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PRESS RELEASE

Attorney General Frosh Joins Lawsuit Against the EPA's "Dirty Power" Rule

Coalition of 29 States, Counties, and Cities Charges Rule Violates Clean Air Act, Supports Expensive Coal Power, and Undercuts Clean, Renewable, and Affordable Energy

BALTIMORE, MD (August 13, 2019) – Maryland Attorney General Brian E. Frosh, joining a coalition of 22 states and 7 local governments, today announced a lawsuit against the Environmental Protection Agency (EPA) over its Affordable Clean Energy (ACE) rule. The ACE rule, dubbed the "Dirty Power" rule by environmentalists, replaces the Clean Power Plan, the first-ever nationwide limits on one of the largest sources of climate change pollution: existing fossil-fueled power plants. The EPA's rule rolls back these limits, and will have virtually no impact on fossil fuel emissions, prolonging the nation's reliance on polluting, expensive coal power plants and obstructing progress of states toward clean, renewable, and affordable electricity. Today's suit was filed in the U.S. Court of Appeals for the District of Columbia Circuit.

"The EPA continues to prioritize the coal industry over clean, renewable energy," said Attorney General Frosh. "The decision to implement the 'Dirty Power' rule will have long-lasting effects on public health. It will accelerate climate change at a time when we desperately need action to reverse it."

The text of the entire ACE rule barely mentions climate change—ignoring the dire threat it poses to public health, the economy, or the environment—and disregards requirements of the federal Clean Air Act. The Clean Air Act requires that limits on air pollutants, such as greenhouse gases, must be based on the emissions reductions achievable through the "best system of emission reduction." However, in the "Dirty Power" rule, EPA has ruled out shifting from a coal-fueled generation to a less carbon-intensive generation, the most cost-effective, proven, and successful approach (i.e., the "best system") for controlling greenhouse gas emissions.

The 10-state Regional Greenhouse Gas Initiative (RGGI), a market-based cap-and-trade program in which Maryland participates, has proven to be an effective, cost-efficient model for reducing power plant emissions of climate change pollution. Power plants in RGGI states have cut their emissions by more than 50 percent. Between 2015 and 2017, these states saw $1.4 billion of net positive economic activity and the creation of 14,500 new jobs—all while maintaining reliability of service and holding the line on electricity rates. However, the "Dirty Power" rule prohibits states from relying on their participation in cap-and-trade programs, such as RGGI, as a means of complying with the requirements of the Clean Air Act.

The “best system of emission reduction” proposed in the “Dirty Power” rule consists solely of equipment upgrades at coal power plants. Such upgrades will reduce carbon emissions by 2030 only 0.7 percent more than having no rule at all, according to EPA’s own analysis. Further, EPA has found that emissions of one or more of three pollutants—carbon dioxide (CO_2), nitrogen oxides (NOx), and sulfur dioxide (SO_2)—will increase in 18 states in 2030 compared to no “Dirty Power” rule.

The “Dirty Power” rule’s projected failure to achieve virtually any reductions in power plant emissions is serious. The International Energy Agency estimates that climate change pollution from the U.S. power sector must be reduced by 74 percent below 2005 levels by 2030 in order to limit worldwide temperature increase to less than 2 degrees Celsius. By the EPA’s own estimates, the “Dirty Power” rule falls woefully short of hitting this target with a projected reduction of only 35 percent from 2005 levels. Of that, roughly one percent is attributable to the impact of the “Dirty Power” rule and 34 percent attributable to market factors.

In addition to Attorney General Frosh, the suit is joined by the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and the chief legal officers of Boulder, Chicago, Los Angeles, New York City, Philadelphia, and South Miami.