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CREATOR: Kenneth L. Peel (CN=Kenneth L. Peel/OU=CEQ/O=EOP@Exchange [CEQ])

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SUBJECT:: Fw: NYT on CO2 litigation

TO: Paul R. Noe (CN=Paul R. Noe/OU=OMB/O=EOP@EOP [OMB])

READ: UNKNOWN

TO: Allison Boyd (CN=Allison Boyd/OU=OPD/O=EOP@Exchange [OPD])

READ: UNKNOWN

TO: djoseffe@omb.eop.ov (djoseffe@omb.eop.ov [OMB])

READ: UNKNOWN

TEXT:

Resending.[]; I had Daryl's email address wrong (this is by Blackberry at home).[]; So Allison and Paul, this may be a repeat for you.[]; Ken

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-----Original Message-----

From: Kenneth Peel <peelkl@yahoo.com>

To: Peel, Kenneth L. <Kenneth_L_Peel@ceq.eop.gov>

Sent: Sat Oct 04 14:23:00 2003

Subject: NYT on CO2 litigation

NEW YORK TIMES REPORT[]; --[]; OCTOBER 4, 2003

States Plan Suit to Prod U.S. on Global Warming

By DANNY HAKIM

Published: October 4, 2003

DETROIT, Oct. 3 []* California plans to sue the Environmental Protection Agency over the Bush administration's recent decision that the agency lacked the authority to regulate greenhouse gas emissions from tailpipes and other sources, state regulators said on Friday.

Nine other states, including New York, Massachusetts and Oregon, as well as environmental groups like the Sierra Club and the Natural Resources Defense Council, are expected to join the suit. The legal strategy, an effort to prod federal action on global warming, sets up a battle between the Bush administration and the states over policy on climate change.

[]; In California, the suit is also seen as an effort to stave off challenges to the state's plan to regulate automotive emissions of greenhouse gases.

"This issue is vital to the future of our state," Gov. Gray Davis said in a statement. "It affects important resources like our rich agricultural lands; Sierra snowpack; the safety of our forests and our seaside communities."

Mark Merchant, a spokesman for the E.P.A., said: "It's apparent that

California is reading the Clean Air Act one way and the E.P.A. is reading it another way. There's a difference of opinion there, and California has decided to ask the court to make a decision."

The move comes after suits filed by several states challenging the Bush administration's loosening of regulations over power plants.

Mr. Davis's administration announced on Friday that the suit against the E.P.A. would come in a matter of days. California and the other states and environmental groups planned to make a joint announcement within a few weeks, but the Davis administration moved up its timetable because of the impending recall election, people briefed on the planned lawsuit said.

The suit stems from the E.P.A.'s decision, announced in late August, that it did not have the authority to regulate emissions of carbon dioxide and other gases linked to global warming trends. Many scientists, but not all, say such trends are leading to a variety of health and environmental problems.

The E.P.A. decision came in response to a petition from environmental groups to take action on climate change and was a reversal of the Clinton administration's policy on the matter. Environmental groups and regulators in several states say the Clean Air Act does give the federal government such authority.

"If the United States is ever going to regulate greenhouse gases, it will start with a victory in this lawsuit," said David Bookbinder, Washington legal director for the Sierra Club.

The Clean Air Act directs the government to regulate air pollutants, including "any physical, chemical, biological radioactive substance or matter which is emitted into or otherwise enters ambient air" if they "may reasonably be anticipated to endanger public health or welfare." Climate change is included as a possible harm to public welfare.

The case could resolve whether greenhouse gases will be classified as air pollutants.

The nine other states expected to join the suit are New York, Washington, Oregon, New Jersey, Massachusetts, Maine, Illinois, Vermont and Connecticut, officials in California said Friday.

Because of its history of smog problems, California has long been the most aggressive state on matters of air policy. Because the state's air policies predated the Clean Air Act, it has the authority to set its own standards, and other states can pick California's more aggressive rules over the federal government's.

Last year, California's Legislature became the first and, so far, only legislative body in the nation to enact a measure aimed at curbing global warming emissions from cars.

The legislation put the state at odds with the auto industry, which is widely expected to sue the state. Environmental groups are concerned that the E.P.A.'s ruling could be used as a legal argument to undercut California's authority to regulate greenhouse gases.

"California has the dual motive of wanting the federal government to do the job and to push back on the attempt of the Bush administration to interfere with California's attempt to do its job," said David D. Doniger,

a policy director at the Natural Resources Defense Council.

Mr. Merchant said the E.P.A. action did not necessarily preclude California from acting on its own.

The auto industry has yet to file suit because the specifics of the measure itself have not been written. The ultimate tenor of the regulation depends on who occupies the governor's office, because the chairman of the state's Air Resources Board is an appointee of the governor.

Arnold Schwarzenegger, the leading Republican candidate whose enthusiasm for Hummers has unsettled environmentalists, supports the legislation.

"California's landmark legislation to cut greenhouse gases is now law," a statement on his Web site says. "I will work to implement it and to win the expected challenges in court along the way."

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