

December 8, 2009

Obama Has Authority to Sign Climate Deal

Robert S. Eshelman

The US Environmental Protection Agency's announcement yesterday that greenhouse gas (GHG) emissions "threaten the public health and welfare of the American people" has put an interesting twist on negotiations in Copenhagen.

The agency's "endangerment finding" is a decisive move toward regulating GHGs. In 2007, the Supreme Court ruled that the Environmental Protection Agency (EPA) had the authority under the Clean Air Act to regulate GHG emissions. The Bush administration did not act on the Court's ruling. But Obama has now given the EPA a green light to regulate GHGs, which could mean licensing requirements for polluting industries and penalties on their emissions.

So, what effect does the EPA action have on COP15 negotiations?

Damon Moglen, Greenpeace USA Global Warming Campaign Director, welcomes the announcement but says it does not address criticisms of the US at COP15. "The EPA's announcement is a political gesture, which is supposed to push the US Senate to act on a cap and trade bill," he says. "For the purpose of these talks it is not the equivalent of increasing emissions targets, bringing money to the table, and agreeing on a fair and ambitious legally-binding climate change agreement."

During his afternoon press conference, UNFCCC Executive Secretary Yvo de

Boer said that the Administration's move will provide needed leverage in building support for passage of climate change legislation in the US Senate rather than give a boost to negotiations under way in Copenhagen. He said: "Well, if I were a businessman, I would say: please, please, please do a deal in Copenhagen and please, please, please make it market-based. Because, if we fail to get a market-based agreement here and if the US Senate fails to agree cap-and-trade regulation, then the Environmental Protection Agency will be obliged to regulate. And every business knows that taxes and regulation tend to be a lot less efficient and a lot more expensive to market based approaches."

While others I spoke to concur that the EPA's announcement is aimed at sending a message to Congress and corporations, some environmentalists say the it demonstrates that the Obama Administration has the authority to commit the US to much greater emission cuts at COP15. In this way, the EPA's announcement boost demands for greater commitments from the US on reducing emissions.

Environmental groups have long argued that Obama can commit the US to much higher emissions reduction targets and sign a legally binding climate treaty. Kassie Siegel of the Center for Biological Diversity (CBD) told The Nation: "The President already has the authority and in fact a mandate to reduce greenhouse pollution under the Clean Air Act. And to say that he can't come to Copenhagen and commit the US to emissions targets is false. Ninety percent of international

agreements are authorized through executive agreements, so it is incorrect to say that his hands are tied by the need for a two-thirds vote in the Senate for ratification."

CBD has authored a report countering the argument that Congressional approval is required before the US can sign a climate pact and argues that: "Existing statutes and the President's own constitutional powers would support a binding, international commitment to meaningful greenhouse gas reductions." CBD argues that there are several legal mechanisms enabling Obama to sign an agreement. The EPA's announcement together with CBD's argument begs the question: why doesn't Obama, given the urgency of climate change commit the US to a 40 percent reduction in GHG emissions from 1990 by 2020 – a level consistent with the IPCC's recommendations and with the demands of poor and low-lying island nations.

Of course, the counterargument will be made that Obama needs to work with Congress and utilize the bully pulpit of the White House to build a broad-based political consensus around the issue of climate change. But from the streets of Europe to the forests of the Brazilian Amazon there is already a strong political consensus on the need to act.

The EPA's action shows that Obama has the audacity to push back against Congressional inaction and move to curb GHG emissions. But will he now use his authority to commit the US to deep emissions cuts and help bring about comprehensive climate deal?