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**Testimony of Craig Butler**  
**Director of Ohio EPA**  
**Before the U.S. House of Representatives**  
**Committee on Science, Space and Technology**  
**Subcommittee on Environment**  
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Chairman Bridenstine, Ranking Member Bonamici and members of the Subcommittee, my name is Craig Butler, Director of the Ohio Environmental Protection Agency (Ohio EPA). Thank you for the opportunity to provide testimony on the now final Clean Power Plan (CPP) issued by the United States Environmental Protection Agency (U.S. EPA).

When I provided testimony back in March to the House Subcommittee on Energy & Power, the CPP was only a proposal and U.S. EPA was in the process of collecting and evaluating what turned out to be over 4.3 million comments. While we continue to review the final rule presented by U.S. EPA on August 3, our fundamental legal and technical concerns persist or continue to grow. The new data, assumptions and strategy used to develop the final CPP are different and have led to completely revised state compliance targets. This, in short, means that states can't rely on analyses used to review the proposed CPP but rather need to re-launch a new effort to assess the final version.

Ohio has striven to revive its manufacturing output over the last few years. Driven by affordable and reliable power, countless energy intensive industries including auto manufacturing, iron, steel, and glass production reside in Ohio. In 2012, Ohio had the 6th highest energy consumption in the United States with 50 percent dedicated to industry and manufacturing. In the PJM Interconnection Region consisting of 13 states and Washington, DC, Ohio uses a full 20 percent of the total energy load. This manufacturing rebound has been due in no small part to the shale-gas production in the eastern part of the state, and like our locally-mined coal, provides a foundation for predictable and relatively stable low-cost power to industries and citizens across the state.

While working to revive our manufacturing output, Ohio has achieved significant emission reductions from our coal-fired power plants. Between 2005 and 2014, carbon dioxide emissions from these units were reduced by approximately 30 percent. Given these reductions, one would think that Ohio is well on a path to comply with the final CPP. Unfortunately, while U.S. EPA suggests using a baseline for emission reductions is 2005, in reality they use 2012, meaning that any reductions prior to 2012 are not being considered for compliance with Ohio's mandated reduction targets. Ohio's coal fleet has and will continue to improve its operational efficiency;

however requiring additional pollution control measures will be extremely costly and will undermine the long-term viability of these power plants.

Ohio has already experienced a dramatic loss in generating capacity, losing some 6,100 MW between years 2010 and 2015, primarily due to U.S. EPA's Mercury and Air Toxics Standards. A further reduction in usage of coal-fired generation is the biggest means for complying with the final CPP and is a serious concern with respect to end-user costs, infrastructure and reliability.

Ohio has benefited from an "all fuels" approach to power generation, utilizing not only coal or renewable energy, but natural gas, hydroelectricity and energy efficiency. States like Ohio are aggressively advancing all forms of energy without picking winners and losers and are taking the lead to be protective of both the environment and consumers. This strategy ensures access to affordable and reliable energy across the state for citizens, manufacturing, business and industry. However, through trading-ready state plans or a federally driven market-based trading program, U.S. EPA plans to mandate significant expansion of renewable generation across the country - regardless of practicality or cost.

On August 3rd, U.S. EPA released three rules that will have an adverse effect on coal-based electricity generation across the country. Finalizing emissions standards for new electric generating units was the first rule released. This rule creates a reliance on cost-prohibitive technology that will effectively prevent any new coal plants from being built across the country. Carbon capture and sequestration (CCS), the only technology described in the rule, is proving to not be ready for wide-scale technical implementation. Costs are escalating to the point that, even with heavy subsidization, projects are being abandoned.

The second and third rules work together. The second rule is the final version of the CPP. The third rule is a proposed "back stop" federal plan for states unable to, or choosing not to comply with the final CPP. These rules will result in an unprecedented overhaul of the power generation, transmission and distribution system by dramatically reducing fossil-fuel based power generation and establishing aggressive renewable energy goals. These rules together are an effort to circumvent Congressional authority by creating a large-scale program to revamp the power industry based on a rarely used provision of the Clean Air Act (CAA) and move to an environmental model to replace the long-standing economic model for the generation of electricity.

U.S. EPA made certain changes in response to comments on the proposed CPP. Changes include pushing the initial compliance date to 2022 from 2020, creating a reliability safety valve to account for short-term grid problems, and making energy efficiency optional rather than a core requirement of the rule. However, it is also evident that U.S. EPA raised the rule's carbon emissions reduction goal from 30 percent to 32 percent nationwide and changed many state mandated reduction targets. In Ohio, our mandated target is now roughly 11% more aggressive than the proposed rule. This now means Ohio will need to lower its carbon emissions rate by 37% between 2012 and final implementation of the CPP. In fact, 15 other states will need to achieve even greater reductions.

