

Resource for Health Organizations: Protecting EPA Clean Air Act Authority in Climate Legislation

The need to act on climate change and avoid the worst health impacts is more urgent than ever. The good news is that many members of Congress are discussing, drafting and introducing legislation to reduce emissions. The bad news is that polluting industries want to seize this opportunity to include dangerous provisions that would permanently roll back clean air and climate protections and weaken the Clean Air Act.

The Clean Air Act gives the U.S. Environmental Protection Agency (EPA) the authority and responsibility to reduce the emissions that cause climate change because of the threat they pose to human health. Congress must also act to address climate change, but must not do so at the expense of EPA's ability to protect public health. We need all the tools in our toolbox to solve climate change and prevent the growing health risks it poses.

The health and medical community must be on guard to ensure that these attacks on clean air don't become law. Below is an overview of two current policy proposals opposed by national public health and medical organizations.

Climate Leadership Council Plan (also known as the Baker Shultz Plan)

The so-called Climate Leadership Council counts among its founding members several oil companies, including BP, Exxon Mobil and Shell, and recently received an infusion of \$2 million from BP and Shell to support lobbying activities. Their plan has not yet been introduced as a bill in Congress, but they are actively lobbying for it.

Their plan would put a fee on carbon emissions with the goal of reducing these emissions, and return the proceeds to taxpayers. It also includes two unacceptable giveaways that would greatly benefit the oil industry at the expense of public health.

- The Baker Shultz plan calls for the repeal of EPA's climate change protections, and the removal of EPA's authority under the Clean Air Act to set limits on carbon pollution and other greenhouse gases, under the guise of "regulatory simplification." This sweeping rollback of critical clean air and climate safeguards would include EPA's limits on greenhouse gas emissions from vehicles, one of the most powerful existing tools to reduce emissions causing climate change.
- The Baker Shultz plan would also immunize fossil fuel companies against any liability for damages caused by their contributions to climate change. This would be akin to a law that prevented anyone from suing the tobacco industry for the harms caused by their products – and it is especially egregious given that both industries have actively worked to keep the realities of those harms from informing policy or becoming public.

H.R. 763, the Energy Innovation and Carbon Dividend Act

This bill, introduced this Congress by Reps. Deutch and Rooney in the House, is not being backed by polluting industries the same way as the Baker Shultz Climate Leadership Council proposal. However, it too reflects the influence of polluting interests, in that it includes an unacceptable trade-off that dangerously weakens the Clean Air Act by blocking for at least ten years EPA action to limit carbon pollution from power plants under the Clean Air Act. Because of that provision, leading health and medical organizations strongly oppose the House version of the bill (H.R. 763).

The legislation is strongly supported by Citizens' Climate Lobby (CCL), an advocacy group that is active across the country. Citizens' Climate Lobby also supported a Senate version of the bill that was introduced last Congress that did not contain the harmful provision.

H.R. 763 would set fees on carbon emissions to reduce them and would also return the proceeds back to taxpayers. It does not contain the dangerous provision that would make polluting industries immune to liability for climate change damages. However, it does include an unacceptable provision that would put a ten-year moratorium on EPA's ability to reduce carbon pollution from power plants under the Clean Air Act. After a decade, if the carbon fee was not working as planned to reduce emissions, EPA would then have to regulate carbon emissions once more.

There are several major problems with this approach:

- It would prevent EPA from exercising its authority to limit power sector carbon emissions for the entirety of the time IPCC scientists say we have left to stave off the worst impacts of climate change – even if the tax was not effectively reducing carbon emissions.
- Taxes are especially vulnerable to a legislative procedure in Congress called budget reconciliation, which allows Congress to pass laws with 51 votes instead of the 60-vote threshold typically required in the Senate. If Congress later overturned just the tax portion of the bill altogether, EPA would still be powerless until the ten-year period was up – and it would be too late to avoid the worst effects of climate change.
- Furthermore, by making the Clean Air Act “germane,” this provision paves the way for other, more harmful rollbacks to be included as the bill's sponsors seek additional co-sponsorship of the bill. As Congress negotiates a bill, it is common for members to request changes. We know that many members of Congress – at the behest of polluters – are pushing for additional concessions in exchange for their support. Their wish lists are long and dangerous, and go far beyond Clean Air Act authority to regulate greenhouse gases. The resulting final legislation would no doubt be far worse than the bill in its current form.

