



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

PMB 2020  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

June 1, 2011

Alec Loorz and Victoria Loorz  
Kids vs Global Warming  
331 Prospect Street  
Oak View, CA 93022

RE: Petition for the promulgation of rules to limit atmospheric concentration of CO<sub>2</sub> to no greater than 350 ppm by 2100

Dear Mr. and Ms. Loorz:

This letter acknowledges that on May 4, 2011, the South Dakota Department of Environment and Natural Resources (DENR) received your petition for rulemaking pursuant to South Dakota Codified Laws (SDCL) 1-26-13, in the above matter. For a number of reasons as more fully set forth below, DENR denies your petition as provided for in SDCL 1-26-13.

**REASONS FOR DENIAL**

**1. THE PROPOSED RULE IS IMPERMISSIBLE UNDER SDCL 1-40-4.1** - SDCL 1-40-4.1 is a statement of policy by the South Dakota Legislature, legally limiting the rulemaking authority of DENR regarding environmental rules. It provides as follows:

**1-40-4.1. Limitation on stringency of certain rules.**

No rule that has been promulgated pursuant to Title 34A, 45, 46, or 46A may be more stringent than any corresponding federal law, rule, or regulation governing an essentially similar subject or issue.

**Source:** SL 1992, ch 254, § 100.

While the United States Environmental Protection Agency (EPA) has asserted jurisdictional authority over global warming and greenhouse gases including CO<sub>2</sub>, it has not adopted standards as sweeping as those suggested in your petition draft. Therefore, DENR considers your proposal, "more stringent than...federal law, rule or regulation," and is therefore impermissible rulemaking under SDCL 1-40-4.1. As a matter of South Dakota state law (SDCL 1-40-4.1), your proposed rule making cannot currently be undertaken by DENR or any of the related state Boards within our jurisdiction.



**2. THE INDICATIONS OF RECORD BY THE SOUTH DAKOTA LEGISLATURE DO NOT SUPPORT THE STATE OF SOUTH DAKOTA UNDERTAKING THE REGULATION OF GLOBAL WARMING, GREENHOUSE GASES OR CO<sub>2</sub>** - The South Dakota Legislature has expressed by Resolution its position on the regulation of global warming, greenhouse gases and CO<sub>2</sub>. Your proposed rule is not consistent with its most recent (2010) position of record (HCR 1008 - Urging Congress to oppose current energy and climate legislation under consideration in the United States Senate). While this resolution does not have the force and effect of law, it is an indication of the view of the Legislature on this subject.

**3. THE POTENTIAL COSTS AND ECONOMIC IMPACTS OF THE PROPOSED RULE ARE GREAT** - In the view of DENR, our Legislature has prudently chosen to wait until there is a more clear indication of the right public policy in this area. This is especially important considering the financial stakes for South Dakotans. I specifically refer you to a 2009 report by our South Dakota Public Utilities Commission (Carbon Cap and Trade: National Policy, Local Impact) that found if the cap and trade measure then pending before Congress were to pass, it would have resulted in a nearly 50% utility rate increase for South Dakotans by 2015. Agriculture is our number one industry, and at least at present and for the near term, it is highly dependent on fossil fuels as a production input. If South Dakota unilaterally undertakes climate regulations that increase their cost of production, it makes them less competitive in national and international markets. Likewise, South Dakotans are dependent on fossil fuels for much of the energy consumed in this state for transportation, heating and electricity. Many of these people are elderly and low-income. Unilaterally undertaking global warming regulation with an uncertain result would create a hardship on many by diverting their already limited financial resources from meeting their basic needs, such as food, housing, and medicine, to pay for increased energy costs.

**4. SOUTH DAKOTA AND OTHER STATES CHALLENGE EPA'S ENDANGERMENT FINDING** - The State of South Dakota has joined other states in challenging EPA's endangerment finding and the "tailoring", "tailpipe", and "timing" greenhouse gas rules. *Coalition for Responsible Regulation, Inc. et. Al., v. Environmental Protection Agency*, Case No. 09-1322 and Consolidated Cases, U.S.C.A., DC Circuit. Adoption of the regulations you propose would, in our view, be inconsistent with the position the State has taken in this litigation.

**5. ESTABLISHMENT OF A 350 PPM CARBON DIOXIDE ATMOSPHERIC CONCENTRATION LIMIT UNENFORCEABLE** - Establishing a 350 part per million carbon dioxide atmospheric concentration level is essentially setting a National Ambient Air Quality Standard. EPA's Advanced Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions under the Clean Air Act identifies major difficulties in establishing a National Ambient Air Quality Standard for greenhouse gases. The first is the determination of what concentration level is requisite to protect public health and welfare. Although you conclude a 350 parts per million carbon dioxide concentration level is necessary to avoid your alleged global warming threats, DENR has found no evidence that a 350 part per million carbon dioxide atmospheric concentration level is the right level to protect public health and welfare based on the scientific evidence. Second, most pollutants can be controlled locally to attain the National Ambient Air Quality Standards. However, greenhouse gases originate throughout the world and



are globally mixed, dispersed, and transported such that there is a relatively uniform atmospheric greenhouse gas concentration level around the world. DENR's research indicates that South Dakota's current carbon dioxide equivalent emissions represent only 0.036% of the world's greenhouse gas emissions. This small amount of CO2 emissions from within the state would make it impossible for DENR to have any impact on concentration levels of carbon dioxide in the atmosphere above South Dakota. Therefore, establishing an atmospheric limit for South Dakota would be unenforceable due to its insignificant amount of CO2 emissions.

**CONCLUSION** - DENR finds it lacks the legal authority to undertake the rulemaking proposed in your petition. Furthermore, in light of the legislative record, uncertain results, and hardships that will occur, DENR finds the proposed rulemaking premature and imprudent. Pursuant to SDCL 1-26-13, true and correct copies of this denial are being provided to the members of the South Dakota Legislature's Interim Rules Review Committee and the Director of the Legislative Research Council. Thank you for your petition.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve', with a stylized flourish extending from the end.

Steven M. Pirner, PE  
Secretary

cc/enclosure of the Petition:

Marty Jackley, South Dakota Attorney General  
Nathan Sanderson, Senior Policy Advisor, Governor's Office  
Richard Sweetman, Chair, South Dakota Board of Minerals and Environment  
Jim Fry, Director - SD Legislative Research Council  
South Dakota Interim Rules Review Committee Members:  
Senator Jean Hunhoff - Chair  
Representative Shawn R. Tornow - Vice-Chair  
Senator Angie Buhl  
Representative Peggy Gibson  
Representative Roger Hunt  
Senator Mike Vehle