

Political Battle Brewing over the EPA's New Emissions Regulations

Bryan Walsh, *Time*, 1-3-11

All in all, 2010 was a year to forget for environmentalists — carbon cap-and-trade legislation died, international climate talks sputtered and even the clean-tech market took a hit — and 2011 isn't looking much better. The incoming class of Republicans taking over the House in January features no shortage of members who deny the connection between man-made greenhouse-gas emissions and a warming planet — let alone think it's worth trying to lower those emissions. Ralph Hall, the new head of the House Science Committee, has said he's not sure whether global warming or what he calls "global freezing" are bigger problems, and he's planning to subpoena climate scientists over the so-called Climategate dispute. (Climategate involved hacked e-mails from scientists, which some skeptics argue erode the scientific argument for man-made global warming; independent investigations into the e-mails, however, have shown no evidence of scientific fraud.) In Congress, at least, environmentalists will be spending all of 2011 on defense — even as global carbon emissions are expected to grow quickly again in the wake of the recession.

But the Obama Administration has a Plan B — and its already putting it into place. On Jan. 2, the Environmental Protection Agency (EPA) enacted what are the first regulations of major stationary sources of greenhouse gases. (While auto fuel-efficiency standards of the sort strengthened by President Barack Obama in 2009 essentially regulate mobile sources of greenhouse gases, the EPA has never tried to regulate major stationary sources such as power plants, refineries and factories.) The new rules will be modest at first, affecting only new plants or existing facilities that are undergoing major upgrades — perhaps 400 facilities will be affected initially. But eventually the EPA will be issuing regulations for nearly all sources of greenhouse gases — providing the only federal action to control U.S. carbon emissions. "We are following through on our commitment to proceed in a measured and careful way to reduce GHG pollution that threatens the health and welfare of Americans, and contributes to climate change," EPA Administrator Lisa Jackson said in a statement late last month.

"Measured and careful" — expect to hear those carefully chosen words a lot from Jackson as she's called to Congress to defend the EPA regulations. And the agency is taking its time as it embarks on what could be the most far-reaching environmental regulatory scheme in American history. The EPA said in December that it wouldn't propose standards for existing power plants — meaning facilities that aren't being upgraded or overhauled — until the middle of 2011, and for refineries until the end of the year, with final standards coming even later. Jackson insists those rules won't impose unreasonable costs, and the EPA will be holding a series of consultations with business this year to ensure that industry will have its say. Unlike carbon cap-and-trade legislation, which would have fixed a limit on greenhouse-gas emissions, the regulations will focus on pushing plants to run at higher levels of efficiency or use cleaner fuels by requiring them to use the best available technology to reduce emissions. "This is not a [carbon] cap program," said Gina McCarthy, EPA's assistant administrator for air and radiation, when the agency announced the rules late last month. "It's an emissions standard."

Despite the EPA's cautionary talk, however, the political battle lines have already been drawn on greenhouse-gas regulations, with Republicans and industry ready to declare war. A dozen states have already filed suit to block the EPA's ability to regulate greenhouse gases, though so far federal courts have refrained from stopping the first round of regulations from going into effect. Texas, though, is going further, simply refusing to comply with the new rules entirely. In response, the EPA has said that it would take direct control of Texas' air-pollution enforcement rather than work with the state environment agency.

But on Dec. 30, a federal appeals court temporarily blocked the EPA from enforcing its regulations in Texas as the courts considered whether such a federal takeover was legal. What's certain is that these lawsuits will only be the beginning as conservatives, industry and some states question the constitutionality of greenhouse-gas regulations. Already Republicans and some conservative Democrats have discussed passing legislation that would block the EPA from regulating emissions — something the White House has threatened to veto. "The EPA has its foot firmly on the throat of our economic recovery," said Fred Upton, Michigan's Republican Congressman and the incoming chairman of the powerful House Energy and Commerce Committee. "We will not allow the Administration to regulate what they have been unable to legislate."

Yet in the absence of congressional action, the White House and its environmental allies insist the EPA has no choice but to regulate greenhouse gases. In 2007, the Supreme Court ruled that the EPA was required to regulate greenhouse-gas emissions under the Clean Air Act if those gases threatened public health. The EPA — and nearly all climate scientists — have found that unchecked global warming does indeed pose a threat to public health, meaning that the agency would be breaking the law if it refused to act on those regulations. (This was the case even under former President George W. Bush, though his White House literally avoided the issue by refusing to open e-mails from EPA staff experts — though several states and environmental organizations eventually sued the agency over the issue.) Both Jackson and Obama have said repeatedly that they would much prefer Congress to take the lead on greenhouse gases through regulation — a carbon cap-and-trade program or tax — but that no longer seems to be an option. "EPA is doing precisely what is needed to protect our health and welfare at a time when some would prefer just to roll back the clock," wrote David Doniger, policy director for the National Resources Defense Council's Climate Center.

For all the sound and fury we're likely to witness from congressional Republicans over the coming year, the EPA's regulations won't do that much to reduce U.S. greenhouse-gas emissions. While the carbon cap-and-trade bills debated by Congress last year would have aimed to cut U.S. emissions 17% below 2005 levels by 2020, EPA officials believe that regulations could only achieve perhaps a 5% cut — far below the reductions many scientists believe are needed to avert dangerous climate change.

Still, President Obama was elected promising to cut carbon emissions and chart a path to a cleaner economy — and whatever its political perils, regulation looks like his only immediate tool.