

US Chamber Challenges EPA CO2 Endangerment In Federal Court

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The U.S. Chamber of Commerce Friday filed a petition in a federal court of appeals challenging an Environmental Protection Agency decision that triggers regulation of greenhouse gases across the economy.

The Chamber--which believes regulating greenhouse gases under the Clean Air Act could cause serious harm to the economy--said it wouldn't test the science of EPA's decision to find greenhouse gases a danger to public health and welfare, but rather the agency's process.

"The Chamber's legal challenge will focus specifically on the inadequacies of the process that EPA followed in triggering Clean Air Act regulation," Steven Law, chief legal officer and general counsel at the Chamber, said in a statement.

The endangerment finding is a prerequisite for regulating a pollutant, and the EPA has since drafted a number of new rules to control emissions from power plants, refineries, chemical plants, smelters, cars and a large number of other emitters. Administration officials say the agency will be "sensible" in its regulation.

"While we have not yet reviewed this petition, EPA issued its endangerment finding as a result of a 2007 Supreme Court decision and after a thorough and transparent review of the soundest science available," said EPA spokeswoman Adora Andy in an emailed statement. "That science overwhelmingly indicates that climate change is a real and growing threat," she said.

The Supreme Court ruled in a 5-4 decision that the EPA had the power to regulate carbon dioxide as a greenhouse gas, but didn't require the agency to find that it was a danger to public welfare and also didn't require the agency to regulate greenhouse gases. Instead, the EPA was required to "ground its reasons for action or inaction" within federal law.

The Chamber, however, fears that the EPA's new controls will not only crimp production and manufacturing costs for major emitters, but will also create a cascade of regulations for businesses small and large across the entire economy.

Greenhouse gases, such as carbon dioxide, are a ubiquitous byproduct of a large portion of the nation's industries and business sectors.

"Because of the huge potential impact on jobs and local economies, this is an issue that requires careful analysis of all available data and options," Law said. "Unfortunately, the agency failed to do that and instead overreached (and) the result is a flawed administrative finding that will lead to other poorly conceived regulations further downstream."

To prevent the floodgates of regulation, the EPA proposed a "tailoring rule" that would limit the new regulations to large emitters for at least the first half-decade.

But industry officials and analysts warn that because of the way the Clean Air Act is written and expected legal challenges, state, local and federal regulators and courthouses may be inundated with new permit applications and cases. Up to six million facilities across the country subject to new, potentially costly greenhouse gas controls, they say.

The Obama Administration was hoping that Congress, under pressure from the pending Clean Air Act regulations, would pass climate legislation. But a raft of political hurdles have all but stalled legislative efforts, forcing the EPA to move ahead with its promised action.

The Chamber's Law said the organization supports "bipartisan legislation that promotes new technologies, emphasizes efficiency, ensures affordable energy for families and businesses, and defends American jobs while returning our economy to prosperity."