



Minnesota Pollution Control Agency

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March 15, 2016

The Honorable Pat Garofalo
Minnesota State Representative
485 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable Melissa Hortman
Minnesota State Representative
345 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

The Honorable John Marty
Minnesota State Senator
3233 Minnesota Senate Building
95 University Avenue West
St. Paul, MN 55155

The Honorable David J. Osmek
Minnesota State Senator
345 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Attn: Reed Polakowski
Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

RE: Minn. Stat. §216H.077

Dear Committee Chairs and Minority Leads:

The Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Commerce (Commerce) are pleased to provide an overview of the initial Clean Power Plan submittal currently under development by the state. This initial submittal is intended to comply with title 40, chapter I, part 60.5765 of the Code of Federal Regulations (CFR) governing initial submittals under the U.S. Environmental Protection Agency's (EPA's) final Clean Power Plan.

The MPCA and Commerce have a statutory requirement (Minn. Stat. §216H.077) to jointly submit to the Senate and House committees with primary jurisdiction over energy and environmental policy for review and comment "the draft plan the state is required to submit to the federal [EPA] to comply with the proposed rule for the federal Clean Power Plan for Existing Power Plants...or any final rule issued in that docket..." The final Clean Power Plan rule, effective December 22, 2015, clarified state plan submittal requirements, and directed states to either submit final plans or to submit requests for extensions (termed "initial submittals") no later than September 6, 2016. The MPCA and Commerce are currently assessing requirements for the initial submittal, and therefore, provide the enclosed document, "Clean Power Plan – Initial Submittal Requirements," which details EPA requirements and includes a list of preliminary information the agencies believe will be used to meet said requirements. We have also provided a list of Clean Power Plan outreach and engagement efforts conducted, to date. The attached documents fulfill the agencies' obligation under Minn. Stat. §216H.077

Committee Chairs and Minority Leads

Page 2

March 15, 2016

On February 9, 2016, the U.S. Supreme Court granted a stay that halts federal implementation of the Clean Power Plan while legal challenges to the rule are decided by the courts. The MPCA and Commerce are reviewing the implications of the stay, but plan to continue engagement efforts on the rule in order to ensure that Minnesota is well-positioned to respond in a timely manner to any possible outcomes of Clean Power Plan litigation. Though the requirements of title 40, Chapter 1 part 60.5765, are currently suspended under the Supreme Court's stay, we do plan to finalize the initial submittal (extension request) to ensure it is available, as needed, upon resolution of legal proceedings.

If you have any questions about this submittal, or if you would like a paper copy of the submittal, please contact Bill Grant with Commerce, at 651-539-1801 or bill.grant@state.mn.us, and J. David Thornton with the MPCA, at 651-757-2018 or j.david.thornton@state.mn.us.

Sincerely,



Mike Rothman
Commissioner
Minnesota Department of Commerce



John Linc Stine
Commissioner
Minnesota Pollution Control Agency

JLS/MK:ld

Enclosure

cc: Beverly Heydinger, Minnesota Public Utilities Commission
Bill Grant, Minnesota Department of Commerce
J. David Thornton, Minnesota Pollution Control Agency
Frank Kohlasch, Minnesota Pollution Control Agency

CLEAN POWER PLAN – INITIAL SUBMITTAL REQUIREMENTS

I. FEDERAL REGULATORY REQUIREMENT

The Clean Power Plan rule language provides states with an option to either submit a final state plan to the U.S. Environmental Protection Agency (EPA) by September 6, 2016, or provide an “initial submittal” requesting a two-year extension to the final plan deadline. The rule language provides further requirements for the component of the “initial submittal.”

40 CFR Part 60, Subpart UUUU Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units

§ 60.5760 What are the timing requirements for submitting my plan?

(a) You must submit a final plan with the information required under § 60.5745 by September 6, 2016, unless you are submitting an initial submittal, allowed under § 60.5765, in lieu of a final State plan submittal, according to paragraph (b) of this section. (b) For States seeking a two year extension for a final plan submittal, you must include the information in § 60.5765(a) in an initial submittal by September 6, 2016, to receive an extension to submit your final State plan submittal by September 6, 2018.

§ 60.5765 What must I include in an initial submittal if requesting an extension for a final plan submittal?

(a) You must sufficiently demonstrate that your State is able to undertake steps and processes necessary to timely submit a final plan by the extended date of September 6, 2018, by addressing the following required components in an initial submittal by September 6, 2016, if requesting an extension for a final plan submittal:

- (1) An identification of final plan approach or approaches under consideration and a description of progress made to date on the final plan components;
- (2) An appropriate explanation of why the State requires additional time to submit a final plan by September 6, 2018; and
- (3) A demonstration or description of the opportunity for public comment on the initial submittal and meaningful engagement with stakeholders, including vulnerable communities, during the time in preparation of the initial submittal and the plans for engagement during development of the final plan.

