

State pushed to limit TransAlta emissions

Clean air agency says it doesn't have legal authority to act

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In what could become a national test case, four national and regional conservation groups have told the Southwest Clean Air Agency that it has "the legal mandate and the moral obligation" to limit carbon dioxide emissions from Washington's only coal-fired electrical plant.

Citing the U.S. Environmental Protection Agency's recent draft finding that CO₂ and other greenhouse gases "threaten the public health and welfare of current and future generations," the groups argue the Vancouver-based agency has the authority to limit greenhouse gas emissions from the Canadian-owned TransAlta plant.

The 1,376-megawatt plant accounts for 74 percent of the state's greenhouse gas emissions from power production, according to the Department of Ecology.

Conservationists also cite Ecology's own clean air regulations, which state that "No person shall cause or permit the emission of any air contaminant from any 'source' if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or businesses."

But Bob Elliott, executive director of the Vancouver-based agency, says he lacks the legal authority to impose such limits.

The U.S. Supreme Court ruled in 2007 that the EPA has statutory authority to regulate greenhouse gases under the federal Clean Air Act. But the Bush administration declined to follow through with development of a rule limiting emissions of the six major greenhouse gases.

The EPA's April "endangerment" finding represents the first step taken by the Obama administration to comply with the 2007 Supreme Court ruling. But that EPA finding "is just another piece of evidence," said Janette Brimmer, an attorney for the environmental law firm EarthJustice. "There is plenty of evidence already that CO₂ is a threat."

"The state has full authority to be more protective than the EPA," Brimmer added.

EarthJustice represents the Sierra Club, the National Parks Conservation Association, the Northwest Environmental Defense Center and the NW Energy Coalition.

Impacts cited

In her letter to Southwest Clean Air, Brimmer noted that between 2000 and 2006, the TransAlta plant emitted an average of 10 million metric tons of CO₂ annually, approximately 10 percent of all greenhouse gases emitted in Washington.

Scientists have documented that greenhouse gases already have altered the climate of the Pacific Northwest by melting the snowpack and shrinking glaciers in the Cascade Range

and unleashing more extreme rainstorms, Brimmer said.

If CO2 emissions continue unabated, she said, scientists predict that climate change could result in more forest fires, rising sea levels, a shortage of irrigation water, reduced hydroelectric power generation, declining salmon runs, and impacts to human health.

The hook for asking Southwest Clean Air to step in and regulate CO2, as well as mercury and nitrogen oxide emissions, is that the five-year operating permit for the TransAlta plant, known as a Title V permit, is up for renewal this year.

The TransAlta permit is the first for a coal-fired plant to come up for renewal since the EPA weighed in on greenhouse gas emissions three months ago.

"It's an opportunity, the first one we've taken on," Brimmer said. "But we wouldn't make the argument if we didn't think that the law is solid."

But Elliott notified Brimmer on Tuesday that he is declining her clients' request and will proceed with issuing a Title V permit, subject to review by the EPA.

"The federal and state air operating permit program does not authorize or allow any agency, including SWCAA, to impose new emission or operating limits on a facility," he wrote.

Operating permits cover only pollutants for which regulatory standards currently exist, Elliott said. If new state or federal limits were imposed, TransAlta's permit could be amended later, he said.

Ongoing negotiations

A proposal to reduce mercury and nitrogen oxide emissions at the Centralia plant has been subject of closed-door negotiations involving Gov. Chris Gregoire, TransAlta and Ecology officials since 2007.

On May 21, Gregoire issued an executive order on climate change that directs Ecology officials to work with TransAlta to reduce the coal plant's greenhouse gas emissions by more than half by Dec. 31, 2025.

TransAlta officials did not respond to a request for comment.

Elliott of the clean air agency acknowledged in an interview that "we have that capability, to pass a rule." But he said it would be "premature" — and politically awkward — for SWCAA to step in and impose a CO2 limit while TransAlta is in negotiations with the governor and Ecology officials.

"I know they've got something on the way," he said. "It would be disruptive for me to be involved at this point in time."

Ecology and Southwest Clean Air share regulatory authority over the TransAlta plant, but the Vancouver agency has been largely excluded from the current negotiations.

Ecology officials came under fire earlier this year for refusing to release information about the plant's emission levels and for holding close-door mediation.

Ecology officials have defended the process, saying closed-door mediation is a legal and appropriate way to avoid litigation in certain cases. They said in April that they would begin a 30-day comment period on new regulations "within the next several weeks" and would hold a public hearing. No date has been set for that hearing.

Elliott said his agency could hold off on issuing a new Title V permit if adoption of a new CO2 limit or any other rule was imminent.

"But we don't know what the EPA is going to do," he said. "The April finding is not specific enough. EPA would have to come out with a rule that would apply to all coal-fired plants. That rulemaking process takes about a year."