

October 30, 2009

Senator Kerry, Co-author, Clean Energy Jobs and American Power Act

Senators Barbara Boxer (Co-Author and Senate EPW Committee Majority Chair)

Senators Thomas R. Carper, Frank R. Lautenberg, Benjamin L. Cardin, Bernard Sanders, Sheldon Whitehouse, Tom Udall, Jeff Merkley, Kirsten Gillibrand

Dear Senators,

The recently-introduced Clean Energy Jobs and American Power Act, S. 1733, protects the right of states and local governments to pursue complementary greenhouse gas reduction programs. But the draft bill, regrettably, does not adequately ensure the environmental integrity of such efforts. We write to ask you to ensure that the right of states and local governments to participate meaningfully in the effort to arrest climate change remains uncompromised.

The problem arises in this way. Under the proposed federal cap-and-trade system, emission reductions resulting from state and local action will free up allowances that otherwise would have been used to cover those emissions, and those surplus allowances will allow a corresponding increase of emissions elsewhere. Unless a mechanism is provided for retiring such surplus allowances, the federal cap-and-trade system, as proposed, would nullify complementary greenhouse gas reduction programs implemented by states and local governments.

States would have the option of purchasing and retiring the surplus allowances, but this would significantly increase program costs. Alternatively, states could abandon their complementary programs and invest in allowance purchase and retirement in lieu of complementary programs. But then states would have no control over how the reductions are achieved and would not be able to focus their resources on reduction strategies that achieve parallel objectives such as mitigating co-pollutants and supporting local economies.

S. 1733 provides states with certain allocations to help subsidize local efficiency and renewable energy programs, but the federal subsidies would not result in any overall environmental benefit unless accompanied by allowance retirement. Moreover, the allocation percentages are limited and are predetermined by S. 1733.

Similarly, the bill confers authority on state and local government to require entities to surrender federal allowances to operate cap-and-trade programs, but it provides no clear authority or jurisdictional scope to use this power to expropriate surplus allowances resulting from state and local climate efforts such as vehicle emission standards, renewable energy standards, building efficiency regulations, residential photovoltaic financing programs, etc.

Support for local climate efforts – particularly those that rely on individual and corporate initiative in response to regulatory incentives and financing mechanisms – could wither as people come to realize that their actions are providing no incremental environmental benefit. To preserve the effectiveness and vibrancy of state and local climate efforts, we recommend that the

EPA be given authority to establish allowance set-asides within the overall cap for qualified state and local programs that achieve emission reductions in capped sectors. This is similar to the bipartisan “State Voice” group’s proposal to establish a “set-aside pool for state allowance retirement;”<sup>1</sup> and it parallels a recommendation by the World Resources Institute to provide for retirement of allowances from federal allowance pools “perhaps through a set-aside, upon a demonstration by the state that it has achieved reductions beyond those achieved by the federal cap-and-trade program.”<sup>2</sup>

Under such a program, the allowance set-asides would be based on the additional emission reductions achieved by EPA-qualified programs, thus preserving incentives for complementary action. The allocations need not be predetermined or limited by federal statute, but EPA qualification would ensure that the set-asides do not increase industry’s federal compliance costs – they would only operate to accommodate actions by states and local communities, undertaken on their own initiative and at their own expense, to reduce emissions beyond the federal limit.

Thank you.

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<sup>1</sup> See September 2, 2009 letter from “The State Voice,” Mary Nichols, et al, to Senators Boxer and Kerry at [www.nescaum.org/documents/state-voice-recommendations-to-senate-on-climate-bill-20090903.pdf](http://www.nescaum.org/documents/state-voice-recommendations-to-senate-on-climate-bill-20090903.pdf).

<sup>2</sup> See October, 2009 publication “Keeping the Lights on in the State Laboratory,” by Nicholas Bianco and Franz Litz at [www.wri.org/publications/keeping-the-lights-on](http://www.wri.org/publications/keeping-the-lights-on).

<sup>3</sup> To whom inquiries may be addressed. See also [www.westernlaw.org/staterights](http://www.westernlaw.org/staterights).