



# ENERGY AND ENVIRONMENTAL POLICY

## MARCH 2012

### OVERVIEW

■ Energy and environmental policies are inextricably linked. Efforts to alter the amount and types of America’s energy consumption often are based on the goal of improving the environment. Similarly, environmental laws and regulations are used to influence energy policy decisions.

■ AMP’s diverse power supply portfolio consists of new efficient coal, natural gas, hydroelectric, other renewables (landfill gas, wind, and solar), and smaller distributed generation units, as well as power purchased on the market to supply our member municipal electric systems. However, because much of the baseload generation in our region is coal-fired, AMP has concerns about the impacts of shut-downs of existing facilities on reliability and capacity prices.

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### ACTION REQUESTED

*AMP / OMEA urge their U.S. Representatives and Senators to keep the following key points of consideration in mind as efforts to develop national energy and environmental policies continue and to weigh in with federal regulators to ensure that an appropriate balance is achieved between environmental protection, reliability, and customer costs. In addition to expanded congressional oversight of EPA, AMP / OMEA offer the following:*

#### Review / Oversight of Environmental Regulations:

- EPA has proposed / issued regulations under a variety of statutes that would also impact the operation of fossil-fueled electric generation facilities, including:
  - **Maximum Achievable Control Technology (MACT) standards for industrial boilers and small (<25 MW) electric generating units (Boiler MACT).** This rule remains in regulatory limbo, having been re-proposed by EPA in December 2011. It will specifically impact four local municipal electric systems in Ohio, as well as thousands of institutional and industrial facilities nationwide.

**ADVERSE IMPACT:** Unreasonable and inflexible emission control requirements and impractical compliance timelines will unnecessarily increase costs for impacted units; for small electric generators such as AMP / OMEA members, this could translate into millions of dollars for retrofits or shutting down essential local electric generation resources, which has a detrimental impact on local reliability for these systems and their customers.

**ACTION REQUESTED:** AMP / OMEA strongly support the amendment that Sen. Susan Collins (R-ME) is sponsoring to the transportation bill (S. 1813), which would include the language of the EPA Regulatory Relief Act (S. 1392 – Boiler MACT legislation). Similar House action is also requested; the House version was passed as a separate bill by the House in 2011.

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o **Mercury and Air Toxics Standards (MATS) Rule** – finalized in February 2012 for coal- and oil-fired electric generating units > 25 MW. Similar to the Boiler MACT rule, the MATS rule tightens limits for mercury and other hazardous air pollutants (HAPs).

**ADVERSE IMPACT:** EPA has not established that any HAP other than mercury warrants regulation under the MACT program. Impacts attributable to the Boiler MACT rule are expected to be repeated and are already in evidence with the recent coal plant closure announcements in the region.

**ACTION REQUESTED:** AMP / OMEA support efforts to maintain and improve the reliability of the nation's electric grid and will work with Congress on appropriate legislation to ensure that federal regulations do not threaten electric reliability. In addition, AMP / OMEA urge that a comprehensive region-by-region review of potential reliability impacts from various EPA rules such as MATS be conducted by the FERC, in conjunction with the North American Electric Reliability Corp. (NERC).

o **Restrictions on cooling water intake structures under Sec. 316(b) of the Clean Water Act (CWA)** – A proposed rule was issued by EPA in March 2011; a final rule is required to be issued (pursuant to a settlement agreement) by July 27, 2012.

**ADVERSE IMPACT:** An overly restrictive rule could require substantial modifications to or construction of new cooling water components for power plants. The impacts on system reliability and wholesale electric prices are expected to be felt disproportionately in regions with considerable coal-fired generation capacity.

**ACTION REQUESTED:** AMP / OMEA appreciate congressional interest in ensuring that any costs imposed by the requirements of the final rule are commensurate with the likely benefits. Additional congressional action may be requested following release of the final rule in July.

o **Proposed hazardous waste designation of coal combustion by-products (CCBs / coal ash) under RCRA.** EPA has indicated it will issue an analysis of the potential health risks from the beneficial re-use of coal ash in April 2012. A final rule is expected by the end of 2012.

