

EPA is preparing to regulate emissions in Congress' stead

Steven Mufson and David A. Fahrenthold, *Washington Post*, 12-8-09

The Obama administration moved closer Monday to issuing regulations on greenhouse gases, a step that would enable it to limit emissions across the economy even if Congress does not pass climate legislation.

The move, which coincided with the first day of the international climate summit in Copenhagen, seemed timed to reassure delegates there that the United States is committed to reducing its emissions even if domestic legislation remains bogged down. But it provoked condemnation from key Republicans and from U.S. business groups, which vowed to tie up any regulations in litigation.

In Monday's much-anticipated announcement, the Environmental Protection Agency said that six gases, including carbon dioxide and methane, pose a danger to the environment and the health of Americans and that the agency would start drawing up regulations to reduce those emissions.

"These are reasonable, common-sense steps," EPA Administrator Lisa P. Jackson said, adding that they would protect the environment "without placing an undue burden on the businesses that make up the better part of our economy." At the same time, however, EPA regulation is no one's preferred outcome -- not even the EPA's. Jackson said her agency and other administration officials would still prefer if Congress acted before they did.

Sen. John F. Kerry (D-Mass.), a leading proponent of a Senate climate bill, issued a statement after the EPA's announcement saying, "The message to Congress is crystal clear: Get moving."

The EPA's "endangerment finding" -- a key bureaucratic step in the regulatory process -- was seen as a message to Congress and Copenhagen, but it was also a belated response to an order from the U.S. Supreme Court, which ruled in April 2007 that carbon dioxide should be considered a pollutant under the Clean Air Act. As a result, the court said, the EPA had not only the power but the obligation to regulate the gas. (In that case, *Massachusetts v. EPA*, the Bush administration was fighting against regulating carbon dioxide from vehicle tailpipes.)

Michael Morris, chief executive of American Electric Power, a utility that is the nation's largest emitter of greenhouse gases, said Monday that "we have been a proponent . . . to a congressional approach to this undertaking. This is the most awkward way we could go about it." The EPA had to comply with direction from the courts, Morris said, but "there are better approaches, more cost-effective approaches and more productive approaches."

It remains unclear whether the EPA's regulatory cudgel will spur Congress to take faster action on the climate legislation that is now mired in the Senate or whether it will provoke a backlash.

"The stick approach isn't going to work. In fact, Congress may retaliate," said Mark Helmke, a senior adviser to Sen. Richard G. Lugar (R-Ind.). "They could stop the funding, and they could change the law."

Anticipating EPA action, Sen. Lisa Murkowski (Alaska) tried unsuccessfully in September to prevent the agency from spending money to regulate stationary sources of greenhouse gases, such as power plants or factories, for one year. Murkowski, the ranking Republican on the Senate Energy and Natural Resources Committee, said in a statement Monday that the endangerment finding is "a blunt instrument that will severely hamper our attempts to bolster the economy and get Americans back to work."

Some senators who environmental groups hope might vote for a climate bill also said they were unhappy. Sen.

Olympia J. Snowe (R-Maine) called the move "regrettable." And Sen. Blanche Lincoln (D-Ark.), chairman of the Senate Agriculture Committee, said in a statement that she is concerned that the move "will create burdens on American industry without providing any significant environmental benefits."

"I strongly urge EPA to wait for Congress to find a solution," Lincoln said.

Earlier this year, the Obama administration took the first step toward complying with the Supreme Court's 2007 ruling by requiring automakers to increase the fuel economy -- and therefore decrease the carbon emissions -- of new cars and trucks by 2016. The ailing automakers supported the accord.

Monday's finding is another step toward compliance. "There are no more excuses for delay," Jackson said. "This administration will not ignore science and the law any longer."

Supporters of regulation note that the Clean Air Act has led to some of the great U.S. environmental success stories, producing significant drops in smog and soot. But greenhouse gases could prove far more difficult to fight. They don't just come from smokestacks, but from millions of auto tailpipes, airplanes, ships, home furnaces and even the digestive tracts of cattle. And there is no simple piece of hardware that emitters can buy to keep the gases out of the air.

"There's no catalytic converter. There's no scrubber. There's nothing," said Jeffrey R. Holmstead, who headed the EPA's air-pollution programs during the Bush administration and now works with the law firm Bracewell & Giuliani. Instead, solutions probably would include switching the fuels burned in power plants and, in the future, using machinery to capture emissions and store them underground.

The Clean Air Act set a low threshold for regulation that opponents argue would require rules for everything from laundries to office buildings, from cow farms to coal plants. But the EPA said it would impose new rules only on large factories, refineries, power plants and other facilities emitting more than 25,000 tons a year of carbon dioxide.

When these plants upgrade their facilities, or when new ones like them are built, they would be required to install the "best available control technology" for limiting greenhouse-gas emissions, while "taking into account costs." In October, the EPA said there were 13,661 facilities that size; it estimated that every year 128 new facilities and 273 existing facilities seeking modifications would require new permits.

"What EPA can require is controls that are technically feasible and cost-effective," said David Donziger, policy director of the climate center at the Natural Resources Defense Council. "With CO₂ there is the chance to save money, which is rarer for other pollutants."

Together, these large sources account for about half of all U.S. emissions, the EPA said. But it's still unclear what, exactly, the "best available" technology should be. Jackson said the EPA is still working on that.

Although many business leaders have urged Congress to adopt climate legislation, some remain staunchly opposed. Those groups also condemned the EPA for moving forward with regulations.

"This action poses a threat to every American family and business if it leads to regulation of greenhouse gases under the Clean Air Act. Such regulation would be intrusive, inefficient and excessively costly," said Jack Gerard, president of the American Petroleum Institute, whose members have big oil refineries and petrochemical plants. "It is a decision that is clearly politically motivated to coincide with the start of the Copenhagen climate summit."