

24 March 2022

Dr. Earthea Nance, Administrator
United States Environmental Protection Agency Region VI
1201 Elm St, Ste 500
Dallas, TX 75270

Via Electronic Mail to Nance.Earthea@epa.gov

cc: James McGuire, Director, Office of Regional Counsel, EPA Region VI
Jeff McAtee, Director, Office of External Affairs, EPA Region VI
John Bel Edwards, Governor, State of Louisiana
Dr. Chuck Carr Brown, Secretary, Louisiana Department of Environmental Quality
Thomas Harris, Secretary, Louisiana Department of Natural Resources

Dear Dr. Nance:

We are a coalition of non-profit environmental organizations working in Louisiana to address the challenges posed by a combination of the climate crisis, pervasive air and water pollution, and environmental racism. We wrote to you on February 2 of this year to express our concerns about Louisiana's application to EPA for a primacy designation in the administration of the Class VI UIC program within our state. In that letter, we expressed particular concern about the ability of the Louisiana Department of Natural Resources (LDNR) to competently administer the Class VI program with respect to several areas required as prerequisites to EPA's approval of the state's primacy application.

We reiterate here each of the concerns expressed in our February letter, but we want to alert you now to a development that may further impair LDNR's ability to act as the primary administrator of the Class VI UIC program and, separately, may contravene the terms pursuant to which EPA has authorized Louisiana to administer the Clean Air Act within the state.

A bill was recently introduced in the state legislature (SB 292 – Hewitt (R-Slidell); attached to this letter) that, if enacted, would prohibit any state agency (including LDNR and the Louisiana Department of Environmental Quality (LDEQ)) from “adopt[ing] or enforc[ing] a state or regional program to regulate greenhouse gas emissions for the purpose of addressing changes in atmospheric temperature without specific legislative authorization....” (The term “greenhouse gas” is defined to mean “carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbon, and perfluorocarbon.”) As of this writing, SB 292 has been assigned to the Senate Environmental Quality Committee, but no hearing date has been set.

SB 292 specifically identifies five (5) categories of plans and programs that would be covered by its prohibition on greenhouse gas emission regulation, and further states that its prohibition is “not limited to” only the enumerated five categories. Those five categories are:

- 1). State plans developed pursuant to any one of the following five (5) sections of the Clean Air Act:

- a). 42 U.S.C. section 7402, providing Congressional authorization to 2 or more states to enter into compacts to prevent and control air pollution;
 - b). 42 U.S.C. section 7410, requiring all states to submit for EPA approval state implementation plans that provide for the implementation, maintenance, and enforcement of all primary and secondary national ambient air quality standards;
 - c). 42 U.S.C. section 7411, establishing performance standards for new stationary sources of air pollution;
 - d). 42 U.S.C. section 7415, requiring EPA to notify a state when EPA has reason to believe that air pollutants emitted within that state "may reasonably be anticipated to endanger public health or welfare in a foreign country...." and
 - e). 42 USC section 7545, relating to the primacy of federal standards over the regulation of motor vehicle fuels and fuel additives.
- 2). State plans "developed as a result of the Governor's 2022 Louisiana Climate Action Plan for reaching net zero greenhouse gas emissions by 2050"
 - 3). "Low carbon fuel standards"
 - 4). "Plans or programs enabling regulation of mobile or stationary sources, greenhouse gas taxes or fees, or greenhouse gas trading" and
 - 5). "State or regional programs prompted by the participation of the United States in international treaties or executive agreements or interstate compacts or agreements"

The 2022 general legislative session in Louisiana is only in its second week and no one can predict either how SB 292 may be amended over the course of the next month or its chances for passage in its current form. Because it explicitly blocks implementation of any and every element of the Governor's signature Climate Action Plan without specific legislative authorization, we believe it is reasonable to expect that Governor Edwards will veto its enactment if it is passed by both houses of the legislature, but the possibility of a post-veto legislative override cannot be ruled out. There are other bills that have been introduced that would prohibit state public agency financial support for businesses that boycott or express approval for the boycott of fossil fuels and, in other ways, weaken or block the transition to a progressively more renewable energy-based economy. However, only SB 292 has the potential to undermine the state's ability to administer portions of the Clean Air Act or the Safe Drinking Water Act's Class VI UIC program to the extent minimally required by the cooperative federalism of those statutes.

