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# EPA car emission limits usher in new regulatory era

By Jonathan Strong

The Environmental Protection Agency (EPA) says that if it loses a near-inevitable court battle, it could be forced to oversee 6 million facilities instead of the 15,000 it does now – a 40,594 percent increase.

Included in that 6 million? Four million single-family homes (including, almost certainly, Al Gore's), which the agency would have to monitor the same way it does industrial facilities like factories and power plants. Almost all commercial buildings, such as hospitals, churches and convenience stores, require enough energy to meet the new limits, as would large private houses.

EPA's problem is that the language of the Clean Air Act requires it to regulate air pollutants at levels that are unrealistically low for greenhouse gases. The Clean Air Act says that once a pollutant is "under regulation" — as greenhouse gases are now — EPA must regulate any facility emitting more than 250 tons of the substance per year, which for most air pollutants would indicate a large industrial facility. Greenhouse gas pollutants are far more plentiful, however, so much smaller facilities would trigger the limit.

The wide disparity between what the law says and what EPA is proposing — a factor of 100 — is behind the controversy and the reason businesses face potential calamity if a court were to disagree with EPA.

The agency says it could not possibly follow the law's lower threshold and oversee so many facilities. Such a scenario "would immediately and completely overwhelm" government bureaucrats, EPA says. The agency has proposed a legal solution, but the debate over the issue is likely to end up in court.

The court battle has not yet started and is months or even years away. But EPA is making the decisions now that will drive that legal fight — one that most say is all but inevitable.

Many legal experts also say EPA is heading into that court battle with a weak defense, making it likely the agency will lose. But Administrator Lisa Jackson says the agency's rationale — EPA argues it must ignore the clear language of the Clean Air Act out of "administrative necessity" and to avoid "absurd results" — is sound.

Virtually every major trade association representing American businesses has registered its concern over the strength of EPA's legal position in comments to its proposal.

While most of the major environmentalist groups have supported EPA in its push, one prominent group has made legal arguments for why the higher threshold is unlawful. Those arguments could foreshadow a lawsuit to force the lower limits found in the law.

That group is the Center for Biological Diversity. The group's top lawyer, Bill Snape, says the EPA's position is dubious. "It probably violates the Clean Air Act," Snape says, "It clearly is different from the numeric standard that is on the plain face of the statute. ... we question the legality pretty strongly, yes." The group has also said EPA is overstating the consequences of regulating a much higher number of facilities.

However, the group hasn't yet decided whether they will sue to force the lower limits once EPA issues its final rule. "We have unequivocally not made a final decision and I don't think we will make a final decision until we see a final rule," Snape says.

Others have suggested businesses themselves may sue EPA over the issue to ensure the regulations are entirely unworkable. No business group has confirmed this publicly.

Either way, it only takes one environmental group or trade association to press the issue in a lawsuit, forcing the issue in court where it could easily be struck down.

Already, one judge has told EPA it is on thin ice. In October, Judge David Tatel of the U.S. Court of Appeals for the District of Columbia Circuit warned EPA his court is willing to strike down laws that abuse the law — shortly after EPA proposed sparing all but the largest facilities.

The issue is heating up now because Friday the Obama administration pushed the first bureaucratic domino over, setting greenhouse gas emissions for cars, that will legally require a slew of other climate change-related regulations the EPA is sprinting to issue.

Meanwhile, the push to enact cap-and-trade legislation in Congress and those EPA regulations may provide environmentalists their only route to action on global warming. On cue, proponents of aggressive action who once said unwieldy EPA rules would pressure Congress to pass a bill have shifted tactics to defending the EPA regulations on their own.