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08/28/2003 11:29:14 AM

Record Type: Record

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Subject: EPA to Say It Lacks Authority To Regulate Greenhouse Gases

August 28, 2003 11:04 a.m. EDT

POLITICS AND POLICY

EPA to Say It Lacks Authority
To Regulate Greenhouse Gases

By JEFFREY BALL
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The Bush administration is expected to formally announce by the end of this week that it doesn't think it has the authority to cap emissions of carbon dioxide and other "greenhouse gases," a move likely to intensify a battle between the administration and environmentalists, including some state regulators.

Word from the Environmental Protection Agency that it believes it lacks authority under the nation's Clean Air Act to regulate emissions that some scientists believe are raising the Earth's temperature comes just after the agency issued another controversial set of rules: those making it easier for older power plants and factories to be upgraded without costly antipollution controls.

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An EPA official confirmed that the agency plans on Thursday or Friday to deny a 1999 petition arguing for regulation, but the official wouldn't immediately provide further details on the agency's specific arguments.

The EPA's decision that carbon dioxide isn't a pollutant it can regulate comes as little surprise. President Bush has long resisted calls to force industry to curb emissions of the chief suspected greenhouse gas. And he has rejected the Kyoto Protocol, the international treaty designed to reduce carbon-dioxide emissions, arguing that mandated cuts would hurt the U.S. economy.

Still, the EPA's announcement will mark the administration's first legal response to lawsuits seeking to force the agency to regulate greenhouse-gas emissions. Armed with that paperwork, some of those activists now say they will take the next step and sue the administration to argue that its interpretation of the Clean Air Act is wrong.

"We have scientists lined up in the wings to testify [that carbon dioxide] is a pollutant," says Kert Davies, research director for the U.S. arm of Greenpeace, the international environmental group. "If carbon dioxide is legally defined as a pollutant, it will change everything."

The outcome of this fight could affect various global-warming battles across the country. Congress is considering controversial proposals to cap carbon-dioxide emissions. Several Northeastern states have sued the EPA in hopes of forcing the agency to take similar action. Meanwhile, California and several states along the East Coast are moving to limit greenhouse-gas emissions on their own because of what they call inaction by the federal government.

Traditionally, the Clean Air Act has regulated substances that contribute to such problems as respiratory ailments or smog. But in 1999, the International Center for Technology Assessment, a Washington-based environmental group, filed a petition arguing that the Clean Air Act also requires the EPA to regulate emissions of suspected greenhouse gases, including carbon dioxide. A central point in the group's argument: The law requires EPA to regulate substances that endanger public health or "welfare," and it defines effects on welfare to include such things as effects on weather or climate.

When the EPA -- under both the Clinton and Bush administrations -- didn't respond to the 1999 petition, the International Center for Technology Assessment, joined by Greenpeace and the Sierra Club, sued the EPA last year to force a response.

California Legislation May Be Affected

The 1999 petition addressed only automotive emissions of greenhouse gases. Since then,

however, states have sought to limit greenhouse-gas emissions from a variety of sources, including power plants, in addition to cars and trucks. Automobiles and power plants are the two biggest sources of carbon-dioxide emissions in the U.S. Carbon dioxide is produced by the burning of fossil fuels -- say, coal in a power plant or gasoline in an auto engine.

The EPA's decision not to regulate carbon dioxide "just shows this administration is continuing to ignore global warming, which all science, which law, and which good policy suggest we should be addressing quickly," said Peter Lehner, chief of the environmental protection bureau of the attorney general's office for New York, one of the states that has sued the EPA to regulate power plants' carbon-dioxide emissions. "They've got their heads in the sand on this."

Environmentalists criticized the EPA decision as the latest example of the Bush administration helping industry. "This is another big favor for the big polluters in the auto, coal and oil industries," said David Doniger, a lawyer for the Natural Resources Defense Council, a New York-based environmental group.

The EPA's decision is likely to have particular ramifications in California, where the legislature has passed a state law to limit carbon-dioxide emissions from automobiles. The auto industry has said it plans to sue the state to block that law once the state finalizes the law's details; the industry argues the California law amounts to a back-door state effort to regulate fuel economy, an authority that's reserved for Washington under the nation's fuel-economy law.

California regulators, and environmentalists, have argued that the state has authority under the Clean Air Act to regulate carbon-dioxide emissions. But Alan Lloyd, head of the California Air Resources Board, the state's clean-air regulatory agency, said the EPA's ruling could jeopardize that effort.

"This could have a significant impact for California," he said, though he noted he hadn't yet seen the EPA's decision. "What's devastating is, yet again, you see Washington basically ignoring the science and, in some cases, stepping up to stop states doing what they can to protect the environment."