

Tough Act to Follow

As the federal government wrestles with its role in controlling greenhouse gases, one state hasn't hesitated to attack global warming.

BY LARRY MORANDI

Massachusetts is suing the Environmental Protection Agency to force regulation of greenhouse gas emissions in a case that is before the U.S. Supreme Court. At issue is whether the Clean Air Act requires EPA to control these gases, which contribute to global warming. States are split on either side of the issue in *Massachusetts v. EPA*, with 11 states siding with Massachusetts and 10 with the federal government.

The Clean Air Act requires EPA to “prescribe ... standards applicable to the emission of any air pollutant from ... new motor vehicles or new motor vehicle engines, which in [EPA’s] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” EPA contends that this language does not require it to regulate greenhouse gas emissions because any standards “will not meaningfully address an air quality issue like global climate change, which is caused primarily by ... emissions from outside of the United States.”

EPA also argues that the petitioners lack legal standing to sue because they have not suffered a particular injury that can be remedied by the court. The petitioners counter that left unchecked, greenhouse gas emissions will cause global warming that will trigger rising sea levels, reducing states’ coastlines and increasing flooding. If the high court determines that there is no standing, it need not consider any other arguments. But if it concludes that the petitioners have standing, it can decide whether or not EPA has the authority to regulate emissions. The final decision is expected in June.

Regardless what the Court decides, several states have taken the initiative and adopted policies aimed at curbing greenhouse gas emissions (see April 2006 issue of *State Leg-*

Larry Morandi is director of state policy research for NCSL. Adela Flores-Brennan, who tracks air quality issues for NCSL, also contributed to this article.



Assembly Speaker Fabian Núñez speaks at a news conference about his bill AB 32 that makes California the first state to cap greenhouse gas emissions

islatures). The most sweeping new legislation passed in California last session. Sponsored by Assembly Speaker Fabian Núñez, the California Global Warming Solutions Act is the first enforceable statewide program to cap all emissions from major industries and penalize those that do not comply.

The act cuts carbon emissions to 1990 levels by the year 2020—a 25 percent reduction. The California Air Resources Board is to develop a program for greenhouse gas emissions reporting and to monitor and enforce compliance. The board is to adopt measures for reducing emissions that are cost-effective and technologically feasible, which may include a cap-and-trade program.

The potential impacts of global warming on California—vulnerability of the coastline to rising sea levels, reductions in snowpack essential to the state’s water supply, and public health threats from intense heat waves—

are severe, Núñez says. As someone who grew up in a poor urban neighborhood, he is pleased with the economic opportunities available in the new law. “We are sending a clear market sign to employ clean technology,” he says, emphasizing technology that can create jobs and generate economic benefits for the state. Noting Governor Arnold Schwarzenegger’s enthusiastic support for the bill, Núñez says, “there is no partisan divide on global warming.”

Critics of state actions to combat global warming argue that only a national approach can have any real impact. But if California were a country, it would be the 12th largest emitter of greenhouse gases. Ten other states have adopted California’s tough air pollution standards for motor vehicles. Will they follow California on climate change? Perhaps the better question is, will the federal government?