



LABOR NETWORK
FOR SUSTAINABILITY

Backgrounder on Labor, Climate, and the EPA

by the Labor Network for Sustainability

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With the collapse of climate protection legislation in Congress, the Environmental Protection Agency is stepping in to regulate the greenhouse gas emissions that are causing climate change. While American labor unions have been heavily involved in the discussion of climate legislation and green jobs, they have had little chance to think through the issues raised by EPA regulation. This backgrounder presents facts and defines questions that can contribute to their consideration.

EPA Regulation of Greenhouse Gasses

The Clean Air Act, just celebrating the fortieth anniversary of its passage, is widely recognized as an effective, well-accepted, and popular means for protecting the environment with minimal economic disruption. It requires the Environmental Protection Agency to regulate air pollution and sets out means for it to do so.

When George W. Bush stated his opposition to the Kyoto Protocol, he specifically said that he did not believe the Clean Air Act applied to greenhouse gasses. The Bush era EPA followed that policy.

In April 2007 in *Massachusetts v. Environmental Protection Agency* the Supreme Court found that the United States has a law for regulating carbon dioxide called the Clean Air Act and that unless the EPA can disprove established science it must regulate greenhouse gasses under the Clean Air Act.

As a candidate for President, Barack Obama pledged to support EPA action on greenhouse gasses.

The Obama administration initially moved quickly to empower EPA regulation. It granted a waiver to California to allow the higher auto emission standards that had long been blocked by the Bush administration. In December 2009 it issued an “endangerment finding” which found that “The current and projected concentrations of the six key well-mixed greenhouse gasses . . . in the atmosphere threaten the public health and welfare of current and future generations.” [1] That finding triggered steps toward such forms of regulation as a “mobile source rule,” a “trigger rule,” a “tailoring rule,” and a “reporting rule.”

1. “Endangerment and Cause or Contribution Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act,” EPA, December 7, 2009.

Obama's brandishing of EPA authority was widely interpreted as a ploy to pressure Congress to pass climate protection legislation. Many advocates of climate legislation regarded Congressional action as a better way to craft national climate policy than Clean Air Act regulation. But some climate protection advocates argued that the EPA could construct an effective climate protection regime either through direct regulation or through requirements on states that would lead to interstate cooperation to put a price on carbon emissions. [2]

In the absence of climate legislation, the EPA has gone forward with plans to regulate greenhouse gas emissions under the Clean Air Act. It has proposed a "tailoring rule" requiring large stationary pollution sources like power plants, landfills, and other industrial facilities to apply for permits. It plans to implement such regulation in incremental stages, starting with 550 large facilities in 2011 and adding 900 additional polluters each year thereafter. New regulations are expected to go into effect January 2, 2011. The EPA's timeline for mobile sources will go into effect at the same time, requiring car and light truck manufacturers to meet greenhouse gas emission standards. [3]

According to a senior official in the Obama administration, EPA regulation under the Clean Air Act will produce far less reduction in greenhouse gases than Obama's target of a 17 percent reduction by 2020 from 2005 levels. [4] That is far below the targets established by climate scientists as necessary to avoid the worst effects of climate change.

According to *The Hill* of September 20, 2010 the EPA has sent a "permitting guidance" to the Office of Management and Budget for review. It would define how facilities would meet the "best available control technology" standard for greenhouse gas emissions. However, according to Bill Becker, executive director of the National Association of Clean Air Agencies, the guidance has been stalled indefinitely at the White House by conflicts over the costs of installing pollution controls. [5]

2. Michael Northrop and David Sassoon, "Clean Air Jump-Start," *Environmental Finance*, October 2008.
3. Elizabeth McGowan, "EPA Says Texas Lawsuit Will Not Thwart Enforcement of 'Tailoring' Rule," *solveclimate*, August 10, 2010.
4. Timothy Gardner, "EPA to issue more rules in climate fight," *Reuters*, September 2, 2010.
5. Robin Bravender, "EPA emissions cuts trapped in haze," *Politico*, October 12, 2010.

