

PUBLIC POLICY INTELLIGENCE REPORT

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**THE CRUCIAL YEAR FOR CLIMATE-
CHANGE LEGISLATION****By Bart Mongoven**

On April 1, the Supreme Court announced its decision on Massachusetts v. Environmental Protection Agency (EPA). The court found that, contrary to the EPA's assertions, the agency does have the right to regulate tailpipe emissions of carbon dioxide (CO₂). As a result, the EPA now must provide a science-based, rather than legally based, reason for it not to regulate CO₂ emissions.

In essence, the Supreme Court ruling means federal policy is coming. It is now impossible for the Bush administration to stand in the way of state-based laws addressing carbon dioxide, and it is unlikely the administration will be able (or willing) to provide a scientific justification for inaction on the issue. That said, 2007 will not be the year a major climate policy is enacted. The crucial year for legislation will be 2008.

Of the dozen or so climate-related bills that have been proposed since the 2006 election, only four can be said to be economy-wide bills; the rest deal with cross-sections of the whole, such as single industries or fuel sources. During the coming months, Congress will consider a number of these smaller bills, including proposals relating to ethanol subsidies, research into clean coal technologies, utility-focused regulations, vehicle fuel economy standards and conservation measures. It will not, however, consider a sweeping carbon-emissions measure.

The lack of action on a major bill will be by unanimous consent of those interests involved -- though all sides will be uneasy. Proponents of a strict cap-and-trade system fear that a parade of successful smaller-focus bills could arrest the momentum behind the climate-change issue by suggesting to the public that Washington is dealing with the issue. Meanwhile, those wary of a strict cap-and-trade system fear that successful climate-related bills in 2007 would encourage cap-and-trade advocates to aim higher in 2008 or even to take their chances and wait until 2009 for a new administration and the hope that a stronger bill is possible.

To understand the regime that emerges in the coming years, it is important to recognize the various interests and strategies in place, as they have brought the issue to this point -- and have dictated how

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climate policy will be determined.

Three Approaches

The most successful strategy driving the policy shift on climate change is the [state-by-state regulatory approach](#) developed by national environmental activists in the late 1990s. It was this approach that essentially was at issue in the Supreme Court's Massachusetts case.

The strategy essentially held that if a number of states developed their own slightly different carbon dioxide-related laws, then industry would find it too expensive to track and ensure compliance with them. Frustrated both by the added expense and by the uncertainty surrounding the future of climate regulation (in states and nationally), the strategy held that companies would begin to demand federal actions to harmonize monitoring and regulation, clarify definitions and provide certainty about the future of regulations.

The pieces of this strategy began to fall into place in 2002 with the passage in California of AB 1493 (which has come to be called the Pavley Law), an automobile tailpipe-emissions regulation that became the model for the Massachusetts law in question at the Supreme Court. On the heels of the California law came the New England Regional Greenhouse Gas Initiative (RGGI or "Reggie"), a greenhouse-gas-measuring registry that first applied to industry in New England states but which has now been joined by California, Maryland and even Ontario.

The court's upholding of the Massachusetts bill essentially means that, in absence of federal regulation, all of the states involved in RGGI are likely to follow suit and develop a car emissions bill. From the automakers' standpoint, numerous changing state emission standards are too difficult to manage, and within hours of the Massachusetts decision, the automakers pledged to cooperate on a new national fuel economy law.

A second strategy that has been in operation for almost a decade has depended on the growing numbers of shareholders demanding that corporations assess the financial implications of climate change on the companies they own. Spurred by advocates of corporate social responsibility such as Ceres and religious shareholder activists, more than half of the Fortune 100 have undertaken so-called [climate risk studies](#) of the business risks -- and opportunities -- available under various climate-change regimes. As a result, industry opposition to climate-change regulations has weakened. Among the outgrowths of this has been the development of various pro-regulation business coalitions, such as Securing America's Future Energy (SAFE) and U.S. Climate Action Partnership (U.S. CAP), which now advocate specific carbon-controlling measures in Congress. U.S. CAP is the most important group to emerge from the climate risk argument. These are companies (General Electric Co., DuPont, BP and others) that can gain significant profit from the development of a U.S. [cap-and-trade regulatory system](#). Their interest is not served by any economy-wide remedy that does not include a cap with tradable emissions credits.

The companies in [SAFE](#), on the other hand, are involved in transportation and chemicals. They benefit primarily from regulatory certainty and a relatively consistent supply and price of fuels. These companies do not advocate a carbon cap, but instead offer a series of smaller measures -- such as fuel efficiency and increased domestic oil production -- which, they argue, would reduce U.S. oil imports.

The third major strategy now bearing fruit is the science strategy that emanated from the United Nations in the late 1980s. The Intergovernmental Panel on Climate Change (IPCC) has been instrumental in convincing the media and policymakers that carbon emissions created by humans are bringing about a warmer planet. The IPCC brings together more than a thousand climatologists, meteorologists and scientists from other disciplines to develop the scientific consensus on climate change. The core elements of the IPCC's conclusions, from its modeling to its data collection, have been (and will continue to be) debated for years, but it has always been seen as a credible source of information on climate change.

The Strategy Forward

As these three strategies have borne fruit, industry has acted in the manner the environmental activists anticipated. Once a few broke ranks and seemingly benefited (e.g. BP, General Electric, Citigroup, Cynergy), a critical mass was reached. As a result, from the point of view of advocates of federal action on climate change, the debate is being led by four distinct but manageable groups.

The road forward is dictated in part by how these strategies conclude. The most important of them, the state-by-state strategy, has forced many important players in industry to the table, but federal action will ultimately supplant the majority of state-based efforts.

