



Written by [James Heiser](#) on November 16, 2010

New Mexicans Resist Board's Effort to Impose Cap and Trade

As reported for The New American on November 4, New Mexico's unelected Environment Improvement Board (EIB) decided on election day to impose a system of "cap and trade" on the 63 "large industrial sources." The EIB's action was adopted by a 4-3 vote and yet will affect the lives of every resident of the state, as power companies raise rates to offset increased expenses, and major industries may be forced to consider layoffs to compensate for the cost of carbon credits.



[The Albuquerque Journal](#) reported:

The plan was opposed by both candidates for governor, dozens of lawmakers, some cities like Farmington and utility and oil and gas groups which argued it would raise consumer prices, destroy thousands of jobs and put New Mexico at an economic disadvantage with other states. [Gov. Bill] Richardson appointed all members of the EIB and the head of the Environment Department which proposed it.

"I am pleased that the EIB adopted the program I have worked so hard to develop," Richardson said in a news release from his Environment Department Tuesday night....

The plan would take effect in 2012, requiring businesses and industries that emit more than 25,000 metric tons of emissions a year to reduce emissions by 2 percent a year, and by 15 percent by 2020. Those that can't achieve the reductions, could obtain "allowances" and offsets from other sources for each ton they emit above the cap to comply with the rule. Allowances could be bought for a to-be-determined market price from other sources in states and Canadian provinces participating in a regional cap and trade program designed by the Western Climate Initiative. New Mexico is a founding member of the WCI. An industry could also purchase an "offset" from an unregulated source anywhere in North America that has taken steps to reduce emissions.

All seven members of the EIB were appointed by out-going Governor Bill Richardson (D), with the advice and consent of the state senate, who has aggressively pushed for such a radical environmental agenda. The cost of implementing the EIB's decision could be staggering; according to the *Albuquerque Journal*, New Mexico's largest power company estimates that the annual cost of this policy would reach \$110 million a year by 2020 for their company alone.

The EIB's action follows an agenda that is similar to that which is [being implemented under Administrator Lisa Jackson at the federal Environmental Protection Agency](#): circumvent the legislative authority of the elected representatives of the people. Whether from principle, fear of the electorate, or both, legislators have been quite hesitant to follow the radical environmental agenda on the path of economic and political suicide; with unelected boards and agencies usurping that legislative role, politicians are free to take the credit for the action of those whom they have appointed and continue the



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work of implementing a *de facto* system of cap and trade without the action of the state and federal legislative assemblies. Thus, for example, a November 2 EIB press release places their action within the context of building a system of cap and trade:

Addressing climate change immediately is the right thing to do I am pleased that the EIB adopted the program I have worked so hard to develop, Governor Bill Richardson said. I call on the federal government to build on New Mexico's program and the WCI to implement a national cap-and-trade system.

I applaud the boards leadership and its willingness to take a stand for New Mexico's future, said New Mexico Environment Department Secretary Ron Curry. This is a great opportunity to promote the states clean energy economy by reducing dangerous greenhouse gas emissions.

The new regulations, adopted by the seven member board, will enable the state to participate in a regional greenhouse gas cap-and-trade program with other U.S. states and Canadian provinces through the Western Climate Initiative (WCI). The WCI is a collaborative of seven western states and four Canadian provinces that are developing strategies to address climate change.

Not all of New Mexico's elected Representatives are prepared to simply accept the EIBs decision. In Farmington, a city of 43,000 in the northwestern corner of the state, the city council is weighing a legal challenge to the boards action. According to the *Farmington Daily Times*, council members went into closed session on November 15 to consider the possibility of litigation:

Councilors are scheduled at their meeting today to discuss "threatened and pending litigation," according to the city of Farmington, related to the state Environmental Improvement Board's decision to adopt the program aimed at reducing emissions blamed for global warming.

The city's policy is to discuss litigation during closed meetings.

But the closed meeting has raised questions for an open government advocate and a city councilman.

Councilman Jason Sandel, an outspoken critic of the cap-and-trade program, said the city has discussed the matter openly for some time.

Last Tuesday, Sandel said the city should authorize its electric utility to move forward on a "legal challenge" of cap and trade. Farmington should lead the charge because its residents will see effects of cap and trade to a greater extent than people in other parts of the state. "I don't see any major reason to go behind closed doors just to give the electric department the authority to pursue a legal challenge," he said. "There could be some new information that I'm not aware of, but on the face of it right now, those are my feelings."

City Attorney Jay Burnham said the city legally can hold the closed meeting because officials are discussing "threatened and pending litigation."

Burnham explained that the city participated in "administrative hearing" proceedings that constitute "litigation" because electric utility officials testified on cap and trade.

"In my opinion, we are in litigation," he said.

Further, appealing the decision to pass a cap-and-trade program to the New Mexico Court of Appeals would constitute litigation, Burnham said.

"That's what we're talking about on Tuesday ... is whether to file an appeal to the Court of



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Appeals,” Burnham said. “That is not just some possible or potential litigation down the line, that’s a decision that’s imminent that we have to make.”

Setting aside the minor point of open or closed meetings, the most relevant issue at stake is whether there will be a movement to push back against the actions of four members of an unelected board. In Farmington, it appears that the answer is yes. What action the new Governor and legislators in Santa Fe will take remains to be seen.



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