The final CPP also dictates that natural gas generating units be deployed at a 75 percent capacity factor. Updated cost projections using the final rule have not been completed. However, the Public Utilities Commission of Ohio (PUCO) conducted a detailed analysis of the proposed rule estimating a 70 percent capacity factor and, as a result, predicted wholesale energy prices to be 39 percent higher in calendar year 2025, costing Ohioans \$2.5 billion. Modeling to project the impact on the bulk power markets, wholesale energy costs and reliability of the power supply is ongoing both within Ohio as well as across the Interconnection Regions.

As is evident at this early stage of review of the final CPP, U.S. EPA has made profound changes to the proposed rule. The number, nature, and overall level of wholesale changes drive Ohio to call for U.S. EPA to re-release the final CPP as a proposed action allowing interested parties an opportunity to review and provide comment. This is not uncommon in Ohio and fairly provides interested parties time to provide comments on significantly revised rules.

Additionally, there is a legal case pending in the Federal Court System that argues U.S. EPA does not have the authority under the Clean Air Act (CAA) section 111(d) to promulgate the CPP because the plain language of the statute does not allow a source category (such as coal-fired power plants) to be regulated under that section if they are already regulated under section 112 (the hazardous air pollutant section). In addition, the CPP is so restrictive that states or U.S. EPA will be forced to regulate activities outside the fence line of the regulated entities. This “fence line” or property line around a regulated facility represents the traditional confines of U.S. EPA’s authority. The state of Ohio has joined the legal proceeding arguing that Congress could not have meant to grant U.S. EPA blanket authority under section 111(d) to directly or indirectly revamp the entire national bulk power system.

On numerous occasions, at both U.S. EPA and the D.C. Circuit Court of Appeals, the State of Ohio has pointed out the serious legal shortcomings of the rule and asked for implementation of the rule to be stayed until the fundamental legality I described above can be resolved. This request needs to resolve the issues of authority before the irreversible impacts of implementing the final CPP are set in motion. One needs to look no further than the Mercury Air Toxics rule impacts in Ohio to see that even when U.S. EPA is remanded by the U.S. Supreme Court, the damage has been done and is irreversible.

This is why Governor Kasich has written a letter to the President asking to stay implementation of the rule until all legal appeals are resolved. As the letter states, this is very reasonable “especially in light of the recent U.S. Supreme Court decision remanding the U.S. Environmental Protection Agency’s Mercury and Air Toxic Standards to the D.C. Circuit court for further consideration.” I have included a copy of the Governor’s letter with my testimony today for you to read at your convenience. So far, none of these requests have been honored, and we are marching down the road toward implementing a rule with far-reaching economic consequences without any assurance that the rule is even a legal exercise of U.S. EPA’s authority.

Responding to the CPP has already been a substantial effort for Ohio EPA. In U.S. EPA’s Response in Opposition to ‘the States’ request for a stay (via an extraordinary writ), filed August 31, 2015, it stated that *“there is absolutely nothing that Petitioners are required to do in this brief period before Rule Publication.”* This statement is disingenuous at best. Unless a state asks for a two-year extension the deadline for states to submit a compliance plan to U.S.EPA is less than a year away. If U.S. EPA believes that the states don’t have to do anything until publication of the rule, which now may be late October 2015, they are failing to recognize and appreciate the investments states have already made.

Ohio has already spoken and met with many stakeholders, substantially increased staff devoted to analyzing the rule, coordinated extensively with the PUCO, created state-specific fact sheets, begun our reassessment of the new technical data, attended webinars, drafted mandatory stakeholder outreach efforts statewide, and started review of the 1560 page final rule for existing sources, 755 page proposed federal plan rule, 768 page rule for new sources, and hundreds of pages of new technical guidance. In my opinion, this is a heavy lift but it’s just a start to the resources, stakeholder engagement and legislative and rule changes that will be needed. And with

already tight and declining budgets permitting, compliance, state planning and other aspects of Ohio EPA's air program have been, and will continue to be, directly sacrificed.

I strongly believe the CPP is not the answer. With unresolved legal challenges, along with substantial changes between the draft and final proposal, U.S. EPA should hold off on implementing the final CPP until legal challenges are resolved or reissue the final CPP as a proposed action.

Thank you for the opportunity to testify this morning. I am happy to answer any questions you may have, and stand ready to work with this Subcommittee in addressing the issues outlined in my testimony.