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## 7 States to Sue E.P.A. Over Standards on Air Pollution

By JENNIFER 8. LEE

**W**ASHINGTON, Feb. 20 — Seven state attorneys general, all Democrats, mostly from the Northeast, announced today that they would file a lawsuit accusing the Environmental Protection Agency of failing to enforce the Clean Air Act by neglecting to update air pollution standards.

The lawsuit, which would be the third brought by states against the Bush administration over the Clean Air Act in the last seven weeks, shows the increasingly antagonistic relationship between the Northeastern states and the federal government over clean air.

Across the country, states are becoming increasingly active on environmental matters, with many officials criticizing the Bush administration as eager to roll back regulations and Congress as unable to demonstrate effective oversight.

The attorneys general sent a letter to the E.P.A. administrator, Christie Whitman, giving her the requisite 60-day notice of their intent to sue.

The suit seeks new regulations of carbon dioxide, which is widely acknowledged to contribute to global warming but is not specifically listed under the Clean Air Act alongside other pollutants.

"Both Administrator Whitman and the president have been clear that carbon dioxide is not a pollutant under the Clean Air Act," said Joe Martyak, a spokesman for the agency. "We have in place all the federal air quality standards required by the Clean Air Act."

The attorneys general contend that updated regulations required under the Clean Air Act would include the regulation of carbon dioxide, a subject of debate over the last several years. Two years ago, the Bush administration pulled out of the Kyoto Protocol climate treaty, advocating voluntary controls on heat-trapping gases instead. Last week, the administration announced some voluntary industry agreements in a ceremony at the Department of Energy, which the attorneys general say demonstrates the administration's lax attitude on carbon dioxide.

"The fact it occurred in the cafeteria of the Department of Energy is emblematic that the E.P.A. has been eaten alive by companies they are supposed to be regulating," said Attorney General Eliot Spitzer of New York, who is coordinating the lawsuit. "They have been negligent in setting standards."

The other states in the lawsuit are Connecticut, Rhode Island, New Jersey, Massachusetts, Maine and Washington. The suit is similar to one announced last year by the Sierra Club and Our Children's Earth Foundation.

The federal government, which generally wins on state lawsuits concerning the substance of

environmental laws, is more vulnerable on legal disputes involving procedural actions, legal experts said.

One lawsuit, filed on Dec. 31, which now has 10 state plaintiffs, tries to stall an effort by the E.P.A. to weaken regulations governing coal-burning power plants. Another lawsuit, announced on Feb. 12 by three states, seeks to have carbon dioxide characterized as a pollutant.

The lawsuit announced today contends that a section of the Clean Air Act requires the E.P.A. to review and revise its regulation over pollutants every eight years, something the plaintiffs say the agency has not done in 20 years. It is a common environmental litigation strategy to sue over agency deadlines.

The states argue that for 20 years the agency has failed to do a review of power plants, which are responsible for some 40 percent of all carbon dioxide emissions in the United States. The agency says it updated its standards in 1998, when it tightened standards for nitrogen oxides.

The states argue that carbon dioxide emissions from power plants clearly fit within the act's definition of an air pollutant, a position the administration disputes.

Generally, the states assert, the Clean Air Act says a pollutant can be regulated if it is something released into the air that endangers public health or welfare. Carbon dioxide is not known to cause acute or chronic illness, criteria that are fulfilled by many of the pollutants under the act. Indeed, Congress has not passed any significant regulation specifically governing carbon dioxide.

Jonathan Adler, a professor of environmental law at Case Western Reserve University who has advocated a more hands-off approach to government regulation, said: "The underlying legal arguments have a lot of problems because they assume the E.P.A. has the authority and the obligation to dramatically expand the regulation of emissions without Congressional approval."

Experts say the procedural part of this suit has more legal grounding.

"This is a tactical strike under the Clean Air Act," said Richard Lazarus, a professor of environmental law at Georgetown University who has worked in both the Reagan and Carter administrations.

Administration officials and industry lobbyists criticize the attorneys general as becoming "serial lawsuit filers," saying that this latest lawsuit is yet another publicity stunt based on extreme legal reach.

Democrats in state office have used courts to focus attention on issues they say are not receiving enough attention now that Republicans control both houses of Congress as well as the White House.

"The big thing about November 2002 election was that there is no check anymore," Professor Lazarus said. "What is interesting is you see the states now coming in and trying to fill that gap."