

***POLICY POSITION
OF THE
SOUTHERN LEGISLATIVE CONFERENCE***

**REGARDING STATE CONCERNS OVER THE EPA'S PROPOSED
CO2 EMISSION STANDARDS**

BACKGROUND

Section 111(d) of the Clean Air Act (CAA) authorizes the U.S. Environmental Protection Agency (EPA) to develop emission guidelines for states to use in establishing greenhouse gas performance standards for existing sources. Section 111(d) does not grant EPA flexibility in establishing emission guidelines or authority to directly issue performance standards for existing sources. The CAA guidelines reflect the "best system of emission reductions for greenhouse gases" based solely on the application of "adequately demonstrated technology" at covered sources.

On June 2, 2014, the U.S. Environmental Protection Agency released new proposed regulations regarding CO2 emissions for domestic power plants. In its draft regulations, the EPA repeatedly cites the concept of "flexibility" in its implementation of these regulations. However, the usage of "flexibility" in this context is incorrect. The reality expressed in these proposed regulations manifests a limited choice for compliance between energy efficiency (everyone is in favor of efficiency, but there is a wide discrepancy in how much can be gained from that option), fuel switching (which signifies a departure from the usage of coal), renewables (which are not reliable and cannot be counted as base load, running 24/7), and using energy in off-peak hours. These proposals are based on emission reduction measures that directly involve the regulation of electricity by the states; and it will have a major impact on energy resources, electric ratepayers, jobs, and the economy of the Southern region.

Another component of the proposed regulations that has serious implications for the Southern region is the EPA's treatment of under-construction nuclear energy facilities. In calculating state benchmarks, the EPA credited under-construction nuclear energy facilities as if they were currently operational. This disproportionately affects states in the Southern region, as the only nuclear energy facilities currently being constructed are in the states of Georgia, South Carolina and Tennessee. It is inappropriate to reflect the completion of these units in state goals, as the units are not currently completed. As a result, the affected states will have to make more drastic emissions reductions in order to meet the proposed goals.

These proposals are not market-driven and are not truly flexible. Rather, these proposed regulations represent a top-down regulation from the EPA providing limited choices for the states in order to comply. Furthermore, the proposed percentage decrease of CO2 in the states varies widely from state to state as determined by the EPA. As these proposed decreases were determined by the EPA, and not by individual states, they are inherently inflexible and violate section 111(d) of the CCA and, most importantly, the Tenth Amendment of the U.S. Constitution.

The Clean Air Act expressly allows states "to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies," and EPA's implementing regulations (40 CFR 60.20-29) provide that states may adopt "less stringent emission standards or longer compliance schedules" than EPA's guidelines based on factors such as "unreasonable cost of control," "physical impossibility of installing necessary control equipment" or other factors that make less stringent standards or longer compliance times "significantly more reasonable."

Since 2005, the United States has reduced its total greenhouse gas emissions more than any other industrialized nation. Indeed, between 2011 and 2012, significant trends have been seen in the top three emitting countries/regions, which account for 55 percent of total global CO2 emissions. In China, emissions **increased** by 3 percent while in the United States emissions **decreased** by 4 percent and the European Union as a whole saw a **decrease** of 1.6 percent. However, the CO2 emission standards proposed by the EPA could result in decreasing interest in the utilization of coal as part of our nation's energy future.

One way to combat this is through the promotion and funding of carbon capture and sequestration technology. Bringing carbon capture and sequestration to the marketplace is a costly enterprise. Further research and development leading to commercialization is essential to continuing the progress of such facilities as Plant Barry in Alabama, the largest Carbon capture and sequestration effort so far.

Southern states have abundant natural resources that have been instrumental in growth and development throughout the region. These states benefit from a diverse mix of energy sources that include coal, natural gas, nuclear power, and renewables. Maintaining a diverse, reliable, and affordable energy supply is vital to economic growth in the Southern region. In order to meet electricity needs, the American system requires a full portfolio of resources, including new nuclear, 21st century coal, natural gas, renewables, and broad-based energy efficiency strategies.

States already possess authority and considerable discretion in determining the best solution for sources within their state. Each state is allowed to use the best approach for individual sources within their own boundaries. Use of flexible compliance mechanisms, such as averaging, banking, trading, and credit for existing action, is a state decision.

RECOMMENDATION

In recognition of The Council of State Government's Federalism Task Force, and in keeping with the Tenth Amendment of the U.S. Constitution, the Southern Legislative Conference of The Council of State Governments maintains that states should retain their flexibility and should each be empowered to determine the levels of decrease for CO2 emissions, if any, within their boundaries. Therefore, The Southern Legislative Conference of The Council of State Governments requests that:

- the U.S. EPA withdraw the proposed guidelines and issue new guidelines that respect the primacy of the Southern states to establish policies that are in the best interest of the Southern region and each of its states;
- the U.S. EPA recognize state authority by relying on state regulators to develop performance standards for carbon dioxide emissions that take into account the unique policies, energy needs, resource mix, and economic priorities;
- the U.S. Department of Energy provide funding to further develop carbon capture and sequestration technology essential to ensuring that coal remains a vital and competitive asset in the United States' energy portfolio; and
- the Federal Energy Regulatory Commission provides additional funding for expansion of nuclear generation and realistic alternatives for disposal of nuclear waste be developed and utilized.

SLC Policy Position

Regarding State Concerns over the EPA's Proposed CO2 Emission Standards

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The Southern Legislative Conference of The Council of State Governments requests that a copy of this policy position be forwarded to the Southern Congressional delegation, secretary of the U.S. Department of Energy, administrator of the U.S. Environmental Protection Agency, and the president of the United States.