Opposition to EPA regulation under the Clean Air Act has been strong in Congress. Sen. Lisa Murkowski's bill to overturn the EPA's endangerment finding was defeated 47 to 53. Jay Rockefeller's two-year moratorium on EPA climate legislation has six Democratic co-sponsors who did not support the Murkowski bill. Rockefeller says Harry Reid has promised him a vote on the bill this year, possibly during the post-election lame duck session. In the past, President Obama has threatened to veto such legislation, but the Rockefeller bill may be close to a veto-proof majority in the Senate. (The House is another matter.) [6]

Opponents of EPA regulation have also tried to put riders on various appropriations bills. They are now considering whether to put one on proposed legislation establishing a national Renewable Energy Standard. [7]

Labor and EPA Regulation

Many unions and both labor federations supported climate legislation, albeit with varying demands for the protection of specific industries and energy sources. While labor organizations have made various statements regarding EPA regulation, most predate the collapse of climate legislation.

In testimony June 19, 2008 in support of climate legislation, Bob Baugh, Executive Director of the AFL-CIO's Industrial Union Council, and Federation point person on climate policy, said

The federal cap-and-trade program should be the exclusive federal authority for dealing with greenhouse gas emissions from those sectors covered under the cap. This is necessary to prevent EPA from issuing regulations that impact these sectors and have the overall effect of overriding the decisions made by Congress in the cap-and-trade program concerning the stringency of the federal cap, the point of regulation and the distribution of economic burdens. The EPA should retain any existing authority it may now have under the Clean Air Act to regulate in sectors that are outside the cap. [8]

6. Brad Johnson, "Senate Approps Dems Prepare To Kill EPA Climate Rules," *The Work Room*, September 14, 2010 and Sean Higgins, "Climate Shift: Republicans, Some Dems Push Legislation To Curb EPA Authority," *Investor's Business Daily*, September 21, 2010.
7. Robin Bravender, "RES bill could draw efforts to stymie EPA regs," *E&E News*, September 23, 2010.
8. Testimony of Robert C. Baugh, Executive Director AFL-CIO Industrial Council, Before the Subcommittee on Energy and Air Quality of the House Energy and Commerce Committee, June 19, 2008.

With little prospect of such a cap in the near future, this might seem to leave open the question of support for existing EPA authority. However, union leaders are clearly concerned about the possible impact of EPA regulation on union jobs.

On October 29, 2009, Eugene Trisko, testifying on behalf of the United Mine Workers, stated “The UMWA strongly prefers properly balanced national climate legislation to U.S. EPA regulation of greenhouse gas emissions, or to piecemeal state and regional climate programs.” [9]

On January 27, 2010, AFL-CIO Building and Construction Trades Department president Mark Ayres wrote to President Obama’s chief of staff Rahm Emmanuel:

I am deeply concerned that aggressive implementation of GHG mitigation options available under the Clean Air Act could have severe negative consequences for our workers. While recognizing the importance of addressing pollution from power generation and heavy manufacturing, I am concerned that overly aggressive action in the absence of effective, economical pollution control technology could result in unintended consequences that hinder the employment growth necessary for a full economic recovery. We in the Building Trades are committed to working with the Agency as it proceeds on these important issues but I must request that you reexamine the Administration’s decision to proceed with the regulation of greenhouse gases at stationary sources by a process that overlooks important technological and economic conditions.

Ayers also expressed concern that the EPA and the Administration “have not yet conducted a comprehensive economic analysis of the impacts including impacts on employment of proposed GHG rulemakings.” [10]

A very different approach has come from the UAW, however. In 2009, the UAW shifted a long-standing position and came out for stronger CAFÉ (auto mileage) requirements. In a March 15, 2010 letter to representatives and senators, UAW legislative director Alan Reuther wrote that the UAW is

9. Statement on behalf of the United Mine Workers of America, AFL-CIO Before the Committee on Environment and Public Works, United States Senate, October 29, 2009.
10. Mark H. Ayers, President, AFL-CIO Building and Construction Trades Department to Hon. Rahm Emmanuel, Chief of Staff, The White House, January 27, 2010.

deeply concerned that overturning EPA's endangerment finding would unravel the historic agreement on one national standard for fuel economy and greenhouse gas emissions for light duty vehicles that was negotiated by the Obama administration last year. As a result of this agreement among all stakeholders, NHTSA and EPA are proceeding with a joint rulemaking effort that will result in significant reductions in fuel consumption and greenhouse gas emissions by 2016. . . . The UAW opposes any attempt to overturn EPA's endangerment finding, either through a disapproval resolution or through a rider. [11]

Conclusion

Over the past few years, organized labor has increasingly come to terms with the reality of climate change and the necessity of climate protection. In 2010 most unions and both labor federations supported climate protection legislation.

