

Water Docket
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Comments on the U.S. EPA and U.S. Army Corps of Engineers Guidance Regarding Definition of
"Waters of the U.S." Under the Clean Water Act,

Docket No. EPA-HQ-OW-2011-0880

To Whom It May Concern:

As members of the Tennessee House Agriculture and Natural Resources Committee, we write in opposition to the Environmental Protection Agency (EPA) and the Corps of Engineers (the Corps) proposed rule regarding the Definition of "Waters of the U.S." under the Clean Water Act (CWA).

Although we concur in the need for clarity and consistency in the interpretation of the CWA, this rule does not accomplish that purpose. Instead of providing the guidance needed, the proposed rule expands the agencies' regulatory authority and introduces new terms that will result in more confusion and contention, not less.

We believe the proposed rule defines "waters of the United States" in a manner that increases burdensome and costly permitting requirements, infringes on private property rights, and circumvents the legislative process. EPA's jurisdiction is expanded to waters previously not regulated as "waters of the United States". If approved, regulatory authority will include small bodies of water and small, remote "wetlands" which may be nothing more than low spots on a farm field and are often not even wet. Natural and artificial tributaries and wetlands adjacent to or near larger downstream waters would also be subject to the federal CWA. Many of the areas are not considered waters under common understanding. If drains and ditches crossing between, among, and within property and farm fields are regulated as "navigable waters," the implications will be disastrous.

The proposed agency rules are particularly troublesome in light of Congress explicitly choosing not to pass similar proposed legislation. In addition, two U.S. Supreme Court decisions have rejected such action and ruled EPA does not have such authority. (*Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, in 2001, and *Rapanos v. United States*, in 2006. In these cases the Supreme Court rendered decisions reaffirming the CWA's limit on federal jurisdiction, and reminding the agencies that Congress used the word "navigable" for a reason.

The proposed rule only brings more uncertainty to an already complicated regulatory scheme while imposing new costs on stakeholders. Therefore, we request the rule be withdrawn and a renewed focus be placed upon providing clarity and consistency in the interpretation of the CWA.

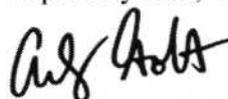
Thank you for your consideration of our comments.

Sincerely,

Rep. Curtis Halford, Chair



Rep. Andy Holt, Vice-Chair



Rep. Ron Lollar, Subcommittee Chair



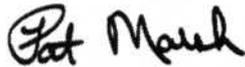
Rep. Sheila Butt



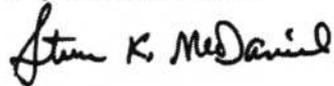
Rep. John Forgety



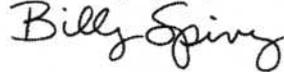
Rep. Pat Marsh



Rep. Steve McDaniel



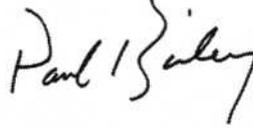
Rep. Billy Spivey



Rep. Ron Travis



Rep. Paul Bailey



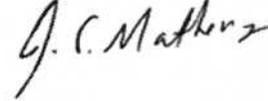
Rep. Richard Floyd



Rep. David Hawk



Rep. Judd Matheny



Rep. Dennis Powers



Rep. Art Swann

Wednesday, December 10, 2014

Isakson, Chambliss Join Senators in Calling for Withdrawal of EPA's Power Plan Rule

Senators send letter highlighting key concerns with EPA's power plan

WASHINGTON – U.S. Senators Johnny Isakson, R-Ga., and Saxby Chambliss, R-Ga., today expressed deep concern about the impact the Environmental Protection Agency (EPA)'s proposed existing source performance standards (ESPS) would have on electricity prices and power grid reliability.

In a letter to EPA Administrator Gina McCarthy, Isakson and Chambliss along with twenty-one of their Senate Republican colleagues called for the rule's withdrawal, citing unrealistic interim targets, a severely constrained timeline for implementation and complications related to multi-state resources among the many concerns raised by stakeholders.

“Our nation’s families and businesses depend upon affordable, reliable electricity. Unfortunately, EPA’s ESPS proposal will constrain Americans’ energy choices and inflict significant economic harm without producing any tangible environmental benefits,” the Senators write in the letter.

For example, the rule does not account for the reduction of carbon dioxide into the environment that will result in the expansion of clean nuclear energy at Plant Vogtle in Augusta, Ga.

Joining Isakson and Chambliss in sending the letter were: Lamar Alexander, R-Tenn., John Boozman, R-Ark., Richard Burr, R-N.C., Dan Coats, R-Ind., Thad Cochran, R-Miss., John Cornyn, R-Texas, Mike Crapo, R-Idaho, Deb Fischer, R-Neb., Jeff Flake, R-Ariz., Lindsey Graham, R-S.C., Chuck Grassley, R-Iowa, John Hoeven, R-N.D., Mike Johanns, R-Neb., John McCain, R-Ariz., Jerry Moran, R-Kan., Rob Portman, R-Ohio, Jim Risch, R-Idaho, Pat Roberts, R-Kan., Richard Shelby, R-Ala., John Thune, R-S.D., and Roger Wicker, R-Miss.

