is later than 24 months after states submit plans, but does not include any ultimate compliance date for sources. Indiana believes that U.S. EPA needs to include a compliance date so sources and states have certainty during the planning process.

Performance Standards

1. Beyond having certainty with regard to what constitutes an affected source, U.S. EPA needs to provide states with more clarity on which sources need to have standards of performance specified in state plans and what those standards of performance might look like. U.S. EPA has stated that Section 111(d) allows states to take remaining useful life, among other factors, into consideration when setting standards of performance. However, U.S. EPA has not specified whether affected sources that states determine are at or near the end of their remaining useful life would still need standards of performance included in a state plan that are more stringent than business as usual. Nor has U.S. EPA determined what would constitute an affected unit at or near the end of its remaining useful life. Further, if a state determines that an affected unit at a source has previously made all upgrades to improve heat rates and can achieve no more, states then set a standard of performance that is based on that unit's "business as usual" heat rate performance. However, what would happen if affected units had trouble meeting those standards of performance after they're set? Since heat rate improvements (HRIs) tend to degrade over time, this is a very real possibility for affected units that have already implemented HRIs. U.S. EPA needs to provide more clarity when discussing which units, exactly, will require standards of performance to be set within state plans, as well as what a "business as usual" standard of performance might look like.

2. In the proposed ACE rule, U.S. EPA does not lay out a clear process for states to follow in order to set standards of performance for affected sources. While it may be pertinent, given the design of the proposed rule, to let states decide the specifics of their own state plans, Indiana is seeking clarity on what an acceptable process for the creation of a state plan would consist of. In particular, Indiana is wondering if states would be allowed to perform monitoring on sources for a certain period of time in order to set standards of performance that reflect current data or if a state would need to rely on historical data when setting a standard of performance. Indiana believes that in the final rule, U.S. EPA needs to provide clarity on what an acceptable process for formulating a state plan would look like, including what activities are allowed. Further, Indiana seeks clarification on acceptable mechanisms should sources fail to meet their specified limits. The proposed rule doesn't appear to touch on this matter but it's a very real possibility that affected units would not be able to meet the standards of performance set by states. Indiana

seeks clarity on what enforcement mechanisms would be allowed in state plans in order to bring affected units into compliance.

New Source Review (NSR) Permitting

1. In the proposed ACE rule, U.S. EPA asked for comment in several places regarding its proposal to update the NSR permitting program in order to allow affected sources to perform HRIs without fear of triggering NSR. Indiana believes it is important that U.S. EPA address requirements triggering the NSR permitting process as NSR can be extremely expensive for sources to have to go through. Further, Indiana believes that the proposed update should be integrated into the proposed ACE rule since the NSR changes would only apply to EGUs affected by this rulemaking.

Candidate Technologies

1. While Indiana has no recommendations for additional candidate technologies that U.S. EPA should consider at this time, the state requests that it be granted the flexibility in the final rule to consider alternative compliance strategies or technologies that may cost less than the candidate technologies listed but produce the same or greater CO₂ reductions. Indiana would further note that a number of the coal-fired EGUs have already installed a number of the candidate technologies, such as neural networks, air heater and duct leakage controls, variable frequency drives, and redesigning or replacing economizers, as part of the SO₂, NO_x, and mercury pollution control projects installed within the past decade. While the individual costs of these candidate technologies are confidential, Indiana would note that these projects have typically fallen toward the higher end of the cost range U.S. EPA provides in Table 2 of the proposed rule. Therefore, Indiana agrees with allowing states to consider the cost of remaining HRIs that can be conducted on an EGU and the remaining life of the EGU when making decisions for CO₂ reductions at a unit.