LETTER TO STATE ATTORNEY GENERALS TO ENCOURAGE THEM TO SUE EPA'S PROPOSED CO_2 RULE TO FORCE REASONABLE REQUIREMENTS

TO: State Attorney Generals

RE: EPA Clean Power Plan

On behalf of the manufacturing sector, an important stakeholder that consumes almost one-third of the electricity and will pay a large share of the total costs of the EPA's Clean Power Plan (CPP) through higher electricity rates, we urge you to take legal action to force the EPA to make reasonable requirements. The manufacturing sector is energy price sensitive, and higher costs directly impact competitiveness, jobs and investment. EPA's proposed guidelines for GHG emissions from existing power plants undermine state flexibility to craft energy and environment policy. There is also mounting concern regarding electric reliability.

On June 2, 2014, EPA released its proposed CO_2 guidelines for existing power plants. The proposal requires states to reduce CO_2 emissions through "building blocks" of control measures, most of which are outside-the-fence-line of a power plant. In this way, the proposed guidelines set standards that power plants inherently cannot achieve. Thus, to comply with the proposed guidelines states must either shutdown coal-fired capacity, or cede vast jurisdiction over a state's electricity grid to EPA – allowing the agency to regulate, in its words, "from plant to plug."

The implication of the CPP goes well beyond the reduction of GHGs in the power sector. Because of the building block approach, every entity in the U.S. that is connected to an electric line could become regulated. And, under the Clean Air Act, the EPA has the ability to lower the reduction requirement at any time, and, at minimum, every eight years, negatively impacting the competitiveness of our country, economic growth, and jobs.

Implementation of the CPP as proposed has two other major impacts:

First, it is important to understand that as the state's electric costs increase due to the CPP, manufacturing facilities with multiple national or global manufacturing sites will shift their production, jobs and GHG emissions to states or countries with lower electric costs. As the state industrial load is reduced, all of the costs associated with the lost industrial load will be shifted to the remaining electric customers, driving up their electric costs. The point is that the industrial load is critically important in keeping total electric costs down for the state. Shifting industrial electrical load and their GHG emissions to other states or to other countries accomplishes nothing environmentally. This phenomenon is called "GHG leakage."

Second, the CPP mandate of regulating GHG emissions outside-the-fence line sets a troubling, if not impossible precedent, for the manufacturing sector. The EPA has already signaled that it intends to establish future GHG reduction standards for many industrial sectors. Under the tenants of the CPP, these sectors could be required to reduce GHG emissions beyond what can be reduced from inside our fence line cost-effectively, and increase energy efficiency at rates that cannot be achieved, thereby impacting jobs and economic growth.

- **Requires Unprecedented Outside-the-Fence Line Control Technology:** The proposed guidelines use of outside-the-fence line control measures contradict the Clean Air Act's plain language, the

September 2013 Attorneys' General analysis, and EPA's own past regulations. Indeed, the Supreme Court's June 23 *UARG v. EPA* decision cites EPA regulations to note that control technology "cannot be used to order a fundamental redesign of the facility," and is "required only for pollutants that the source itself emits," and "may not be used to require reductions in a facility's demand for energy from the electric grid." Yet, the proposed guidelines seek to redesign the electric grid by effectively requiring control measures well outside-the-fence line of a power plant and often where no greenhouse gases are actually emitted.

- **Requires EPA to review and possibly tighten standards by 2024**: Section 111 of the Clean Air Act requires standards to be reviewed a minimum of every eight years. Because the foundation for EPA's rule are arbitrarily high and perpetually increasing values of avoided carbon emissions, known as the social cost of carbon, this ensures the standards would be tightened again by 2024, well before the 2030 compliance period.

- **Establishes Economy-Wide Precedent:** EPA's rule is a gold mine for activist suits to demand regulation of other sectors of the economy in a similar manner to their rules for power plants. EPA likely will enter into settlement agreements to expand these growth-limiting regulations to all other sectors of the economy. EPA's budget already includes funding to work on those rules.

- **State Plans Will (Unwittingly) Endorse the Social Cost of Carbon:** Once states fall into EPA's trap and submit a federally enforceable plan to reduce emissions based on the benefits of avoiding the social cost of carbon, activists will force states through lawsuits to apply the social cost of carbon to every policy decision in the state.

- **The Supreme Court is Weary of EPA Power Grabs:** EPA is seeking to overhaul the country's entire electric grid by claiming new powers under a law that has been on the books for over 40 years. The *UARG* decision sends a clear warning to EPA that such expansive use of authority faces substantial legal hurdles, "When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'"

- **Usurps Traditional State Powers Over Energy Policy:** The Federal Power Act clearly authorizes states to regulate electricity within their borders. Indeed, the D.C. Circuit's May 23 *EPSA v. FERC* decision threw out federal regulations because they intruded on state retail electricity matters. The proposed guidelines' outside-the-fence line approach short-circuits the states primacy. One state official recently testified to Congress that under EPA's proposed 111(d) guidelines, State Public Service Commissions would be able to take actions to protect ratepayers and ensure reliability "only in so much as they comport with EPA's greenhouse gas agenda."

- **Undermines State Flexibility on Environmental Policy:** Under the Clean Air Act, states are the driving force in crafting standards, like those in the proposed guidelines, according to EPA. States are also empowered to base such standards on a number of factors including, in this case, the "remaining useful life" of a power plant. Yet the proposed guidelines ignore this statutory role of states, declaring that "once the final goals [under the proposed guidelines] have been promulgated, a state would no longer have an opportunity to request that the EPA adjust its CO_2 goal."

- **Establishes Unreasonable State Requirements:** The proposed guidelines' outside-the-fence line analysis uses flawed assumptions in each "building block" of control technologies that lead to unreasonable state requirements. EPA dismisses concern over its assumptions, suggesting in the proposed guidelines that states rob Peter to pay Paul, "even if a state demonstrates during the comment period that application of a building block to that state would not result in the level of emission reductions reflected in the EPA's quantification for that state, then the state should also explain why the application of the other building blocks would not result in greater emission reductions than are reflected in the EPA's quantification for that state."

Thank you for giving this consideration. We look forward to working with you.

Sincerely,