**ADVERSE IMPACT:** Additional regulation is unnecessary and use of Subtitle C, with its especially stringent and duplicative requirements, would substantially increase operational costs and significantly damage the CCB recycling industry.

o **Cross-State Air Pollution Rule (CSAPR)** – While a final rule was issued in July 2011, it has been stayed by the courts. With oral argument scheduled for April 2012, no final decision is expected until later this year.

**ADVERSE IMPACT:** The court's action has caused uncertainty as to compliance requirements and deadlines.

□ Congressional action is still needed on EPA's rule establishing **National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE units)**. There may be light at the end of the tunnel on this long-delayed rulemaking process, with EPA's proposed settlement agreement announced in January 2012.

**ACTION REQUESTED:** Congressional support for the settlement agreement with up to 60 hours of run time for emergency demand response and the proposed new NOPR process (to be issued in April) – voiced to EPA – would help keep pressure on EPA to complete this rulemaking as soon as possible, with a complementary extension of the compliance deadlines until at least November 2014.

□ EPA is taking more and more regulatory actions pursuant to consent agreements and legal settlements with interveners, rather than through the traditional propose-and-public-comment process. This circumvents public participation and results in rules that are not given the proper regulatory review prior to proposal or finalization. Congressional oversight is due.

□ The threat from EPA's regulatory onslaught continues. In addition to congressional oversight, AMP / OMEA support legislative efforts to extend various compliance dates or direct specific changes to proposed rules (such as through the Congressional Review Act process). As noted above, the combined impact of these various rules is expected to have a disproportionate impact on coal-dependent regions of the country through increased capacity prices and reduced electric system reliability.

■ While it had been a central focus of both the Administration and congressional leadership for the past several years, it is clear that interest in pursuing "cap and trade" legislation to reduce greenhouse gases (GHGs) has evaporated for the 112th Congress. AMP / OMEA have generally opposed past cap and trade proposals debated by Congress, particularly in the following areas:

- Failure to recognize regional differences in baseload generation and customer / economic impacts;
- Overly aggressive emission reduction levels and timeframes;
- Insufficient allocation of allowances to impacted electric generators;
- Lack of effective cost-cap provisions;
- Failure to fully preempt EPA's use of the Clean Air Act (CAA) and other statutes to regulate GHGs; and
- Unclear offset rules and insufficient allocation of offset credits.

■ Absent legislative action on cap and trade, since 2009 EPA has chosen to focus its attention on attacking GHG emissions through the legal and regulatory process. EPA has moved forward with administrative decisions, legal actions, and rules in the following areas:

- Mandatory GHG reporting
- GHG Endangerment Finding
- GHG emissions standards for motor vehicles
- GHG Tailoring Rule - Prevention of Significant Deterioration (PSD) and Title V permits
- GHG Best Available Control Technology (BACT) Guidance for PSD and Title V permitting

■ In what is expected to be perhaps the most far-reaching action to date in regulating GHGs, sometime this spring EPA is expected to issue Section 111 GHG New Source Performance Standards (NSPS) for utilities and refineries.

■ EPA is proceeding on a number of other regulatory initiatives beyond those regulating GHGs that are expected to impact energy development, production, and delivery for years to come. AMP's comments on many of these proposals are available at <http://amppartners.org/services/regulatory/amp-regulatory-comments/>. Multiple analyses of these initiatives have raised serious concerns regarding their collective impact on the reliability of the nation's electric system as utilities make decisions about unit retirements, scheduling unit down-time for retrofits, or constructing new gas-fired units to replace lost generating capacity.

■ The Federal Energy Regulatory Commission (FERC) conducted a technical conference in November 2011 on the impacts of proposed EPA regulations on system reliability. FERC also has begun an ongoing dialogue with state regulatory officials on system reliability concerns relative to environmental regulations.

