

Obama's climate 'Plan B' in hot water

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President Barack Obama's 'Plan B' for tackling global warming is under attack in the courts and on Capitol Hill.

Through federal lawsuits, two conservative attorneys general, a major coal company and the U.S. Chamber of Commerce are leading the charge to overturn the Environmental Protection Agency's ability to write its own climate rules.

Key coal-state Democrats and nearly all Republicans are also unified in their bid to slow down the EPA via legislation — and they're determined to force a series of votes on the issue before the next big suite of rules start kicking in next January.

"You attack it at all fronts," Sen. Lisa Murkowski (R-Alaska), a leading advocate for stopping the EPA, told POLITICO. "You go the judicial route. You go the legislative route. I think this is important to make sure we are looking at all avenues."

Bids to stop the EPA started even before the agency concluded last December that greenhouse gases are a threat to public health and welfare, issuing its all-important endangerment finding that essentially triggered a series of climate-themed rules under the Clean Air Act.

But EPA's moves are now front and center as the Obama administration starts exercising its administrative muscle after Senate Democrats last month shelved a broader climate bill for the year.

"People on the pro- and anti-policy side are increasing the intensity of their curiosity of what EPA is doing because they don't have a process to focus on," an Obama administration official said in an interview. "We're definitely the most significant game in town."

The EPA took its first big step in the spring when it unveiled new climate-themed standards for motor vehicles, the byproduct of several years of legal wrangling and closed-door negotiations with industry, states and environmentalists.

More rules will come in January for power plants and other major stationary sources. And the EPA is also trying to limit the reach of its future rules on smaller industrial sources by issuing a so-called tailoring rule that sets minimum emission thresholds before any standards would kick in.

The legality of the tailoring rule is under scrutiny in court, but conservatives want to drive home their point that the agency — unless ordered otherwise — is obligated under the

law to start setting new restrictions on churches, schools and, maybe someday, lawn mowers.

“I don’t know if its backyard barbeque grills or hitting small business,” said Robert Stavins, a Harvard University economist who has been working on climate rules for several decades. “But there will be some regulation that looks silly that just becomes a poster child for the right. And it could lead to less, rather than more, national enthusiasm on climate policy. And people on the right recognize that.”

On Capitol Hill, Murkowski tried earlier this year to reject EPA’s endangerment finding with a Congressional Review Act resolution that required only 51 supporters to pass in the Senate. She lost 47-53. Last week, Murkowski attempted to tack an amendment that would stop EPA’s power plant rule onto a small-business bill.

A vote is unlikely because of ongoing Senate gridlock, but Murkowski said she’s taking her chances wherever and whenever she can. “What I’m trying to do is preserve options,” she said. “If there are opportunities, we don’t want to have missed an opportunity.

“The calendar is advancing,” Murkowski added. “Jan. 1 is coming upon us. I think businesses are taking a look at this and asking, ‘Is this what this will mean to us?’ And I think they’re making the calls to their representatives and saying what are you doing about this because this is going to impact us in a substantial way.”

Efforts in the House are also picking up steam. A House appropriations subcommittee narrowly defeated an amendment, voting 7-7 last month, to stop the EPA for two years, and Rep. Rick Boucher (D-Va.), a leading advocate, predicted another vote if the full Appropriations Committee meets in September.

“It’s going to be incredibly economically disruptive,” Boucher said of the EPA rules. “The tools will lead to blunderbuss regulations.”

Boucher, who played a key role last year writing cap-and-trade legislation, said he’d prefer Congress pass a bill because it can do things the EPA can’t, such as establish an emissions trading program and allow companies to purchase offsets if they can’t meet their compliance obligations.

“Congress needs time to assemble the political will to do this properly,” he said.

EPA’s opponents have support from some typical moderates on environmental issues, including Sen. Susan Collins. The Maine Republican voted with Murkowski in June and said last week she’d be there again the next time because she wants Congress to provide a long-term solution to the climate issue.

“At least we deserve an opportunity to try,” Collins said. “The problem is this is such a big policy issue that it should really be decided by Congress and not carried out by regulatory fiat.”

Environmental groups stung by last month's abrupt Senate defeat have quickly shifted to defend the EPA regulations. The League of Conservation Voters, the Natural Resources Defense Council, Environment America and the National Wildlife Federation ran an ad last Thursday in *The Washington Post* and another Friday in *The Akron Beacon Journal* naming the seven congressmen — Ken Calvert (R-Calif.), Ben Chandler (D-Ky.), Tom Cole (R-Okla.), Steve LaTourette (R-Ohio), Jerry Lewis (R-Calif.), Alan Mollohan (D-W.Va.) and Mike Simpson (R-Idaho) — who voted for the two-year delay in the House appropriations subcommittee.

"It doesn't matter if you're are a Republican or a Democrat, if you take on the Clean Air Act that has a 40-year track record and is right now our lone tool to address the climate crisis, we're going to scream about it," said Joe Mendelson, NWF's lead climate official and a lead author on the original petition that led to the 2007 Supreme Court decision *Massachusetts v. EPA*, which underpins the agency's regulatory authority. "It's time to take action. It's not time to take steps back."

The Obama administration is also defending itself on several fronts. A White House official has said the president would veto any bill that reaches his desk that tries to take away EPA's authority to write the climate rules, saying the agency will not overreach.

"We will achieve modest gains with modest regulations," the official said. "These regulations, on the one hand, are not going to solve the entire global warming problem. On the other, they won't be incredibly intrusive and blunderbuss. They'll be the modest steps that EPA is authorized by the existing Clean Air Act to take."

Also last week, EPA Administrator Lisa Jackson dismissed several preliminary petitions that were aimed at trying to overturn the endangerment finding based on stolen e-mails from prominent climate scientists. Virginia Attorney General Ken Cuccinelli, one of the petitioners, had argued to EPA that the e-mails — which formed the basis of last fall's so-called Climategate controversy — show collusion to hide contrary information debunking global warming.

But Jackson disagreed. "These petitions — based as they are on selectively edited, out-of-context data and a manufactured controversy — provide no evidence to undermine our determination," she said.

Jackson said an agency review of the e-mails showed "a candid discussion of scientists working through issues that arise in compiling and presenting large, complex data sets." She said four independent reviews have reached similar conclusions.

Brian Gottstein, a Cuccinelli spokesman, responded Thursday that Jackson's decision was "fatally flawed procedurally" because she reviewed and weighed new information without giving public notice or allowing public comment.

And Robin Conrad, executive vice president of the Chamber's National Litigation Center,

said she, too, would appeal the agency's decision not to overturn the endangerment finding. The Chamber's argument didn't go after climate science, she said, but instead questioned the "wisdom of regulating greenhouse gases under the Clean Air Act, which simply was never intended to regulate something as complex as the problem of climate change."

Oral arguments in the lawsuit against EPA's endangerment finding are expected next spring. Attorneys tracking the case say a final decision is likely by the summer.