

Wisconsin legislators passed a bill three years ago to set up the CEA, an experimental five-year program intended to provide incentives for industry participants that exceeded air pollutant emissions regulations. "If a company is willing to do more than the rules require, it can gain a little bit of flexibility in its administrative reporting process," says a DNR source. "If you put out less from a smokestack, you can do less reporting." The source stressed though that the CEA program does not give companies the right to waive environmental standards.

Wisconsin Electric is the only utility to formally submit a proposal under the new program. According to the DNR source, the industry has been reluctant to submit CEA proposals for a number of reasons, namely that few could justify going above the emissions standards because they were doubtful any proposed reporting flexibility would lead to substantial economic benefits. Also there was widespread skepticism that, even with this state program, EPA would allow a flexible reporting standard, which would essentially force companies to comply with possibly two different standards, one flexible state standard, and another more rigid federal requirement.

The DNR source expects several more CEA proposals by the end of the year.

The source says that, "[Wisconsin Electric] would definitely reduce emissions. [The utility] estimates that a trainload of coal will be saved per year [and] at a minimum you have extended the life of current landfills by creating new space for new ash."

The source says they hope to have a counter proposal by the end of July and hope to sign a final agreement by September. The source explained that the DNR must issue a counter-proposal to any CEA proposal submitted under the law. But the source was quick to point out that he was confident the DNR proposal would not be that different from Wisconsin Electric's plan.

One environmental advocate was guardedly optimistic about the potential benefits of the proposal arguing that getting companies to move beyond minimum standards is a good idea, but "inspection or monitoring should not be sacrificed." The source says, one question that remains to be answered is, "Are you releasing a bunch of air emissions when you dig the ash up?"

INDUSTRY AGREES TO PREDICATE CLEAN AIR TALKS ON CARBON DIOXIDE

Electric utility officials have agreed to demands that their closed-door talks with a small group of environmentalists to change the Clean Air Act include discussion of possible reductions in greenhouse gas emissions, among other pollutants.

A very small group of influential electric utility officials and environmentalists met near Washington, D.C. earlier this month for the second round of closed-door discussions on how to change the Clean Air Act next year to establish new pollution controls for the industry. The purpose of the talks is to establish the ground rules for setting new emission standards that could include reductions in greenhouse gases — a prerequisite for environmentalists to even join in the talks and a particularly thorny issue for the electric utility industry.

In fact, sources say the talks are proceeding only after the explicit recognition by industry officials that the ultimate outcome of these talks could lead to reductions in emissions of several pollutants, including carbon dioxide, mercury, nitrogen oxides and sulfur dioxide. Environmentalists had previously told the utilities that they would only participate in the talks if they would lead to these reductions, particularly reduced levels of carbon dioxide.

Although the agreement to proceed represents a breakthrough, the two sides are likely still far apart substantively. Historically, environmentalists have pressed the industry to meet timelines and reduction levels included in the Kyoto Protocol on global warming, a position industry has thus far seen as unrealistic.

The talks June 5 and 6 represented the second round of discussions among an extremely small and influential group of environmentalists and industry officials to discuss what some sources familiar with the talks say could form the "ground rules" for negotiations during the next Congress. So far, both sides see at least enough progress to consider future discussions. The environmentalists are participating in an effort to reduce what they say is excessive pollution from coal-fired power plants. Industry officials say they simply must agree to a long-term plan to reduce the emissions or face a series of uncoordinated, conflicting and costly new environmental mandates on a piecemeal basis over the coming decades that will make capital planning nearly impossible.

Environment & Public Works Committee Chairman Bob Smith (R-NH) has announced that he is considering moving a utility "bubble bill" sometime next Congress that would set new emission limits for the industry.

A small group including Paul Bailey, vice president of the environment department at the Edison Electric Institute, American Electric Power Senior Vice President of Environmental Affairs Dale Heydlauff, Cinergy Corp. Chief Executive Officer Jim Rogers and Natural Resources Defense Council Senior Attorney David Hawkins quietly held the first meeting months ago at the Landsdowne Resort in Leesburg, VA. Observers following the talks note that any agreement among such powerful players and other participants could go a long way toward changing the law.

Those sources familiar with the talks say the group continues to explore the possibility of at least agreeing on the basic assumptions that will provide the basis for any clean air compromise. For example, the group continues

discussions to seek agreement on what potential costs the industry might face to meet any new clean air requirements.