Full text of the letter is available below:

December 10, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
U.S. EPA Headquarters – William J. Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

We write to express serious concern regarding EPA's proposed existing source performance standards (ESPS) under Section 111(d) of the Clean Air Act and to identify some key issues that must be addressed in any final rule. As proposed, the rule would have sweeping impacts that would not only raise Americans' electricity

12/12/2014

prices, but also jeopardize the reliability of our nation's power grid. Among the biggest problems with the rule are the unrealistic interim targets, severely constrained timeline for implementation, and the complications related to multi-state resources.

First, as both state environmental agencies and industry stakeholders have pointed out, the emission rate targets are front-loaded, requiring a disproportionate percentage of emission rate reductions in the early years of the program. These unrealistic reduction rates do not account for the time needed to accommodate the infrastructure changes needed to achieve them. Development of new generation and transmission resources takes time. Planning, design, siting, permitting, and construction can easily take as long as a decade.

Comparing the interim emission rate reduction in 2020 (from the 2012 baseline) to the final emission rate reduction required by 2030, total emission rate reductions that must occur between the 2012 baseline and the 2020 emission rate target reach as high as 90%. The median reduction level is 66% for all states during that timeframe. Under EPA's second building block—prematurely shutting down coal-fired generation in favor of natural gas combined cycle generation, EPA's emission rate formula results in a 100% decrease in coal generation by 2020 in some states. Furthermore, this premature shutdown of coal fired generation will pose serious reliability risks to the electric grid and result in billions of dollars in stranded investment in expensive pollution control equipment that has been installed in order to comply with recent EPA regulations. For these reasons, we urge the elimination of the 2020 targets.

Second, states have very little time to prepare and submit implementation plans—13 months from the time EPA issues a final rule with a possibility of a one-year extension for individual state plans or two-year extension for multi-state plans. This is simply not enough time for states to plan and prepare for such significant changes to their electricity generating portfolio, let alone address “beyond-the-fence” energy efficiency programs. Moreover, regional transmission operators must have time to evaluate and provide feedback on the state plans to address impacts on regional markets and ensure power reliability. As outlined in its 2014 Initial Reliability Review of EPA's Proposed Clean Power Plan, the North American Electric Reliability Corporation also needs time to assess resource adequacy and long-term reliability of the North American bulk power system.

A third fundamental issue to be resolved is how EPA will account for electricity resources generated in one state but used in another. While EPA has promulgated state-based reduction targets, our electricity system is interconnected with many cross-state purchase agreements. EPA's current proposal fails to establish a workable regulatory framework for addressing these complicated, but critically important multi state issues.

Our nation's families and businesses depend upon affordable, reliable electricity. Unfortunately, EPA's ESPS proposal will constrain Americans' energy choices and inflict significant economic harm without producing any tangible environmental benefits. We urge you to address the wide range of issues raised by stakeholders regarding this proposal, including the three key concerns we have identified above, should you choose to proceed with issuing any final rule. However, we strongly believe the best way to address the aforementioned concerns is by withdrawing this ill-conceived and overreaching rule in its entirety.

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Permalink: <http://www.isakson.senate.gov/public/index.cfm/2014/12/isakson-chambliss-join-senators-in-calling-for-withdrawal-of-epa-s-power-plan-rule>



SENATE JOINT RESOLUTION 2

By Norris

A RESOLUTION urging the United States Congress to propose a certain Constitutional amendment relative to the regulatory authority of the executive branch.

WHEREAS, the growth and abuse of federal regulatory authority threaten our Constitutional liberties, including those guaranteed by the Bill of Rights in the First, Second, Fourth, and Fifth Amendments of the United States Constitution; and

WHEREAS, federal regulators must be held more accountable to elected representatives of the people, not immune from such accountability; and

WHEREAS, the Declaration of Independence decried the imposition by the central government of "an absolute tyranny over these states" and a central government that "erected a multitude of New Offices and sent hither Swarms of Officers to harass our People and eat out their Substance"; and

WHEREAS, states too often find themselves in a similar position today; and

WHEREAS, the United States House of Representatives has passed with bipartisan support the "Regulations From the Executive in Need of Scrutiny Act of 2013," known as the "REINS" Act, to require that Congress approve major new federal regulations before such regulations take effect; and

WHEREAS, the President of the United States has unfortunately shown no inclination to sign the REINS Act if it were passed by both Houses of Congress; and

WHEREAS, even if enacted, a law may be repealed by a future Congress and President; and

WHEREAS, an amendment to the United States Constitution does not require the President's approval and cannot be repealed by a future Congress and President; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED NINTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that this General Assembly hereby urges the United States Congress to propose the "Regulation Freedom Amendment" to the Constitution of the United States as follows:

Whenever one-quarter of the Members of the United States House of Representatives or the United States Senate transmit to the President their written declaration of opposition to a proposed federal regulation, it shall require a majority vote of the House and Senate to adopt that regulation.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be delivered to the presiding officers of each house of the legislatures of each state in the Union, the Secretary of State of each state, the President of the United States Senate, the Speaker of the House of Representatives, each member of the Tennessee Congressional delegation, and the federal Administrator of General Services.