Frequently Asked Questions

Q: How clear is it that EPA has the authority to act to address climate change?

A: Crystal clear. The U.S. Supreme Court has ruled that greenhouse gases count as pollutants under the Clean Air Act, and that because they endanger human health, EPA is required by the Clean Air Act to regulate them.

Q: If EPA maintains this authority, won't companies be at risk of getting regulated twice for the same thing – once by a carbon tax and again by EPA regulations?

A: Under the Clean Air Act, EPA has the responsibility to protect health from harmful air pollution, which includes carbon pollution. This responsibility is not replaced by a carbon tax, but a strong carbon tax may make additional steps unnecessary. First, under a strong carbon tax, sources that have already cleaned up their emissions adequately could be “deemed to comply” with EPA standards. Second, the Clean Air Act provides a suite of tools that help ensure compliance with a strong carbon tax, including the ability for citizens to sue to ensure cleanup. And third, if emissions remain too high under a carbon tax, EPA must use its authority as quickly as possible. The urgency of the climate crisis means we cannot wait 10 years, followed by a study, for EPA to be allowed to use its authority.

Q: What protections from EPA would the provisions in H.R. 763 and the Baker Schultz plan block?

A: H.R. 763 would prevent EPA from limiting carbon pollution from power plants, as it did in the Clean Power Plan, for at least ten years. Leaders of the Climate Leadership Council say that their plan would also take away EPA's ability to set greenhouse gas emissions limits for vehicles – blocking standards now in place that have been enormously successful in reducing emissions. EPA has numerous other rules on the books limiting greenhouse gases and cleaning up the sources that contribute to climate change.

Q: Aren't these concerns irrelevant given the Trump Administration's track record on climate change regulations?

A: The provision in H.R. 763 would tie EPA's hands for at least ten years – long into another presidential administration. The Climate Leadership Council's plans could remove EPA's authority permanently.

Q: Don't we have to make some concessions to get bipartisan support for climate action?

A: The Clean Air Act reduces pollution and prevents more than 230,000 premature deaths, 230,000 heart attacks and 1.2 million asthma attacks annually. This incredibly successful public health law must not be seen as a “chit” to trade, and health and medical organizations are working hard to defend it. The good news is that there is a growing bipartisan consensus about the need to act on climate change. Now is the time to organize, educate and persuade members of Congress that climate change harms public health and must be an urgent priority. Climate advocates, especially health and medical professionals, should work together to build constituent demand and bolster support for health-protective climate solutions on both sides of the aisle. Trading away Clean Air Act authority is a dangerous way to cut corners at the cost of public health – we must not allow this to happen.

Q: How do you know that H.R. 763 is really going to get worse?

A: The American Lung Association has worked to defeat attacks by polluters and their allies in Congress to block, weaken or delay Clean Air Act safeguards for decades. We are proud to say that by working with national and state health and medical organizations, medical professionals, and patients, we have defeated hundreds of legislative attacks on the Clean Air Act – especially since 2010 when the attacks began to escalate. We've fought back against multiple, diverse challenges, including these: to strip EPA's authority to regulate carbon pollution; to limit EPA's ability to base its air quality standards on health science; to repeal or delay limits on specific categories of polluting sources; to censor sound health science from informing policy decisions; and to weaken the interpretation of decades-old policies. Polluters and their allies in Congress have a long and dangerous wish list that would benefit their bottom line at the expense of human health, and we've been fighting these attacks for years. We are very confident that climate legislation is just the latest vehicle they're using to try and get these attacks on the Clean Air Act signed into law.