

# NJ Snub Of GHG Pact Muddles EPA Carbon Rule Compliance

By **Martin Bricketto**

Law360, New York (June 06, 2014, 8:50 PM ET) -- Rejoining a multistate greenhouse-gas reduction pact and preserving cap-and-trade regulations could be the easiest way for New Jersey to address a new federal plan for curbing carbon emissions, but Gov. Chris Christie's administration has rejected that path, leaving the state to pursue a potentially more cumbersome alternative, some attorneys say.

Christie in 2011 announced that New Jersey was leaving the Regional Greenhouse Gas Initiative, and the administration is now moving forward with a repeal of the associated carbon trading program regulations, which follows a [court decision](#) in March that formal action was required if the administration didn't want to enforce them.

While the Obama administration's Clean Power Plan to slash carbon emissions from existing power plants by 30 percent by 2030 would give states flexibility and different options in meeting targeted reductions, it may offer a smoother avenue to compliance for states that join pacts to reduce carbon emissions.

The regulations that the U.S. [Environmental Protection Agency](#) unveiled on Monday envision a June 2016 deadline for states to present an implementation plan, but a state that joins the RGGI or a similar program could receive a two-year extension to submit a complete plan, according to Columbia Law School professor Michael B. Gerrard. The state would also receive an emissions reduction credit.

"The guidelines do not require any state to join RGGI, but they create incentives to do so," Gerrard said.

Under the EPA regulations, states have proposed rate-based goals, meaning the rate of carbon emissions from fossil fuel-fired power plants per megawatt-hour of electricity generated. New Jersey would have to reduce its power sector emissions from a 2012 rate of 932 pounds per megawatt-hour to 531 pounds per megawatt-hour by 2030.

But the regulations also allow for the conversion of rate-based goals into a mass-based approach, which the EPA said would help one or more states cap their tonnage of carbon emissions and establish a trading program.

"For New Jersey and I think any state, it is going to be far easier to meet these standards using a mass-based approach or an RGGI-type approach," [Ballard Spahr LLP](#) partner Robert B. McKinstry Jr. said.

"And frankly, that's going to be a lot easier for industry to comply with because of the difficulty of converting the rate-based approach and the difficulty in doing interstate and regional trading

in a rate-based program,” he added. “Interstate programs are going to be more cost-effective because you can get more reductions cheaply if you have a bigger market.”

Still, the Clean Power Plan hasn't spurred New Jersey to rethink its stance on the RGGI, according to Larry Ragonese, a spokesman for the state Department of Environmental Protection.

“We're not considering going back to RGGI; it's not on the table,” Ragonese said, adding that overhauled cap-and-trade regulations aren't an option for the administration either because it would represent an unwarranted tax on business.

The state has markedly reduced its emissions and believes that is already meeting the EPA's requirements, but some of the regulator's numbers have left it puzzled, according to Ragonese. At this stage, the state doesn't have enough information to say exactly how its own efforts to reduce emissions would translate into an implementation plan, he said.

“We think we're going in the right direction. We think we're meeting and exceeding the requirements,” Ragonese said. “We want them to make it clear for us and all states so we know what we're dealing with.”

In 2012, New Jersey power sources that the EPA rule would cover produced 12 million metric tons of carbon emissions, which pales in comparison to states such as neighboring Pennsylvania and its 106 million metric tons of emissions, according to EPA data.

The state's power sector has also seen a drop in carbon pollution, with a 24 percent reduction from 2005 to 2012, according to the Georgetown Climate Center at Georgetown Law.

Coal-fired plants make up only a sliver of the electricity produced in New Jersey at about 3 percent, while nuclear and natural gas sources respectively make up 51 percent and 43 percent of the state's power generation, according to the center. The state — which under former Gov. Jon Corzine passed a law requiring an 80 percent drop in greenhouse gas emissions by 2050 — presently has four coal-fired plants, according to the DEP.

The state could indeed devise an alternative rate-based program covering each coal-fired and natural gas-fired plant, but it would have to factor in other puzzle pieces such as energy efficiency improvements and ensure that its approach is enforceable in the eyes of the EPA, according to McKinstry.

The state can claim that it's already meeting the EPA's requirements, but it would have to show that the reductions are permanent, McKinstry said. Right now, there's no legal mechanism for doing so, and the reporting and modeling necessary to show that reductions are being achieved and maintained could be hefty compared to cap-and-trade, according to McKinstry.

“The other route is going to be very expensive, very burdensome, and it's not really going to be an attractive approach for utilities because they're also going to have to figure out how to comply,” he said. “The utilities know how to comply with the cap-and-trade program. It sort of baffles me as to why they would want to go in a different direction.”

The RGGI could be worth reconsidering for New Jersey as a “fully developed and economically viable means for trading emission credits,” but that doesn't necessarily mean that an alternative will be more burdensome and time consuming, according to [McCarter & English LLP](#) partner John J. McAleese III.

“I am not sure we can go that far because the state may conclude through analysis that other means of compliance are more efficient, cost-effective, economical or otherwise advantageous to N.J. interests,” he said.

Still, it does seem that New Jersey would be taking the tougher path, at least administratively, according to Maura E. Blau, who is counsel with [Greenbaum Rowe Smith & Davis LLP](#).

“It's starting from square one versus being already up and running, and I don't think there's any getting around that,” Blau said. “I don't see how it's possible that it's not going to be more cumbersome no matter which of the different options that New Jersey picks.”

While the final regulations and New Jersey's plan for implementing them remain to be seen, the public will soon weigh in on the state's repeal of RGGI-related regulations. That proposal is set for publication in the state Register on July 7.

Environment New Jersey Director Doug O'Malley, whose organization successfully challenged the Christie administration's inaction on the regulations, said the state doesn't have to reinvent the wheel and that RGGI still represents the easiest way for it to comply with federal emissions targets. Either way, New Jersey will be on the hook, he said.

“This is why the EPA carbon rule is so important,” O'Malley said. “For politicians like Gov. Chris Christie that want to double down on climate inaction, that option has been taken off the table by the EPA. We're not going to get a get-out-of-jail-free card.”

--Additional reporting by Keith Goldberg. Editing by Jeremy Barker and Philip Shea.