The group had scheduled a second meeting for early May in Cincinnati, OH, but shelved the plan after an increasingly large group of stakeholders demanded a seat at the table, sources familiar with the talks say. And, the discussions are raising eyebrows among industry officials that rely on coal and on Capitol Hill where any moves that may be associated with implementation of the Kyoto Protocol would likely be met with harsh opposition. Some industry officials say they will oppose any move to reduce greenhouse gas emissions from the electric utility industry because it could open the door to further regulatory reductions. In an effort to insulate the talks from public scrutiny, the members of the group have also agreed to an aggressive strategy for blocking media access to details of the plan.

A memo by staff on the House National Economic Growth, Natural Resources & Regulatory Affairs subcommittee to industry officials earlier this spring articulates some of the potential backlash. That memo slams any legislation that would give the industry "credits" for reducing greenhouse gas emissions that could be used in any future carbon trading program, and sink congressional agreements to refrain from any Kyoto implementation measures until the Senate ratifies the treaty. "Congress' embrace of any such proposal will effectively nullify" congressional provisions that would prohibit federal spending on greenhouse gas reduction measures, the memo reads. Furthermore, the staff argue that any such program will simply generate support for ratifying the Kyoto Protocol. *A copy of the memo is available on our online document service, IWP Extra. See page 2 for details.*

ENVIRONMENTALISTS ALLEGE FLAWS IN EPA EMISSION TRADING PLANS

An environmental group is aiming harsh criticism at EPA efforts to implement new emissions trading programs, charging that the agency is scrambling to approve state plans for inter-sector emissions trading and other trading schemes, despite serious technical and practical problems that would jeopardize environmental protection.

The objections, included in a white paper from Public Employees for Environmental Responsibility (PEER) developed with the aid of EPA employees, come as EPA is continuing to work on a controversial draft guidance on economic incentives programs (EIP) that has raised concerns among environmental justice advocates. The guidance would instruct states on how to design open-market emissions trading programs, which offer more flexibility for sources to generate credits by implementing non-permanent pollution reductions, and even to trade those credits across sectors.

The PEER report also comes as several states, including New Jersey, Michigan and Illinois, are currently seeking EPA approval for their own emissions trading plans. *The report is available from our online document service, IWP Extra. See page 2 for details.*

In *Trading Thin Air: EPA's Plan to Allow Open Market Trading of Air Pollution Credits*, PEER contends that EPA is rushing forward with a dubious trading strategy, despite three major defects in the programs. The group singles out a lack of adequate "quantification protocols" to ensure that different sources are trading comparable emissions reductions. The group argues that the programs rely too heavily on a weakened EPA enforcement program, and also contends that EPA's reliance on these market-based programs has come at the expense of meeting Clean Air Act deadlines for actual emissions cuts.

At the heart of the group's concerns are that the deficiencies could cripple enforcement of the Clean Air Act against stationary air pollution sources and that EPA is undertaking the approach despite a number of previous warnings from the agency's own inspector general concerning deficiencies in open market trading programs being implemented in several states. The groups contend that, because the programs rely heavily on enforcement rather than upfront evaluation, weaknesses in EPA's enforcement program will allow violations of the Clean Air Act to go unpunished.

The critique echoes a number of longstanding objections by emissions trading skeptics against open market programs, which even proponents concede can be more open to "gaming the system." It also echoes comment filed by PEER last year on EPA's draft EIP guidance. But the report also includes a critical history of development of market-based programs that a PEER source says seeks to appeal to a more general audience.

In addition to the substantive objections to the programs, the report claims that dissent within the agency on the programs has been muzzled, and documents a number of connections between regulators and regulated industries that the groups contend are simply too close and ethically suspect.

EPA sources were unfamiliar with the comprehensive report, but take issue with a number of the report's general claims. One agency source notes that emission trading, when used properly, has been a valuable tool in increasing environmental protection and obtaining emission cuts at reasonable cost. Referring to the development of EPA's controversial emissions trading guidance, the source also takes issue with PEER claims that dissent has been muzzled.

The report calls for EPA to revisit its controversial EIP guidance, and calls for EPA to refrain from proceeding with approval of proposed state open market trading programs in several states. Requests for approval are pending from several states, including New Jersey, Michigan and Illinois. In addition, the report calls for EPA to bolster its enforcement capabilities and calls for a thorough review of other EPA reinvention policies the group says rely too much on back-end enforcement.