



New Jersey Tackles Global Warming: DEP to Regulate CO₂

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NEW JERSEY IS TAKING ON GLOBAL WARMING, SEEKING to curb emissions of the greenhouse gas, carbon dioxide (CO₂). Citing concerns over rising sea levels and extreme weather events, Governor McGreevey announced on Sept. 16, 2004 that the New Jersey Department of Environmental Protection (DEP) will propose new rules to define CO₂ as an air contaminant, laying the groundwork to reduce CO₂ levels regionally and within the state. DEP proposed initial regulations on Oct. 18, 2004, and will accept comments on the rules until Dec. 17, 2004.

CO₂ is a greenhouse gas that is released into the atmosphere when solid waste, fossil fuels, and wood and wood by-products are burned. The United States Environmental Protection Agency (EPA), the Intergovernmental Panel on Climate Change and the National Academy of Sciences have confirmed that greenhouse gases contribute to global warming, increase mean global temperatures and cause a rise in sea levels. Despite the consensus that global warming is

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real, a vocal opposition exists and views differ as to what should be done to address the problem.

Some studies on global warming forecast average temperature increases between five and ten degrees by 2100, and a sea level rising in New Jersey one inch every six years. EPA has estimated that sea level could rise 27 inches at Atlantic City over the next century. These changes could erode beaches, inundate wetlands, intensify flooding and increase salinity in rivers, bays and ground water. The Federal Emergency Management Agency has estimated that a rise in sea level of one foot may increase flood damage as much as 36 percent to 58 percent. Estimates of the cost to address these impacts along the mid-Atlantic coast through 2100 are \$20 billion, with the cost of sand alone to protect New Jersey's coastline estimated at \$900 million to \$2.6 billion.

Carbon Dioxide is an Air Contaminant

Under the proposal to regulate CO₂, DEP will revise regulations issued pursuant to the New Jersey Air Pollution Control Act to bring them "in line with current scientific consensus that carbon dioxide is an air contaminant." DEP also issued a finding that CO₂ emissions are responsible for significant adverse impacts to public health and the environment, altering the climate and leading to rising sea levels. Although the formal finding is new, DEP's view is not: the Whitman Administration, for example, acknowledged greenhouse gas impacts and, in 1998, DEP committed to reduce emissions of greenhouse gases to 3.5 percent below 1990 levels by 2005.

Although DEP currently requires large stationary sources to report CO₂ emissions, the agency will not immediately regulate CO₂. The proposal is prelude to a multi-state, regional cap and trade program for CO₂—designed by the nine-state Regional Greenhouse Gas Initiative to reduce greenhouse gas emissions in the Northeast. DEP also recently revised its earlier pledge, now to seek to reduce greenhouse gases to 7 percent below 1990 baseline levels by 2010.

New Jersey has aggressively used litigation in an effort to curb emissions of greenhouse gases. New Jersey joined seven states and New York City this summer in a lawsuit against five of the nation's largest power companies, seeking a reduction in their CO₂ emissions. One third or more of New Jersey's air pollution has been attributed to upwind sources out of state. In October 2003, New Jersey similarly joined 10 states, the District of Columbia and American Samoa to sue the federal government for EPA's recent decision not to regulate greenhouse gases.

In response to a petition by environmental and technology groups, EPA recently reviewed the language of

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the Clean Air Act, congressional action with respect to greenhouse gases, recent U.S. Supreme Court precedent and the U.S. Department of Transportation's authority to regulate fuel economy standards. The EPA concluded that it does not have the authority to regulate CO₂ and that setting greenhouse gas standards for automobiles is not appropriate. This followed previous determinations by the EPA under the Clinton Administration that CO₂ may be regulated. The states argue in the litigation that the EPA has misconstrued the Clean Air Act and failed to justify its new policy. The EPA's recent new source review regulations similarly are the subject of legal challenge.

Despite opposition, experts predict that significant efforts to address global warming are likely to be taken in the United States and abroad. Russia's recent ratification of the Kyoto Protocol to address global warming makes the terms of the international treaty enforceable against its signatories, which do not include the United States. Senator John McCain has introduced the Climate Stewardship Act to require industry to reduce emissions of greenhouse gases.

Eastman Kodak, British Petroleum and United Technologies, among others in industry, already have announced their intent to do so. A recent study shows that banks, insurance companies and investment houses increasingly expect clients to respond to global warming issues. Some electric utilities have begun to report to shareholders the potential costs to reduce greenhouse gas emissions.

Businesses in the United States and around the globe thus are preparing to address the challenges of global warming. Given the new initiatives, the need to reduce greenhouse gas emissions may come sooner in New Jersey, where business is familiar with burdensome environmental regulation. ■

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