(b) You must submit an initial submittal allowed in paragraph (a) of this section, information required under paragraph (c) of this section (only if a State elects to submit an initial submittal to request an extension for a final plan submittal), and a final State plan submittal according to § 60.5870. If a State submits an initial submittal, an extension for a final State plan submittal is considered granted and a final State plan submittal is due according to § 60.5760(b) unless a State is notified within 90 days of the EPA receiving the initial submittal that the EPA finds the initial submittal does not meet the requirements listed in paragraph (a) of this section. If the EPA notifies the State that the initial submittal does not meet such requirements, the EPA will also notify the State that it has failed to submit the final plan required by September 6, 2016.

II. FEDERAL GUIDANCE

The EPA has provided further clarification via an October 22, 2015 memo regarding the Clean Power Plan rule language requirements for the “initial submittal” request for extension.

EPA Memo, October 22, 2015: “Initial Clean Power Plan Submittals under Section 111(d) of the Clean Air Act,” Stephen D. Page, Director, Office of Air Quality Planning and Standards

An extension request must include:

1. An identification of the final plan approach or approaches under consideration by the state and a description of progress made to date on the final plan components. An initial submittal can include, but is not limited to, a description of activities such as:
 - Exploring tradeoffs among various state plan approaches
 - Understanding the state’s requirements and need for further engagement with stakeholders and the EPA
 - Considering multi-state coordination or development of a trading-ready state plan
 - Educating state officials and staff on existing state CO₂-reducing programs and policies
 - Building relationships and lines of communication among key state institutions with environmental agencies, public utilities commissions, and governors’ offices
2. An explanation of why the state requires additional time to submit a final plan. Such an explanation could include a discussion of one or more of the following activities the state is planning to or must undertake that cannot be completed by September 2016:
 - The evaluation of potential impacts of the different state plan approaches and next steps
 - The need to work with other states and stakeholders to address issues related to multi-state cooperation
 - The need for new state regulatory actions including the length of time required for state administrative processes
 - Legislative approval or consultations, including state-specific dates of legislative sessions
 - The need to undertake data analysis or gather information on state programs, including a description of the types of analyses
 - The need to fully engage with a wide variety of stakeholders, including a schedule for public outreach
3. A demonstration or description of the opportunity for public comment the state has provided on the initial submittal and opportunities for meaningful engagement with stakeholders, including vulnerable communities, during preparation of the initial submittal, and plans for public engagement during development of the final plan. This may include, but is not limited to, an appropriate combination of activities such as:
 - A description of any engagement with stakeholders prior to and during the public comment process on the initial submittal
 - A description of plans for engagement opportunities leading up to the final plan submittal
 - An explanation of how the state identifies vulnerable communities, such as by using EJSCREEN or other methods
 - A description of strategies used and planned for outreach to vulnerable communities

III. MINNESOTA OUTLINE TO PREPARE SEPTEMBER 2016 INITIAL SUBMITTAL

The information below provides an early outline of information and materials the MPCA and Commerce believe will fulfill the requirements of 40 CFR §60.5765 and allow the state to receive an extension for submittal of its final Clean Power Plan state plan. It is necessary to take all available steps to ensure Minnesota receives an extension for submittal of its final state plan for several reasons:

- The Clean Power Plan will require state plans to include enforceable elements applicable to affected sources, which will require a rulemaking process. Minnesota's rulemaking process, defined in Chapter 14 of Minnesota Statute, includes multiple procedural requirements and typically takes a minimum of 18 months to complete.
- The MPCA and Commerce have made a conscious decision to not begin the development of state rule language or make final plan decisions until after the agencies have gathered critical input from all stakeholders (including regulated parties, and Minnesota citizens and ratepayers) to ensure that the final plan reflects the best interests of Minnesotans.
- It is also necessary to ensure that the State is fully aware of all final EPA requirements and guidance directing state planning efforts prior to the development of state rule language. To date, the EPA has not finalized model rules that identify presumptively approvable plan elements, nor has it issued guidance pertaining to several critical plan elements including evaluation, measurement and verification requirements for state plans, and the Clean Energy Incentive Program created by the final rule.

The February 9, 2016 stay of the Clean Power Plan by the U.S. Supreme Court suspends the implementation of the rule at the federal level, pending resolution of legal challenges to the rule. Therefore, the requirement for the initial submittal, previously due September 6, 2016, is also currently suspended. The MPCA and Commerce do plan to finalize the initial submittal requesting an extension to ensure that it is available, as needed, upon resolution of Clean Power Plan litigation. Because Court decisions could potentially result in shortened plan submittal timelines, the MPCA and Commerce believe completion of the initial submittal, even without immediate submittal, is prudent.

Items bolded/italicized below identify the requirements of 40 CFR §60.5765; text below the regulatory requirement identifies information and material that may comprise Minnesota's submittal.

