

## 2. POLICY:

### Regulators ask state lawmakers for leeway to comply with EPA's Clean Power Plan

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Published: Wednesday, December 10, 2014

As conservative state legislators rally against U.S. EPA's Clean Power Plan, the head of a group representing air agencies tasked with writing plans for cutting greenhouse gas emissions is imploring them not to tie their states' hands with laws that restrict options for complying with the draft rule.

Twenty-seven states have told EPA they don't believe it has legal authority to regulate "beyond the fence line," or require emissions reductions outside power plants, said Paul Bailey, senior vice president of federal affairs and policy for the American Coalition for Clean Coal Electricity ([ClimateWire](#), Dec. 2). Six of those states have passed legislation limiting state regulators to changes that can be made at coal-fired plants, Bailey said.

That's a mistake, according to Bill Becker, the executive director of the National Association of Clean Air Agencies. "The more of these state laws that are passed by some state legislatures, they're setting them up for failure," Becker said after speaking on a Washington, D.C., panel sponsored by the National Conference of State Legislatures.

As state legislatures reconvene beginning in January, many will be taking a fresh look at EPA's proposal, guided by a model bill from the conservative American Legislative Exchange Council that would give legislative chambers an effective veto power over the plans being crafted by their states' agencies ([ClimateWire](#), Dec. 9).

Pennsylvania's outgoing Republican governor, Tom Corbett, signed a similar bill into law in October. North Dakota House Majority Leader Al Carlson, a Republican from Fargo, said his Legislature will take up a similar measure in its upcoming session.

"I'm a states' rights kind of guy," Carlson said to Becker and other state and industry representatives at the NCSL panel yesterday. "It's very hard for us to turn over what should be legislative to agencies, and say just go ahead and do what you want to do. It's important that you don't in this process lose sight of where the real power comes from. And that's the people."

#### Laws create a loss of state authority?

Becker argued that the ALEC legislation and other bills that would limit the scope of state proposals could actually take away state authority by constraining flexibility.

States could be struggling with that power dynamic for years as they wrestle with EPA's rule, and lawmakers will be able to make the plan-writing process easier or much harder for regulators. Even without the model legislation from ALEC, some legislatures will need to give state agencies more authority to write proposals to comply with the CPP, and others will have to sign off on the final blueprints.

At least a dozen states are already challenging EPA's legal authority to impose CPP in court, many of them by signing onto a lawsuit filed by Murray Energy Corp., the biggest private coal-mining company in the country ([ClimateWire](#), Aug. 7).

Bailey of the American Coalition for Clean Coal Electricity, which represents coal producers and utilities, said he expects at least 20 states to eventually challenge the federal rule.

As those states move forward with their legal fights, their governors and legislatures will want to continue to take a hard line against the regulation. One of their key arguments is that EPA doesn't have authority to set goals for states based on options that are beyond the direct source of the emissions.

Legislators in Kentucky demonstrated their opposition by limiting regulators from using compliance options outside what they think EPA has jurisdiction to regulate. EPA has based its reduction requirements for states on assumptions about how much they could improve coal plant efficiency but also on how much they could ramp up natural gas use, increase renewable power and cut back on energy demand through efficiency programs.

#### Ky. restricts regulators; Ga. probably won't

Kentucky law prevents state agencies from considering anything other than coal plant efficiency. But a top electric official in Georgia, Public Service Commissioner Tim Echols, said he doesn't necessarily expect identical pushes in other conservative legislatures.

There's no need for restrictive laws in Georgia, because most decisionmakers are "singing from the same page, and we're pushing back in unison," said Echols, who was not at the National Conference of State Legislatures event.

While Georgia has not signed onto the lawsuit challenging the draft rule, the state has a Republican governor and Legislature. Its five public service commissioners -- who are elected -- are Republican, too. Echols said their ideas closely align enough with the Legislature that he doesn't expect them to feel the need to pass legislation on the rule.

"I don't feel like Republican legislators across the street could somehow feel the plan we're going to come up with is going to be way off base or somehow tied with the Obama administration or the president's philosophy or you fill in the blank on any negative thing a Republican might construe," said Echols, who had just returned from a meeting with incoming lawmakers. "I cannot see a scenario where they tie our hands in the legislature."

Echols said the Georgia Public Service Commission and other state agencies have been loud and united about problems they see in the rule, but they will rely on the building blocks EPA has laid out -- including energy efficiency and renewable energy -- to comply when all is said and done.

"Once the rule becomes the rule, we're going to turn our attention to compliance," Echols said.

But that picture is different in states with Republican legislatures and Democratic governors, like Virginia and, beginning in January, Pennsylvania.

ALEC's model bill to give legislatures veto power over state plans is based on a law in Pennsylvania, where incoming Gov. Tom Wolf is a Democrat but Republicans hold broad majorities in both chambers. During this year's campaign, Wolf expressed an interest in joining the Northeast's Regional Greenhouse Gas Initiative ([ClimateWire](#), July 11). That may be harder for Wolf to do now that the Republican-controlled House or Senate can demand changes to his administration's eventual plan.

Whether or not state legislatures push to formally involve themselves in the CPP compliance process, lawmakers will likely wield considerable influence over how aggressively their states' agencies embrace or reject the EPA rules. After all, it's the legislatures that vote on how much money air officials can spend and what they can spend that money on.

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