■ The Administration has not backed off its announcement in the 2011 State of the Union speech that the nation should utilize 80% "clean energy" by 2035, which further reinforces the link between energy and environmental policy.

■ Yet, EPA regulatory policies in particular continue to impede the development, operation, and retrofit of needed electric generation resources, particularly those that rely on domestic fossil fuel resources. Using as a base its authority to regulate GHGs under the Clean Air Act, which itself remains under legal review,

EPA is moving forward with a number of significant regulatory proposals that could result in the retirement of more than 100 GW of existing coal-fired electric generation capacity by 2020 (EEI / ICF International analysis, January 2011).

■ The result is an expected regulatory “trainwreck” for fossil-fueled electric generating facilities. Regulations specifically impacting the electric sector are being proposed under EPA’s existing authority – as well as through legal settlements – under the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act (RCRA).

■ It should be noted that the regulatory “trainwreck” will impact not only utilities that are currently operating or developing electric generation projects. The resulting expected impact on reliability and capacity prices will affect electric markets and consumers in regions such as ours that are primarily fueled by fossil generation to meet baseload needs.

■ Legislative efforts to avoid the “trainwreck” surfaced first in the 111th Congress and have moved forward on certain levels in the 112th Congress, but have not moved through both Chambers. Those included efforts to delay for two years EPA’s authority to move forward with GHG regulations; bills to address separately the Boiler MACT, coal ash, and RICE NESHAP rules; legislation to delay the compliance dates for EPA’s rules on Mercury and Air Toxics Standards (MATS, formerly Utility MACT) and the Cross-State Air Pollution Rule (CSAPR); and broader regulatory review authority for Congress in the form of the TRAIN Act (“Transparency in Regulatory Analysis of Impacts on the Nation”) and the REINS Act (“Regulations from the Executive in Need of Scrutiny”). Future legislative action remains in doubt in the current Congress.

■ Despite targeted congressional inquiries to EPA regarding the status of its long-delayed RICE NESHAP rulemaking, this issue remains in regulatory limbo, with looming compliance deadlines but no clear direction from EPA as to final compliance requirements. AMP / OMEA remain concerned that needed distributed generation units may be unable to operate without important changes to the final rule. In February, AMP filed comments generally supporting the proposed settlement agreement between EPA and EnerNOC et al. that would permit units to run up to 60 hours for emergency demand response. Our comments acknowledged that the agency’s announced schedule for a new Notice of Proposed Rulemaking (NOPR) in April 2012 was a positive development. A copy of AMP’s comments can be found at [http://amppartners.org/pdf/extranet/regulatory-comments/Final\\_AMP\\_RICE\\_settlement\\_agreement\\_Feb-2-2012.pdf](http://amppartners.org/pdf/extranet/regulatory-comments/Final_AMP_RICE_settlement_agreement_Feb-2-2012.pdf).

■ There also is expected to be some specific debate (at least in the Senate) on EPA’s recently finalized MATS rule, which sets emission limits for thousands of coal- and oil-fired electric utility generating units nationwide. Sen. James Inhofe (R-OK) has introduced a resolution of disapproval on this issue.

■ Proposals are being floated to encourage the development of a clean energy standard (CES) to support the President’s 80% goal, including nuclear and natural gas-fired generation and coal with carbon capture and sequestration technology requirements; generation technologies would be judged based on their carbon content. Sen. Jeff Bingaman (D-NM) recently released such a proposal, although he admits it is unlikely that it will move through Congress this session. It appears that a separate push for a renewable electricity standard (RES) is off the legislative table. It’s important that mandates of any type be scrutinized to ensure that customers do not bear undue costs.

■ Thus, the issues of climate change / environmental policy and energy policy are inextricably linked, and legislative and regulatory developments and decisions in the coming months will direct what happens on these critical issues.