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 Claiming Lack of Regulatory Authority

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Page A-37

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Climate Change States to Sue EPA Over Decision Claiming Lack of Regulatory Authority

Three New England states announced Sept. 3 they will file a lawsuit in a federal appeals court challenging the Environmental Protection Agency's determination that it cannot regulate greenhouse gases from mobile sources under the Clean Air Act.

The states' attorneys general--Richard Blumenthal from Connecticut, Tom Reilly from Massachusetts, and Steven Rowe from Maine--intend to argue the agency has the legal authority under the Clean Air Act. They also will argue that the EPA decision contradicts earlier statements and testimony from the agency, according to Blumenthal.

At the same time, the three states filed a motion Sept. 3 in a federal district court to dismiss "without prejudice" a petition they filed June 4 against EPA for failing to regulate carbon dioxide emissions, a significant contributor to global warming, under national emission standards for criteria pollutants (*Massachusetts v. EPA*, D. Conn., No. 3:03CV984, 09/03/03).

Blumenthal, Reilly, and Rowe had filed a federal lawsuit against EPA but dropped the pending lawsuit in favor of challenging EPA's new ruling, Sarah Nathan, Reilly's spokeswoman told BNA Sept. 3.

Nathan added, "we are still focused on global warming as the problem, we just changed our approach to solving it and decided to take EPA head on" at the appellate level.

A spokesman for the Department of Justice declined to comment Sept. 3 on the greenhouse gas lawsuits.

Request by Environmental Groups Denied

On Aug. 28, EPA denied a request from environmental groups to regulate carbon dioxide from motor vehicles under the Clean Air Act, asserting Congress did not give it the authority to do so.

The coalition of environmental organizations had filed a petition with the agency in October 1999 seeking federal regulation of CO₂ from mobile sources.

After EPA failed to respond to the petition, the coalition requested judicial assistance Dec. 5, 2002, in getting a response from the agency (*International Center for Technology Assessment v. EPA*, D. D.C.,

No. 02-2376, 12/5/02). EPA's response declaring its lack of authority to regulate mobile sources of CO₂ led environmental groups and now the three New England states to announce lawsuits challenging the determination.

Arguing that EPA's Aug. 28 announcement was contrived to bring the whole matter before the U.S. Court of Appeals for the District of Columbia Circuit, the three attorneys general said in the district court filing that "EPA's newly-minted position ... was formulated in the context of the ongoing litigation and its issuance was plainly driven by the agency's need to respond to the [three states'] complaint."

According to the states, EPA also filed a motion on Aug. 28 to dismiss the states' global warming lawsuit, arguing that the legal challenge should be made before the federal appeals court, not the district court.

"While we are switching legal forums, we are re-doubling our efforts to challenge EPA's abdication of responsibility," Reilly said.

"The EPA seems determined to deny irrefutable, increasing scientific proof that greenhouse gas emissions and global warming are endangering public health," as well as "denying powerful scientific evidence from its own studies," Blumenthal said in a statement. He was referring to a June 2002 report to the United Nations in which EPA said it "generally agrees" that emissions are increasing and accumulating in the Earth's atmosphere because of human activities.

By Pamela Najor

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