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States join emissions battle

Governors plan to back California's bid to reverse EPA on greenhouse law.

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From Oregon to Maine, a multistate groundswell emerged on Thursday behind California's struggle to enforce its greenhouse gas emissions law.

One day after the Bush administration blocked the law, governors and other officials from at least eight states pledged to help California as it prepares to sue the administration.

"We're going to be out there on California's side," Oregon Gov. Ted Kulongoski said in an interview. "The only way we're going to get the national administration to move on this is to keep up the pressure."

Washington Gov. Chris Gregoire said the support of multiple governors, plus members of Congress, could create political pressure on the Bush administration to reconsider. "It's an overwhelming voice from the states," she said.

If the administration doesn't relent and the issue goes to court, the support of New Jersey, New York and others surely wouldn't hurt California's case. Moreover, a report in the Washington Post said the Bush administration ignored warnings from its own lawyers that California could prevail if the matter goes to court.

Nonetheless, legal experts said California faces a difficult challenge because courts usually give federal agencies considerable leeway. "The legal standard that the state is facing is not very favorable for California," said Ann Carlson, a professor of environmental law at UCLA.

On Wednesday, the U.S. Environmental Protection Agency rejected California's request for a waiver allowing the state to implement a law reducing emissions of greenhouse gases from new motor vehicles.

The EPA's rejection kills copycat rules that have been adopted by 12 other states and are under serious consideration by six others. Top officials from many of those states, representing both major political parties, were quick to condemn the EPA.

Vermont Gov. Jim Douglas, a Republican, said the EPA "is out of touch with the reality of climate change." New Jersey Gov. Jon Corzine, a Democrat, called the decision "horrendous," while Maine Democratic Gov. John Baldacci called the administration "obstructionist." Officials in New York, Connecticut, Arizona and Pennsylvania made similar comments.

EPA Administrator Stephen Johnson said California's law was trumped by the new federal energy law – signed by President Bush on Wednesday – that requires automakers to increase fuel efficiency on new cars to 35 mpg by 2020. He said the federal law will achieve roughly the same global-warming results as California's and has the advantage of delivering a single national standard for all to follow.

But state officials said the California law is stronger. It requires the cuts in greenhouse gas emissions to be made by 2016, or four years sooner – a difference of millions of tons of greenhouse gases. California's law

calls for even deeper cuts beyond 2016.

The federal law "seeks to reduce all states to the lowest common denominator, which is completely irresponsible and reprehensible," said Attorney General Richard Blumenthal of Connecticut.

"There's no question that we will challenge this early holiday gift to the automobile industry," he said in an interview.

The world's major automakers, saying the California law would mean economic disaster, tried and failed to have the law overturned by filing lawsuits in California and Vermont.

The California law, AB 1493, would require a 30 percent decline in greenhouse gas emissions on new vehicles by 2016. It is a significant component of a more broad-based law, AB 32, which requires substantial cuts in greenhouse gases in almost all sectors of California life.

California is the only state with the authority to establish its own clean-air rules, but only if it gets a waiver from the EPA. Once the EPA grants the waiver – as it has done more than 40 times in the past – other states can enact copycat rules.

Several states filed legal briefs on California's behalf in the Fresno and Vermont lawsuits, and supported California's waiver request by providing testimony to the EPA.

The states' support will likely help California somewhat when it sues the EPA. "It makes a difference if it's one entity or if it's half the country suing," said S. William Becker, executive director of the National Association of Clean Air Agencies.

But political clout alone won't determine the outcome of a court case. Holly Doremus, an environmental law expert at the University of California, Davis, said California must demonstrate "compelling and extraordinary" conditions. That's fairly easy to prove on localized pollution like smog, but harder when global climate change is involved, she said.

"I suspect that the EPA will try to argue that California is no different than the other states" with respect to the threat of climate change, said UCLA's Carlson. "On the other hand, 'compelling and extraordinary' doesn't necessarily mean different. It could just mean compelling – like that we're going to lose all of our water. It's a really novel legal question."

According to a story in Thursday's Washington Post, EPA lawyers warned their bosses they were on shaky legal ground if they rejected California's request.

In a PowerPoint presentation, the paper said, the lawyers wrote that if California sued, "EPA is likely to lose suit." If the waiver was granted and the automakers sued, "EPA is almost certain to win," the lawyers wrote.

Citing "serious questions about the integrity of the decision-making process," Rep. Henry Waxman, D-Los Angeles, chairman of the House Oversight Committee, announced an investigation into the matter and told the EPA to turn over all documents relating to the California request.

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