AFS POLICY STATEMENTS ON ENVIRONMENTAL ISSUES

EPA'S AFFORDABLE CLEAN ENERGY RULE

On June 19, 2019, EPA issued the Affordable Clean Energy rule (ACE), an effort to provide existing coal-fired electric utility generating units, or EGUs, with achievable and realistic standards for reducing greenhouse gas (GHG) emissions. This action finalized two related, but separate and distinct rulemakings:

1. the repeal of the Clean Power Plan (CPP) ; and
2. new implementing regulations and emission guidelines to address GHG emissions from existing coal-fired EGUs and provide greater flexibility for states in reducing emissions from existing power plants consistent with the authority of Clean Air Act (CAA).

AFS supports EPA's final actions on these rulemakings.

AFS has expressed opposition to the Clean Power Plan (CPP) from its inception. Through its Air Quality Committee, AFS submitted comments asserting that the CPP would impose significant negative impacts on metalcasting operations because the rule would force the closure of most coal-fired utilities, thereby disrupting energy grid reliability and imposing higher electricity costs. In addition, the CPP exceeded EPA's statutory authority to regulate emissions from existing power plants. EPA has sought to repeal the CPP primarily because it exceeds the agency's authority under the CAA.

With regards to implementing regulations and emission guidelines, ACE establishes heat rate improvement (HRI), or efficiency improvement, as the best system of emissions reduction (BSER) for CO2 from coal-fired EGUs. By employing a broad range of HRI technologies and techniques, EGUs can more efficiently generate electricity with less GHG emissions.
The BSER is the best technology or other measure that has been adequately demonstrated to improve emissions performance for a specific industry or process (a "source category"). In determining the BSER, EPA considers technical feasibility, cost, non-air quality health and environmental impacts, and energy requirements. The BSER must be applicable to, at, and on the premises of an affected facility.

ACE lists six HRI "candidate technologies," as well as additional operating and maintenance practices. For each candidate technology, EPA has provided information regarding the degree of emission limitation achievable through application of the BSER as ranges of expected improvement and costs.

States will establish unit-specific "standards of performance" that reflect the emission limitation achievable through application of the BSER technologies. These technologies, equipment upgrades, and best operating and maintenance practices were determined to comprise the BSER because they can be applied broadly and are expected to provide significant HRI without limitations due to geography, fuel type, or other factors beyond the facility's property line.

In promulgating the ACE rule, EPA has provided a more clear definition of BSER by identifying a list of heat-rate efficiency improvements. States are allowed to determine which heat-rate efficiency improvements are most appropriate on a unit-by-unit basis and to provide incentives to existing power plants to implement efficiency improvements without triggering more stringent new source review (NSR) requirements. This approach also does not require fuel switching at existing power plants, and focuses exclusively on environmental policy and not energy policy.

The CAA provides that states establish the standards of performance and explicitly directs EPA to allow states to consider "the remaining useful life of the source" and other source-specific factors in establishing standards of performance. States will evaluate applicability to their existing sources of the six candidate technologies and improved operating and maintenance practices and take into consideration source-specific factors in establishing a standard of performance at the unit level.

The proposed rule allows states up to three years to develop their state implementation plans (SIPs) for CO_2 emissions reductions. EPA has also issued clarification regarding what is needed for a complete SIP and provided 12 months to act on a complete SIP. States will submit plans to EPA that establish standards of performance and include measures that provide for the implementation and enforcement of such standards. The plan submissions must explain how the

state applied the BSER to each source – and how the state took other factors into consideration – in setting unit-specific standards.

The final ACE rule would continue to decrease CO_2 emissions by as much as 35 percent below 2005 levels (which is similar to the targets of the CPP) -- a reduction of approximately 11 million short tons of CO_2 by 2030. The final ACE rule represents a thoughtful, responsible, and cost-effective approach to reducing CO_2 emissions from existing power plants through requirements that are within the authority provided by the Clean Air Act. This approach should help ensure that the metalcasting industry will have reliable and affordable energy sources without burdensome regulatory requirements.

If you have any questions or would like additional information on this issue, please contact Jeff Hannapel with the AFS Washington Office at jhannapel@thepolicygroup.com.

