

Congress of the United States
Washington, DC 20515

June 3, 2015

The Honorable Earl Ray Tomblin
Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Governor Tomblin:

We are writing you concerning the Environmental Protection Agency's (EPA) proposed rule to reduce greenhouse emissions from existing fossil fuel power plants, known as the "Clean Power Plan" (CPP). As you consider West Virginia's response we urge you to consider NOT submitting a state implementation plan (SIP) due to concerns over EPA's legal justification and the impact the CPP will have on jobs, electricity prices, and reliability.

The CPP will undeniably force the state to change the way it produces electricity, reduce the amount of electricity used by West Virginia consumers, threaten grid reliability, and increase electricity prices on all West Virginians. A recent study by the National Economic Research Association (NERA) found that the CPP will cause at least a 12 percent increase in retail electricity prices for West Virginia business consumers. Even more concerning is the impact that increased energy prices will have on West Virginia's families, particularly the 430,000 low-income and middle-income families—nearly 60% of the state's households—who are especially vulnerable to an increase in energy prices.

Furthermore, the CPP will be detrimental to West Virginia's coal industry and the jobs that depend on it. Coal provides 96 percent of West Virginia's electricity and the industry is currently responsible for nearly 90,000 direct and indirect jobs throughout the state. By EPA's own estimates, electricity generation from coal will decline nearly 30 percent nationwide.

Aside from the severe negative impacts that the rule will have on West Virginia, the CPP is on questionable legal grounds. The Supreme Court has ruled that the EPA may regulate carbon dioxide under the Clean Air Act (CAA), but the Court never sanctioned an effort as far-reaching as the CPP. Harvard Law School professor Laurence Tribe noted that the plan is "constitutionally reckless" and that it "usurps the prerogatives of the States, Congress and the Federal Courts."

Moreover, the West Virginia Department of Environmental Protection (WVDEP) stated in their December 2014 comments regarding the proposed existing source rule, that plan is "patently illegal." The WVDEP specifically cites eight instances where the plan violates existing law. Also the CPP affords States the ability to create multi-State compliance plans to reduce emission rates without the approval of Congress. This is a clear violation of Title I Section 102(c) of the Clean Air Act which says:

"No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress."

The EPA is trying to compel states to do more themselves than what the agency would be authorized to do on its own. Therefore, we urge you to join your fellow Governors of Texas and Oklahoma by refusing to submit a SIP to the EPA and subjecting West Virginians to this overreaching plan. By declining to submit a plan you will give the courts the necessary time to rule on whether the EPA's proposed rule is legal while also giving Congress a chance to address its concerns with the plan.

Sincerely,


David B. McKinley, P.E.
Member of Congress


Alex Mooney
Member of Congress


Evan Jenkins
Member of Congress