

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: "Jeffrey.B.Clark@usdoj.gov" <Jeffrey.B.Clark@usdoj.gov> ( "Jeffrey.B.Clark@u

CREATION DATE/TIME: 4-JUN-2003 13:57:20.00

SUBJECT:: FW: CO2 -- 3 States in NE File Lawsuit in D. Conn.

TO: Philip J. Perry ( CN=Philip J. Perry/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

TO: James Connaughton ( CN=James Connaughton/OU=CEQ/O=EOP@EOP [ CEQ ] )

READ: UNKNOWN

TO: Daryl L. Joseffer ( CN=Daryl L. Joseffer/OU=OMB/O=EOP@EOP [ OMB ] )

READ: UNKNOWN

CC: "Andrew.Emrich@usdoj.gov" <Andrew.Emrich@usdoj.gov> (Receipt Notification Request

READ: UNKNOWN

CC: "Tom.Sansonetti@usdoj.gov" <Tom.Sansonetti@usdoj.gov> (Receipt Notification Reque

READ: UNKNOWN

TEXT:

[REDACTED]

(b)(5)

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

From: Cruden, John  
Sent: Wednesday, June 04, 2003 12:51 PM  
To: Sansonetti, Thomas L.; Clark, Jeffrey B. (ENRD)  
Subject: FW: CO2

Tom (cc jeff) See attached. We do not yet have the complaint/petition.  
John

Northeast AGs sue Bush admin over CO2 emissions  
Darren Samuelsohn, Greenwiresenior reporter  
Top legal brass from three Northeastern states filed suit today against the Bush administration's climate change policies, charging in federal district court that the U.S. EPA has failed to take the appropriate steps to list carbon dioxide emissions as a pollutant under the Clean Air Act. The attorneys general of Connecticut, Massachusetts and Maine -- all Democrats -- brought the challenge in U.S. District Court in Hartford, Conn. Their suit is one of at least three poised to hit the Bush administration regarding the controversial climate change issue as states, environmentalists and conservatives seek recourse through the judicial system (Greenwire, May 14).  
In its 32-page legal brief, the AGs claim EPA is long overdue in starting the complex process whereby carbon dioxide emissions would be regulated under CAA's National Ambient Air Quality Standards. The suit uses as its basis the landmark 1976 federal appeals court decision that ultimately drove EPA to add lead to its list of NAAQS criteria pollutants. There, the court sided with the Natural Resources Defense Council that EPA had already acknowledged lead emissions posed a serious risk to human health and should therefore begin to regulate the substance. Here, the AGs climate change argument follows the same pattern in claiming that EPA has made clear its understanding of the possible scenarios that

could result from unchecked carbon dioxide emissions. Specifically, the AGs point to the administration-approved Climate Action Report released last June that said recent climate changes "are likely due mostly to human activities" and that predicted increases in temperature and weather variability could have serious negative ramifications, including major ecosystem transformations, diminishing water supplies, a 4-inch to 35-inch rise in sea levels and increased outbreaks of insect-borne diseases. The report has been subject to much controversy, from President Bush's comment that it had been "put out by the bureaucracy" to a possible legal challenge from the Competitive Enterprise Institute that would have the White House publicly revoke any connections to the assessment.

The AGs also cite a pair of controversial Clinton-era EPA occurrences that include legal arguments for regulating CO2 as an air pollutant under the CAA. Environmentalists and other critics of administration inaction on global warming have seized upon the 1998 memo, from former EPA General Counsel Jonathan Cannon to former agency Administrator Carol Browner, as evidence that EPA has in the past concluded that CO2 qualifies as an "air pollutant." They also point to a 1999 House of Representatives hearing during which EPA General Counsel Gary Guzy "confirmed and reiterated" the position laid out in Cannon's memo.

While an EPA spokesperson could not be reached for comment, the Bush administration's positions on climate change have been well documented and will likely serve as the basis for its legal defense. Among other things, the White House has argued through cabinet-level public statements and other correspondence that CO2 is not a pollutant under the CAA and it has no plans to advance such a cause. Instead, the administration argues that it has adequately addressed the issue through voluntary measures during its two-plus years in office.

In February 2002, for example, Bush asked companies to reduce their greenhouse gas intensity -- the ratio of emissions to economic output -- by 18 percent in the next decade. The administration also has established a multi-agency Climate Change Science Program to develop a Climate Change Research Initiative, coordinating it with the existing, congressionally mandated U.S. Global Change Research Program. At the same time, the Bush administration has consistently opposed any approach to establish new CO2 requirements through the legislative process, including attempts by Sens. John McCain (R-Ariz.), Jim Jeffords (I-Vt.) and Joe Lieberman (D-Conn.) Massachusetts Attorney General Thomas Reilly, Connecticut Attorney General Richard Blumenthal and Maine Attorney General G. Steven Rowe told EPA of their intention to sue in January. Originally, attorneys general from 11 states said they would call on the Bush administration to reconsider its position on regulating CO2 back in July 2002. The AGs from Alaska, California, Maryland, New Hampshire, New Jersey, New York, Rhode Island and Vermont are not party to the lawsuit filed today.

Among the other lawsuits addressing the administration's positions on climate change is a challenge from a seven-state coalition led by New York AG Eliot Spitzer (D), who is expected to argue that EPA should within two years update its CAA new source performance standards (NSPS) for power plants and other industrial facilities to include CO2 requirements. A similar suit brought by environmentalists has already begun in a federal district court in Oakland, Calif., and sources expect the two to ultimately be consolidated.

Christopher S. Vaden  
Assistant Section Chief  
Environmental Defense Section  
U.S. Department of Justice  
(202) 514-4438