In light of these ongoing state legislative developments, along with the concerns expressed in our February 2 letter to you, we respectfully reiterate our request that EPA Region VI indefinitely postpone any decision on Louisiana's Class VI UIC Program primacy application and independently evaluate the extent to which the enactment of SB 292 could disable LDEQ and LDNR from fulfilling their federal program administration obligations under the Clean Air Act and the Safe Drinking Water Act.

We thank you again, Dr. Nance, for your consideration of the concerns and requests expressed in this letter, and we remain hopeful that we will soon have the opportunity to meet with you here in Louisiana to address these issues.

In solidarity,



Greater New Orleans Interfaith Climate Coalition
Pastor Gregory Manning
Founder and Board President

Jonathan Sebastian Leo
Member, Board of Directors



Healthy Gulf
Cynthia Sarthou
Executive Director

Matt Rota
Senior Policy Director

Scott Eustis
Community Science Director



Alliance for Affordable Energy
Logan Atkinson
Burke
Executive Director



Deep South Center for Environmental Justice
Monique Harden
Assistant Director of Law and Public Policy;
Community Engagement Program Manager



Gulf Coast Center for Law and Policy
Colette Pichon Battle
Executive Director

Kendall Dix
Policy Lead



Louisiana Green Army
Lt. General Russel Honoré



Center for Progressive Reform
Katlyn Schmitt, JD
Policy Analyst



Louisiana Bucket Brigade
Anne Rolfes
Director



Louisiana Environmental Action Network
Marylee Orr
Executive Director



The Climate Reality Project, New Orleans Chapter
Peter Digre



Sierra Club
Darryl Malek-Wiley
Senior Organizing Representative,
Environmental Justice



No Waste Louisiana
Jane Patton
Director



Foundation for Louisiana
Flozell Daniels
President & CEO



Environmental Defense Fund
Liz Williams Russell
Louisiana State Director



Greater New Orleans Housing Alliance
Nichelle Taylor, MPH, RVT
Program Director for Policy Development & Implementation

2022 Regular Session

SENATE BILL NO. 292

BY SENATOR HEWITT

ENVIRONMENTAL QUALITY. Provides for regulation of greenhouse emissions. (8/1/22)

1 AN ACT

2 To enact R.S. 30:2053(10) and 2054.1, relative to air quality; to provide for definitions; to
3 prohibit the adoption and enforcement of certain programs; and to provide for related
4 matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 30:2053(10) and 2054.1 are hereby enacted to read as follows:

7 §2053. Definitions

8 As used in this Chapter, the following terms shall have the meanings ascribed
9 to them in this Section, unless the context clearly indicates otherwise:

10 * * *

11 **(10) "Greenhouse gas" means carbon dioxide, methane, nitrous oxide,**
12 **sulfur hexafluoride, hydrofluorocarbon, and perfluorocarbon.**

13 * * *

14 **§2054.1. Specific legislative authority required**

15 **Notwithstanding any other law, neither the department nor any other**
16 **state agency shall adopt or enforce a state or regional program to regulate**
17 **greenhouse gas emissions for the purposes of addressing changes in atmospheric**

1 **temperature without specific legislative authorization, including, but not limited**

2 **to the following:**

3 **(1) State plans developed pursuant to 42 U.S.C. 7402, 7410, 7411, 7415,**
4 **or 7545.**

5 **(2) State plans developed as a result of the Governor's 2022 Louisiana**
6 **Climate Action Plan for reaching net zero greenhouse gas emissions by 2050.**

7 **(3) Low carbon fuel standards.**

8 **(4) Plans or programs enabling regulation of mobile or stationary**
9 **sources, greenhouse gas taxes or fees, or greenhouse gas trading.**

10 **(5) State or regional programs prompted by the participation of the**
11 **United States in international treaties or executive agreements or interstate**
12 **compacts or agreements.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Tyler S. McCloud.

DIGEST

SB 292 Original

2022 Regular Session

Hewitt

Proposed law prohibits the Dept. of Environmental Quality or any other state agency adopting or enforcing a state or regional program to regulate greenhouse gas emissions for the purposes of addressing changes in atmospheric temperature without specific legislative authorization.

Effective August 1, 2022.

(Adds R.S. 30:2053(10) and 2054.1)