CLEAN WATER ACT JURISDICTION FINAL RULE

On June 29, 2015 EPA and the U.S. Army Corps of Engineers (Corps) published a final regulation to expand Clean Water Act (CWA) definition of "waters of the United States" or WOTUS. Specifically, this action subjected a broad range of routine activities of industrial, agricultural and commercial operations to jurisdiction of the CWA and triggered the need for federal permits for these activities.

Several states, industry and agricultural groups, and environmental groups filed legal challenges to the final rule in several different federal courts. A district court in North Dakota invalidated the rule in 13 states, and, the U.S. Court of Appeals for the 6th Circuit issued a nationwide stay of the rule until the case could be reviewed. The U.S. Supreme Court agreed to hear the case to determine if the 6th Circuit properly asserted exclusive jurisdiction over the legal challenges.

On July 27, 2017 EPA and the Corps proposed to rescind the final rule and to recodify the pre-existing regulatory language. While this proposed action was still pending, the U.S. Supreme Court unanimously held on January 22, 2018 that challenges to the June 2015 final WOTUS rule

must be filed in federal district courts rather than in federal appeals courts. The ruling did not address the merits of challenges to the WOTUS Rule, only the proper jurisdiction to hear the case.

The Court's decision on the proper venue to litigate the merits of CWA challenges was significant because claims must first be heard in federal district court to be eligible for appellate review. The decision also undermined the Sixth Circuit decision to impose a nationwide stay on the WOTUS Rule. Accordingly, the 2015 WOTUS Rule would go into effect, at least until it is rescinded or replaced, in the 37 states where it was not also stayed by a North Dakota district court judge.

The ongoing efforts by EPA and the Corps to rescind and replace the 2015 WOTUS rule requires notice and comment, a time-consuming process that likely will be protracted by litigation. In the interim, facilities would have be forced to abide by the ill-defined, uncertain, existing pre-WOTUS-Rule regulations, case law, and agency guidance on what is meant by "waters of the United States." As a result in February 2018, EPA and the Corps extended the effective date of the WOTUS rule for two years. This action helped to minimize the uncertainty and confusion regarding CWA jurisdiction over waters of the U.S. until the rulemaking to rescind the WOTUS rule can be finalized.

In December 2018 EPA issued its proposed new definition of WOTUS under the Clean Water Act. The proposed rule replaces the Obama Administration's WOTUS rule that was widely criticized as being too broad. The proposed rule appears to provide a much more reasonable approach to the limits of Clean Water Act jurisdiction for waters of the U.S. Fortunately, it appears that these actions will result in a new rule with a more favorable approach to defining waters of the U.S. for the metalcasting industry. EPA indicated that it has scheduled to issue the final WOTUS rule by September 2019.

AFS supports the actions EPA has taken to clarify and simplify the regulatory requirements for defining WOTUS. If you have any questions or would like additional information on this issue,

please contact Jeff Hannapel with the AFS Washington Office at jhannapel@thepolicygroup.com.

MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES

EPA issued the final Multi-Sector General Permit (MSGP) on June 16, 2015. Several industry groups and environmental groups filed legal challenges to the final MSGP. In response to this challenge, EPA entered into a settlement agreement to have the National Academies of Science (NAS) conduct a two-year study to evaluate the stormwater benchmark monitoring requirements.

In February 2019 NAS released its report on Improving the EPA Multi-Sector General Permit for Industrial Stormwater Discharges. The report including the following recommendations.

- NAS recommends that benchmarks should be revisited, including the possible suspension or removal of benchmarks for iron and magnesium, until more data can be collected.
- The development of new numeric stormwater effluent limitations is not recommended at this time.
- EPA and states should consider more stormwater monitoring, but balance the need to improve data quality with the burdens associated with increased monitoring.
- Consideration should be given to the development of stormwater retention standards.

AFS supports the general findings of the NAS study and looks forward to working with EPA and states to implement reasonable solutions to address stormwater discharges from metalcasting operations. If you have any questions or would like additional information on this issue, please contact Jeff Hannapel with the AFS Washington Office at jhannapel@thepolicygroup.com.