With the failure to pass climate legislation, however, the EPA is required by the Clean Air Act as interpreted by the Supreme Court to move forward to regulate greenhouse gas emissions. Further, such regulation currently appears the major American vehicle for reducing the greenhouse gasses that "threaten the public health and welfare of current and future generations."

Ready or not, organized labor is being confronted with the need to consider the effects of EPA regulation on their members, on the economy, and on the future well being of our climate and our people. It is time for the labor movement to open a thoughtful, reasoned discussion of how the need for climate protection, apparently at this moment possible only through EPA regulation, can best be reconciled with the need to protect workers and expand jobs.

11. Ben Geman, "UAW to Congress: Don't block EPA climate rules," *The Hill*, March 15, 2010. <http://thehill.com/blogs/e2-wire/677-e2-wire/86809-uaw-to-congress-dont-block-epa-climate-rules>

An appropriate labor dialogue will need to explore:

- How various forms of regulation will affect particular groups of workers and particular unions.
- What groups of workers and unions will be affected by an increase of green jobs due to EPA regulation.
- How EPA regulation can maximize the creation of new green jobs.
- How regulations can be targeted to minimize negative impacts.
- How “just transition” policies can be included in the formulation of regulations.
- How regulation or the lack thereof will affect the development of green jobs.
- How US emissions standards or a lack thereof will affect the development of a domestic “green” climate protection industry.

Only if organized labor constructively engages with the EPA regulation process are we likely to have a result that protects both workers’ jobs and the health and welfare of workers, their children, and their communities.

How the EPA’s Clean Air Act regulation works ^[12]

The Clean Air Act aims to protect human health and the environment from emissions that pollute the atmosphere. It was initially passed in 1955 and amended in 1970, 1977, and 1990.

The CAA requires the Federal Environmental Protection Agency to establish minimum national standards for air quality. But it gives states primary responsibility for ensuring compliance with those standards. A “tailoring rule” often allows regulations to be modified for different conditions on the grounds that appropriate solutions to pollution need to be adapted to particular circumstances.

12. See James E. McCarthy, “Clean Air Act: A Summary of the Act and its Major Requirements,” Congressional Research Service May 9, 2009. <http://fpc.state.gov/documents/organization/47810.pdf>

Background on Labor, Climate, and the EPA

The EPA sets National Ambient Air Quality Standards (NAAQS) for air pollutants ranging from sulfur dioxide to ozone to particulates. States adopt State Implementation Plans (SIPs), which they submit to the EPA for approval. High pollution areas are given more time to meet standards but are also required to take more intensive measures to meet them. States failing to develop and implement EPA-approved plans may be deprived of highway and other Federal funds or have their regulatory processes taken over by the EPA. SIPs include measures ranging from vehicle inspection and maintenance programs to requiring improved technologies to phasing out highly polluting facilities.

The EPA also has several other approaches to reducing pollution. Since 1968 the CAA has required emission standards for automobiles. It establishes standards for 188 toxic air pollutants and requires polluters to use the best available technology to reduce their emissions. It requires new industrial facilities to apply uniform national pollution control standards so that no community will gain an advantage from allowing lower standards. It issues permits for EPA pollution sources that conform to the law. It implements the international agreement known as the Montreal Protocol, which mandates the phasing out of CFCs and other chemicals that deplete the ozone layer.

Since 1990 the EPA has administered a program designed to reduce acid rain that became the model for “cap and trade” climate protection plans. A “cap” progressively reduces how much sulfur dioxide polluters may put into the atmosphere. Those who continue to emit sulfur dioxide must buy permits from the EPA. If they reduce their emissions below the standard they may sell some of their permits to other emitters, creating an incentive for investment in pollution reduction.

Several of these approaches could potentially be used to regulate greenhouse gasses. Initially the EPA has proposed to use on standards for automobiles and permits for large stationary sources to regulate greenhouse gasses, but several of its other pollution restriction approaches may also be applicable.