

The State; States to Sue Over Global Warming; California and seven others, unhappy with U.S. policies, say the carbon dioxide from five energy producers is a 'public nuisance.'

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Dissatisfied with the Bush administration's policies on global warming, attorneys general from California and seven other states plan today to sue five large energy producers who they contend are responsible for nearly 10% of the heat-trapping gases that the United States is releasing into the atmosphere.

In an unusual legal maneuver, the states are seeking to force the electricity providers to curb carbon dioxide emissions by arguing that the releases violate an arcane series of "public nuisance" prohibitions against endangering the health of the commons that the U.S. copied from English common law.

The lawsuit is expected to be filed by Democratic attorneys general from California, New York, Connecticut, New Jersey, Iowa, Wisconsin, Rhode Island and Vermont. New York City's corporations counsel, also a Democrat, is expected to join the suit as well. It is aimed at four private companies -- Cinergy Corp., Southern Co., Xcel Energy and American Electric Power Co. -- as well as one public utility, the Tennessee Valley Authority.

The lawsuit represents a direct challenge to the Bush administration, which to date has adopted a policy of continuing to study global warming rather than taking steps to stop it.

The suit is expected to accuse the power producers -- which derive much of their electricity from coal-fired plants -- of creating a "potentially devastating" public nuisance that threatens the general public, and will seek to force them to cut their carbon dioxide emissions. If successful, the suit probably would require the power producers to invest tens of millions in new exhaust-control equipment, and even consider closing some older plants.

"Global warming is real. The severe threat it poses to our states is real. And the attorneys general are taking needed action to address that threat," said Tom Dresslar, a spokesman for California Atty. Gen. Bill Lockyer. "We can't afford to wait."

Industry groups dismissed the lawsuit as election year grandstanding and questioned whether it had any legal grounds.

Though the suit may be the first to target global warming as a public nuisance, numerous state officials and environmental groups have used nuisance laws in

recent years to address air and water pollution. At Lake Tahoe, for example, the South Tahoe Public Utility District used public nuisance laws to force a settlement requiring oil companies to clean up contamination from the gasoline additive MTBE.

The U.S. Environmental Protection Agency concluded last year that it did not consider carbon dioxide a pollutant under the federal Clean Air Act. That interpretation is being challenged in federal court by 11 states and 14 environmental groups.

During his first campaign, President Bush promised to regulate power plant releases of carbon dioxide, but he changed his mind after taking office, saying that such rules would hurt the economy. Bush also withdrew from the Kyoto Protocol, an international pact to reduce greenhouse gas emissions, citing an "incomplete state of scientific knowledge."

The Bush administration's stance on global warming has angered critics around the world, who say there is already evidence that elevated carbon dioxide levels are contributing to rising temperatures, with visible consequences in places such as the icecaps of Greenland and Antarctica.

With the latest lawsuit, expected to be filed today in a Manhattan federal court, some of the states active in the suit against the EPA are hedging their bets. If carbon dioxide emissions do not violate the nation's environmental laws, they argue, states should not be barred by federal preemption rules from filing their own legal actions to target companies releasing the gases.

The attorneys general plan to formally announce the lawsuit this morning in a series of simultaneous news conferences around the country, including one by Lockyer in downtown Los Angeles.

Some environmentalists praised the states' action, saying that without their advocacy, the United States' contributions to global warming might not be addressed.

"The Bush administration has buried its head in the sand on this issue. It has protected these big dirty-power companies from having to take any action to reduce carbon dioxide emissions," said Frank O'Donnell, executive director of the Clean Air Trust, a Washington, D.C.-based air pollution watchdog group. "So, the only way to achieve any progress on this issue is for the states to take the initiative."

Power plants are the most concentrated man-made source of carbon dioxide emissions. According to a document prepared by the attorneys general, the five energy producers operate roughly 200 fossil-fuel power plants in the U.S., emitting a combined 646 million tons of carbon dioxide annually. That represents

24% of the country's carbon dioxide releases from power plants, which in turn make up 40% of the overall emissions of the gas in the United States.

Some of the power providers targeted by the suit said Tuesday that they already had planned to make voluntary reductions of carbon dioxide emissions, an approach supported by the Bush administration.

Paul Adelman, a spokesman for Xcel Energy, said the company already has committed to reducing carbon dioxide by 12 million tons per year by 2009, and was in the middle of tripling its wind power generation.

Xcel also has begun a \$1-billion voluntary plan to reduce power plant emissions, including carbon dioxide, from three coal-fired plants in Minnesota, he said.

"We are in the middle of one of the largest voluntary emissions reductions programs ever right now. We are proud of our environmental record," Adelman said.

"There are no regulations governing carbon dioxide at this time," he added, saying that the company does not believe it has broken any laws. "Every person breathes carbon dioxide every day all over the planet."

Carbon dioxide is one of the natural building blocks of life.

But there is a growing consensus among scientists that releases of carbon dioxide and other greenhouse gases since the Industrial Revolution, primarily from burning coal and oil, are causing an abnormal rise in global temperatures. That position has been supported in recent years by the National Academy of Sciences, the American Meteorological Society and numerous other scientific organizations.

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