



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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**William Pound**  
*Executive Director*

May 12, 2011

Ms. Mary Johnson  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: EPA's Rulemaking for Greenhouse Gas Emissions from Electric Utility Steam Generating Units Consultation with State and Local Governments**

Dear Ms. Johnson:

I am writing on behalf of the National Conference of State Legislatures (NCSL) in response to your request for consultation on the regulatory options being considered by the Environmental Protection Agency (EPA) in the upcoming rulemaking process concerning greenhouse gas (GHG) emissions from electric utility steam generating units. NCSL appreciates the EPA's commitment to the principles of Executive Order 13132, "Federalism;" and the Unfunded Mandates Reform Act (UMRA), and values the opportunity to participate in consultation discussions with the agency during the development of the regulation. Consultation early in the rulemaking process is indicative of what NCSL hopes for in meaningful consultation under the Federalism Executive Order.

NCSL does not currently have policy on the establishment of specific standards to control GHG emissions from electric utility steam generating units. However, there are related issues to the development and implementation of any proposed new requirements that are of key importance to state legislatures including unfunded mandates, state flexibility and the potential role of state legislatures in advancing the implementation of such rules.

An overarching concern for NCSL is the extent of federal unfunded mandates. States and localities across the country continue to face severely constrained budgets with many forced to deal with recurring deficits and fewer options for filling budget gaps. The cumulative impact of federal regulations creates a difficult task for state and local governments seeking to ensure compliance. Many of these requirements come with little or no federal funding attached leaving the burden on state and local government to ensure the programs are adequately funded. Estimates related to a regulation's impact on state or local government should include one-time and ongoing regulatory implementation costs as well as the costs of state compliance activities. NCSL urges EPA to take this into consideration at each stage of the upcoming rulemaking process and ensure that the choice of regulatory options maximizes benefit and minimizes implementation and compliance costs.

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In reviewing the regulatory options being considered, NCSL would urge the agency to pay particular attention to those options that would provide states with as much flexibility as possible in reaching the underlying goals set by EPA in the upcoming regulation. States are often able to establish programs that address regional or state dynamics more directly than a national program and NCSL is supportive of efforts to use such programs as tools in meeting federal standards. Should the agency choose this course it may avoid issues of preemption while allowing for state flexibility, which is key to the successful implementation of any state-federal partnership program.

In establishing any timelines for compliance EPA should take into consideration the constraints of the state legislative calendars that may come into play and ensure that sufficient time is allowed for states actions necessary to come into compliance. A minimum of two years is necessary to account for the fact that there are six states that only hold session every other year. This concern is not limited to this particular example and could potentially raise a different set of questions in different states. NCSL stands ready to answer any questions you might have about state legislative schedules, deadlines and restrictions on length and scope of sessions.

If you have questions about these comments, or for further discussion, please do not hesitate to call on Tamra Spielvogel (202-624-8690 or [tamra.spielvogel@ncsl.org](mailto:tamra.spielvogel@ncsl.org)) or Max Behlke (202-624-3586 or [max.behlke@ncsl.org](mailto:max.behlke@ncsl.org)) in our Washington, DC office. Thank you again for the opportunity to provide input early in the rulemaking development process. NCSL looks forward to continuing conversations with EPA over the coming months as the proposed rule is developed and issued.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Morris', with a horizontal line extending to the right.

Representative Jeff Morris, Washington  
Chair, NCSL Environment Standing Committee