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EPA rebuffs state on warming

Lawsuit vowed after waiver on emission limits is denied.

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Ratcheting up a fight between Washington and Sacramento over global warming, the Bush administration Wednesday blocked a landmark California law aimed at curtailing greenhouse gas emissions from motor vehicles.

The decision by U.S. Environmental Protection Agency Administrator Stephen Johnson doesn't mean the end of the dispute. Within minutes of the announcement, Gov. Arnold Schwarzenegger and Attorney General Jerry Brown, who had been bracing for the EPA's rejection, promised to sue the federal government.

Johnson said California's law was pre-empted by the new national energy bill signed earlier Wednesday by President Bush. That bill increases fuel economy from 27.5 mpg to 35 mpg by 2020, resulting in "some of the largest greenhouse gas emission cuts in our nation's history," Johnson said.

That's far more effective than "a partial, state-by-state approach," he said in a conference call with reporters. "It is a global problem that requires a clear, national solution."

But California officials and their allies in the environmental movement argued that the state's law, passed in 2002, was stronger. It would cut emissions to roughly the same level as required by the U.S. law but would do so by 2016, or four years sooner – a critical difference given the urgency of the problem, they said. It also provides for deeper cuts in emissions in future years.

As for the claim about a piecemeal approach, state officials said other states can – and often do – follow California's lead, creating a bandwagon effect that sweeps the nation.

California is the only state with the right to set its own air emissions standards, but it needs a waiver from the EPA to do so. Once a waiver is granted – as it has been more than 40 times in the past 40 years – other states can piggyback on California's move and adopt identical rules. Already 12 states had adopted copycat laws on greenhouse gas emissions; five or six more were in the process of doing so.

Now all are on hold.

Wednesday's decision marked the first time the EPA had flatly refused California's waiver request, said a spokesman for the state's Air Resources Board.

"It is disappointing that the federal government is standing in our way and ignoring the will of tens of millions of people across the nation," Schwarzenegger said in a press release. "We will continue to fight this battle."

The California law, AB 1493, was supposed to take effect with the 2009 model year. It is key to the state's crusade against climate change. Cutting motor vehicle emissions would account for one-sixth of the greenhouse gas reductions required by another bill, AB 32, the high-profile global warming law signed by Schwarzenegger last year.

Johnson said he called Schwarzenegger Wednesday afternoon to inform him of his decision to block AB 1493 and to thank him for California's leadership on global warming, which he said helped nudge Congress to enact the energy bill. Schwarzenegger's press secretary, Aaron McClear, said the call came 30 minutes before Johnson's announcement. He called the conversation "terse."

Other officials were swift in their condemnation. Sen. Dianne Feinstein, D-Calif., called it "disgraceful" and said the new national energy bill doesn't give the EPA the right to abandon its responsibility to regulate air pollution. Feinstein was a key player in crafting the federal law.

"We're deeply disappointed that the administrator chose to deny the waiver, and we're even more discouraged that he did it on such flimsy grounds," said Mary Nichols, chairman of the state Air Resources Board.

Environmentalists said it was vital California be allowed to continue in its role as environmental trailblazer. By rejecting the waiver, the administration is "sticking their thumb in the eye of 18 governors from red and blue states," said attorney David Doniger of the Natural Resources Defense Council, which helped California fend off lawsuits filed by the world's automakers challenging the state law.

The auto industry welcomed the decision. The new national law will lead to 30 percent cuts in greenhouse gas emissions and is better than a "patchwork quilt of inconsistent and competing fuel economy programs at the state level," said Dave McCurdy, president of the Alliance of Automobile Manufacturers.

The automakers had argued in court that the California bill would have increased manufacturing costs by up to \$6,000 per vehicle, clobbering sales and forcing the layoffs of tens of thousands of autoworkers. California officials said the emission reductions could be made largely with off-the-shelf technology costing \$700 to \$1,800 per vehicle.

Former Gov. Gray Davis signed AB 1493 five years ago. After finalizing its regulations, California asked the EPA for the waiver two years ago and sued the agency last month, accusing it of dragging its feet.

In his decision, Johnson said California had not met the threshold for obtaining a waiver. Generally, the state must prove that it has "compelling and extraordinary" reasons for setting its own rules. With previous waivers, California was dealing with forms of pollution whose effects were localized. But greenhouse gas emissions, regardless of where they're emitted, affect the world's climate, Johnson said. Therefore, California doesn't have any unique claims, he said.

"California is not exclusive in facing this challenge," he said.

Environmentalists and state officials said exclusivity has nothing to do with it.

In past waiver cases, "the EPA has never made us prove that our smog is worse than Houston's," said the ARB's Nichols.

Dan Farber, an environmental law expert at the University of California, Santa Barbara, said the state will have "an uphill battle" in court because judges generally give government agencies the benefit of the doubt.

Still, he said, "people following the case law across the country say that the Bush administration is having an increasingly tough time in the courts."

Last spring, the U.S. Supreme Court, in a major boost to California, ordered the EPA to begin regulating greenhouse gases for the first time. In September, a federal judge rejected a lawsuit filed by automakers against one of the states adopting a copycat law, Vermont. Earlier this month, a federal judge in Fresno tossed the automakers' lawsuit challenging the California law directly.

But officials knew there was a good chance the waiver request would be turned down.

"No surprise, and we'll go to court," said attorney David Bookbinder with the Sierra Club in Washington, D.C., which has worked with the state to defend the law. "I'm looking forward to humiliating these guys in court."

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