- 1. Identification of final plan approach or approaches under consideration by the state and a description of progress made to date on final plan components***
 - a. At this time, Minnesota is considering primarily the trading ready approaches, including subcategorized rate targets and mass targets for existing sources alone as well as including the new source complement. Minnesota expects to participate in the Clean Energy Incentive Program (CEIP) under either a rate or mass target.
 - b. Attachments may include:
 - Preliminary compliance projections showing viable pathways for either rate or mass
 - Documentation of stakeholder support for trading-ready pathways
 - Documentation of support for CEIP (written comments shared with PCA)
- 2. An explanation of why the state requires additional time to submit a final plan***
 - a. EPA's Clean Power Plan model rules will not be completed until Summer 2016. Because Minnesota must be able to consider the content of the model rules and direction provided by model rules regarding presumptive approvability of certain plan elements, significant plan development is unable to be completed at this time. State rulemaking processes typically take a minimum of 18 months to be completed; therefore, if rule and plan development begins in earnest by Summer 2016, it would be completed no earlier than early 2018.

b. Attachments may include:

- State rule and plan development timelines projecting plan completion in 2018

3. A demonstration or description of the opportunity for public comment the state has provided on the initial submittal and opportunities for meaningful engagement with stakeholders, including vulnerable communities, during preparation of the initial submittal, and plans for public engagement during development of the final plan

a. Minnesota has been conducting an extensive stakeholder engagement process since the EPA first proposed the Clean Power Plan in 2014. The MPCA conducted 13 meetings and four webinars for technical stakeholders between July 2014 and December 2015. The MPCA began community-focused engagement in 2016 with a series of listening sessions around the state.

b. Attachments may include:

- List of technical stakeholder meetings, community listening sessions, public events (including dates, locations, and estimated numbers of participants where available)
- Clean Power Plan outreach/engagement materials, including:
 - Meeting presentations
 - Web copy
 - Fact sheets
 - Poster copy and/or photographs of posters
- MPCA Clean Power Plan Community and Environmental Justice Engagement Plan
- MPCA Draft Clean Power Plan Equity Analysis Outline

Clean Power Plan - Outreach/Engagement Meetings

Date	Type of meeting	Location
7/7/2014	Technical stakeholder meeting	MPCA - St. Paul
7/25/2014	Technical stakeholder meeting	MPCA - St. Paul
8/11/2014	Technical stakeholder meeting	MPCA - St. Paul
8/28/2014	Technical stakeholder meeting	MPCA - St. Paul
9/22/2014	Technical stakeholder meeting	MPCA - St. Paul
9/23/2014	Public event - information booth	Heart of the Beast Theater - Minneapolis
2/20/2015	Technical stakeholder meeting	Hiway Credit Union - St. Paul
3/12/2015	Technical stakeholder meeting	WEBINAR only
3/18/2015	Technical stakeholder meeting	MN PUC - St. Paul
4/15/2015	Technical stakeholder meeting	WEBINAR only
4/29/2015	Technical stakeholder meeting	MN PUC - St. Paul
5/18/2015	Technical stakeholder meeting	WEBINAR only
5/26/2015	Environmental justice advocates	CEED office - Minneapolis
6/26/2015	Technical stakeholder meeting	MN PUC - St. Paul
6/30/2015	Environmental justice advocates	EMERGE Center - Minneapolis
7/17/2015	Technical stakeholder meeting	MPCA - St. Paul
7/18/2015	Public event - information booth	Rondo Education Center - St. Paul (Rondo Days)
9/1/2015	Public event - information booth	Colin Powell Center - Minneapolis
9/17/2015	Technical stakeholder meeting	WEBINAR only
9/20/2015	Public event - information booth	Nicollet Ave - Minneapolis (Open Streets)
9/26/2015	Public event - information booth	Lowry Ave - Minneapolis (Open Streets)
10/8/2015	Technical stakeholder meeting	MPCA - St. Paul
10/28/2015	Tribal engagement	Teleconference
11/17/2015	Technical stakeholder meeting	MN PUC - St. Paul
12/11/2015	Technical stakeholder meeting	MN PUC - St. Paul
2/4/2016	Environmental justice advocates	MPCA - St. Paul
2/8/2016	Technical stakeholder meeting	WEBINAR only
2/9/2016	Community listening session	SCSU - St. Cloud
2/16/2016	Community listening session	BSU - Bemidji
2/23/2016	Community listening session	UMD - Duluth
2/24/2016	Community listening session	SMSU - Marshall
3/2/2016	Community listening session	Wellstone Center - St. Paul
3/3/2016	Tribal engagement	Teleconference
3/8/2016	Community listening session	Minneapolis Urban League
3/9/2016	Community listening session	Centerstone Plaza Hotel - Rochester
3/10/2016	Youth community listening session	University of Minnesota, Minneapolis
3/16/2016	<i>Technical stakeholder meeting</i>	<i>WEBINAR only</i>
3/31/2016	<i>Technical stakeholder meeting</i>	<i>Hiway Credit Union - St. Paul</i>