Each of the industry players wants the issue resolved in the next two years. The Bush administration has been an ally of industry, and with the possible exception of U.S. CAP, industry wants any sweeping climate policy to be tailored for this president's approval. Very few in industry want to take their chances with the winner of the 2008 election -- be it a Republican or Democrat. Thus, there remains a press for a major bill by mid-2008.

Those who want as strong a policy as possible are torn. Realists who support a strong federal regime are drawn to the idea that with most in industry calling for action on climate change, there is no time like the present. Just as only Richard Nixon could go to China (or create the EPA for that matter), many realists argue that only George W. Bush could sign a climate bill that places significant controls on industrial emissions of CO₂. They fear that if they hold out for a perfect bill, the corporations will no longer align with environmentalists in a similar fashion, just as they fear over-reach by a Democratic president and Democratic Congress. They would prefer a guarantee in 2008 over a hardened battle in 2009 with no certainty of victory.

Idealists, on the other hand, argue that with momentum on their side, there is little that industry could do in the face of a Democratic president and Congress, and therefore time is on the environmentalists' side. The idealists argue that they have not gone this far only to pass a half-measure, particularly one that does not contain a hard carbon cap.

Democrats, finally, have their own considerations, separate from the environmental and business lobbies. They have to determine whether they want the issue or the victory. If the Democrats find that they can win in 2008 running in part against the perception that the Republican Party is overwhelmingly controlled by big business, a lack of national climate policy under a Republican president could be a substantial element of that argument. On the other hand, there is significant risk to waiting. If they wait, the policy that

emerges will be their policy, which means they can be blamed by Republicans and business alike for the rising energy prices and the perception of diminishing U.S. competitiveness. Furthermore, if they wait and lose the 2008 general election, particularly to a moderate on these issues like John McCain or Rudy Giuliani, the public perception that they are the leaders on the issue could change. (This is not a mantle they can lose to Bush.)

Playing out 2007

While industry and environmentalists position themselves for the larger, wide-ranging regulatory bills most likely to merit serious consideration in 2008, a segmented approach toward energy policy is likely in 2007.

Businesses will likely push for low-cost measures they view as popular with environmentalists and beneficial to their interests. Witness the automobile industry's call for a national approach to fuel efficiency (to avoid the continued proliferation of Pavley-like laws). Also, SAFE, another group with a firm policy position, already advanced its agenda by working with Sens. Byron Dorgan, D-N.D., and Larry Craig, R-Idaho, to introduce the Security and Fuel Efficiency Energy Act of 2007, which calls for increased fuel efficiency standards and expanded oil development under the framework of energy security. Common to both the business and the SAFE approach is the call for a fuel efficiency law. With automakers, security hawks and environmentalists on the same side, such a measure is likely to pass.

Another targeted measure likely to gain momentum is increased funding for ethanol research. The biggest question surrounding the 2007 Farm Bill is how well -- not whether -- research into ethanol and other biofuels will be subsidized. This subsidy will complement a bill that calls for renewable fuel standards, essentially laws requiring that increasing amounts of alternative fuel be used in transportation fuels.

Also, lawmakers wary of being seen as overstepping the public's support for a broad-based climate regime, or afraid of acting too quickly, could push for carbon regulations for only targeted segments of industry, specifically the utility sector. This incarnation would take place with passage of the Feinstein-Carper bill, which would create a cap-and-trade system for the utility sector only. Such a bill would serve as an on-ramp or a test case for a larger economy-wide cap-and-trade framework.

In fact, Sen. Dianne Feinstein's energy strategy is representative of the likely 2007 policy scenario. She is introducing staggered energy bills, the first dealing with the utility sector, the second a national emissions bill, and further bills on energy efficiency and cap-and-trade for other sectors.

These bills are the low-hanging fruit of the climate-change issue. Together they would address some of the issues involved in limiting CO₂ emissions, but they would not represent a coordinated unified approach or one that establishes limits on the country's overall CO₂ emissions. After these are passed, however, all involved would have to take stock of what they have and what they need.

At the end of the year, SAFE members would be generally satisfied, and they likely would join the broader business community in skepticism about a more dramatic set of laws. The U.S. CAP members, on the other hand, would not be satisfied at all, as their goal of a cap-and-trade system would not have been met. The environmental camp would not have met any of their goals, though progress would be undeniable. Finally,

Democrats would still have the issue of a coherent national policy to use as a political stick against the Republicans.

What comes after this will depend on the success of a final piece of the climate-change puzzle -- how the public views the issue.

Enter Al Gore

The final piece of the puzzle -- grassroots attention -- will begin to take shape in the coming months. Climate change is an anomaly because it has not risen as an issue out of grassroots interest or concern. On the contrary, it has captivated intellectual and media elites for a decade without moving through the standard [issue-development process](#). As a result, we see the rare development of a contentious national policy discussion that few people really care about.

The remedy to this could come in the person of former Vice President Al Gore or in the development a larger movement of students that grows into a national grassroots climate-change campaign. While environmental leaders have recognized this weakness for years, the idealists especially realize that it is now imperative that an independent climate-change movement develop. Gore could take the leadership position on this issue, as he is seen as not being narrowly interested in environmental issues. This role also could be filled by writer and professor Bill McKibben, organizer of a nationwide series of demonstrations set for April 14.

If Gore or another leader emerges, the debate during 2008 will likely run closer to the wishes of realist environmentalists and the corporations in U.S. CAP. If no grassroots leader emerges, however, the public could well come to view the flurry of bills in 2007 plus a moderate economy-wide bill in 2008 as having dealt with the issue of climate change. Hence, the first phase of U.S. climate policy will end either without a carbon cap at all or with a relatively weak one.

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