

1. CLIMATE: Under Senate scrutiny, EPA opens comment period on Calif. waiver plan

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U.S. EPA opened a public comment period today on California's 15-month-old request for federal approval to begin regulating auto-tailpipe emissions of carbon dioxide, marking the Bush administration's first official move in response to the recent Supreme Court opinion on global warming.

EPA Administrator Stephen Johnson announced the comment period during a Senate hearing in which he came under fire from Democrats skeptical of the administration's approach to climate policy.

EPA had sat on California's request since December 2005, prompting a wave of criticism from Capitol Hill and even a personal lobbying visit two weeks ago by Gov. Arnold Schwarzenegger (R).

But with the Supreme Court's 5-4 ruling in *Massachusetts v. EPA* that rebuked the administration on climate change, Johnson said he would take the next step on California's request.

EPA will hold a public hearing on the state's waiver request May 22 in Washington. And the public comment period will run through June 15.

Johnson made no promise on when he will make a final decision on California's request, prompting complaints from several senators and a promise for more hearings from the chairwoman of the Senate Environment and Public Works Committee.

Sen. Ben Cardin (D-Md.) suggested EPA should decide 30 days after the comment period closes, but Johnson replied that he was not ready to make a decision.

The panel chairwoman, Sen. Barbara Boxer (D-Calif.), also challenged Johnson to spell out how he would respond to other aspects of the Supreme Court ruling, including his pending decision on whether greenhouse gases such as CO₂ are harmful to humans and the environment.

"We're going to be moving expeditiously, but we're going to be moving responsibly," Johnson said.

Under questioning, Johnson repeated the same statement on timing about a dozen times. And Boxer and others expressed exasperation.

"I don't hear in your voice a sense of urgency as to when to make this finding," Boxer said.

Earlier in the hearing, Boxer raised questions about why EPA could not begin moving immediately to regulate CO2 emissions from new cars and new power plants.

"I don't know what decision you read, sir," Boxer said. "This decision is so clear, and I urge you to read it again."

Johnson said he has been discussing the implications of the Supreme Court decision with EPA officials across the country.

EPA also is scouring the Clean Air Act to see what titles and sections will be affected by the ruling, Johnson said. Provisions under review affect everything from stationary sources, such as coal-fired power plants, and the stratospheric ozone layer, he said.

"This decision is complex," Johnson said.

But not everyone agreed with Johnson's cautious attitude.

After the administrator had left the room, Boxer said Johnson's responses were "code" for delay.

And two former EPA administrators said the Bush administration should begin regulating carbon emissions from motor vehicles. Carol Browner, who led the agency under President Clinton, said she believes EPA could act in six months.

Added William Reilly, former EPA administrator for President George H.W. Bush: "We're ready to move."

'Judicial activism'

Several Republicans questioned the court's ruling.

"It represents judicial activism at its worst," said Sen. James Inhofe (R-Okla.), the committee's ranking member.

And Sen. Kit Bond (R-Mo.) recalled recent comments from House Energy and Commerce Committee Chairman John Dingell (D-Mich.), a key author of the 1990 Clean Air Act amendments. Dingell has said he made sure not to list CO2 as a pollutant.

But Boxer reminded Inhofe and Bond that Republican presidents appointed three of the five judges in the majority: Justices John Paul Stevens, Anthony Kennedy and David Souter.

Inhofe also warned of adverse consequences if EPA established air standards for CO2. All counties would be marked in nonattainment, he said, triggering a series of penalties that local governments could not avoid.

"Since China will become the world's biggest carbon emitter this year, wouldn't this mean we're putting China and other developing countries in charge of whether states receive their highway dollars?" Inhofe said.

Recounting Boxer's call for EPA action, Bond warned Johnson against making a hasty response.

"Personally, I'd like to see you get it right rather than quick because this is a long-term consideration," Bond said. To make his point about the amount of work involved, he displayed a chart outlining the six-year process California has embarked on as it implements a new climate law on large sectors of its economy.

Several senators suggested the Supreme Court decision would prompt lawmakers to move first.

Sen. Joe Lieberman (I-Conn.) said many industries would rather see Congress act as opposed to waiting for a state patchwork of laws or the EPA rules.

"I'm confident Congress will act earlier" than EPA, Lieberman said.