

EPA prepares to return air permitting program to California

By BRIAN SKOLOFF, Associated Press Writer

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FRESNO, Calif. (AP) - The U.S. Environmental Protection Agency announced that California will likely take control of an air pollution program that ended the agriculture industry's decades-long exemption from clean air laws by forcing farm polluters to apply for permits.

The announcement comes after Gov. Gray Davis signed a package of bills last month to reduce air pollution in the San Joaquin Valley, home to 3.3 million people and the state's agricultural heartland. State officials estimate farms account for as much as 20 percent of the smog-producing gases in the nation's second most polluted air basin.

The new state legislation, which takes effect Jan. 1, forces farm polluters to apply for air quality permits. California farms have been exempt from federal Clean Air Act regulations for more than 25 years because the state has not required such permits. The EPA began the permit process in October 2002 to settle a lawsuit with environmental groups which wanted the agency to enforce its own Clean Air Act requirements, which the federal government had not done because states are charged with that task.

"Nationally, nothing existed like this where a major polluter had been exempted from federal clean air laws," said Sierra Club member Kevin Hall.

In a settlement last year, the EPA agreed to handle the permits on an interim basis for the state.

The agency is accepting public comments until Nov. 7 on its proposal to return permitting power to the state, and EPA officials said control would likely be handed over when California's new law takes effect.

"Once the exemption was removed, that was the last barrier in allowing local districts and the state to administer the program," said Josette Merced Bello, spokeswoman for the San Joaquin Valley Air Pollution Control District. "Before that, we couldn't do anything because the state prevented us from doing so."

Brent Newell, an attorney for the Center on Race, Poverty and the Environment, applauded the prospect of more local control, but said that the EPA did not do its job.

"EPA was supposed to accept and process permits during 2003 while it administered the program. It did not do that," Newell said Thursday. "It's a good thing the state is getting control back. It's a bad thing that the Bush administration punted on regulating agriculture."

Kerry Drake, associate director of the EPA's Pacific Southwest air division, acknowledged the agency issued no permits.

"I think we made a conscious decision knowing the state was going to take back the program to allow them to issue the permits," Drake said. "We did workshops and trained people. We reached hundreds, if not thousands, of farmers to help them figure out if they needed to apply for permits."

Farmers who have stationary diesel fuel engines and are considered to be heavy polluters had until May 14 to apply for air quality permits. Most other farming operations have until Nov. 13 to apply for the so-called Title V permits, the EPA said.

Schwarzenegger inherits fights between California and White House

By MARTHA MENDOZA, AP National Writer

In the Bakersfield Californian

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Gov.-elect Arnold Schwarzenegger is arriving in Sacramento with hopes of getting along better with one of California's recent enemies: the Bush administration.

California has staged epic battles with the federal government on issues including environmental protection, energy, health care, consumer protections, immigration and medical marijuana.

Schwarzenegger has promised to continue some of these efforts - an ongoing lawsuit, for example, that would allow California to set tougher anti-smog standards for carbon dioxide emissions than the federal government requires. But during his first news conference as governor-elect, the moderate Republican indicated he's willing to reach some compromises with the more conservative President Bush, who plans to campaign with Schwarzenegger in California next week.

"He promised me he would do everything possible to help California, and so I'm looking forward to working with him and asking him for a lot, a lot of favors," Schwarzenegger said.

For his part, Bush said he's "absolutely" ready to work with the new governor - a striking turnaround from the polarized relationship between Bush and ousted Gov. Gray Davis, who mostly failed in his attempts to get the federal government to reimburse California for everything from the costs of imprisoning illegal immigrants to increased homeland security.

The lawsuits reflect a desire among California's Democratic leaders for the state to have its own standards, which in many cases are more environmentally friendly, socially liberal and protective of consumers than Bush administration regulations.

"A hallmark of our state has been its willingness to say to the Bush administration, 'What you're doing is bad for our state, and we're going to take a different direction,'" said Carl Zichella, regional staff director for Sierra Club in Sacramento. "But I'm not sure how a Republican governor can tell Republican presidential candidate who is fighting for his life that he can't have what he wants in California."

The point-man for the legal battles has been state Attorney General Bill Lockyer, who on Thursday sent Schwarzenegger a confidential memo outlining all the state's litigation, including dozens of lawsuits against the federal government.

"My view is that the Bush administration is the most aggressively big government of any administration in national history, and so we have those lawsuits just because they're rewriting the doctrine of federalism," said Lockyer, who considers Schwarzenegger to be a friend.

While most of the lawsuits are over policies, there's real money at stake as well. Still pending is the state's demand that the Federal Energy Regulatory Commission order energy companies to refund \$9 billion in windfall profits made in California.

Schwarzenegger, who was criticized during the campaign for joining a closed-door meeting in Beverly Hills with Enron Chairman Kenneth Lay during the energy crisis, hasn't said whether he'll keep fighting to get the \$9 billion refunded to ratepayers.

Consumer and environmental advocates are worried Schwarzenegger will declare surrender.

"I just hope that we'll be able to hold the line, and continue to be the bellwether that we have been in the past on so many issues," said Betsy Imholz is Director of the West Coast Regional Office of Consumers Union.

The environmental conflicts include banning offshore drilling, protecting endangered species and limiting auto and power plant emissions.

"There are many examples of the administration siding with polluters rather than clean air," said Tim Carmichael, president of the Coalition for Clean Air in Sacramento. "Schwarzenegger comes in as new blood with a positive attitude, and I believe good intentions with regard to the environment and public health. Perhaps he'll have better communication with the feds, and resolve some of the problems."

Although he hasn't made detailed policy statements on many issues, Schwarzenegger promised while campaigning to fight to protect California's higher standards when it comes to carbon dioxide emissions. "California's landmark legislation to cut greenhouse gases is now law, and I will work to implement it and to win the expected challenges in court along the way," he said.

One of the touchiest battles may involve medical marijuana. Schwarzenegger has admitted using marijuana and other "soft" drugs in the past, and was asked while campaigning if he supports drug legalization. Schwarzenegger called it "a bad idea" but said "I would legalize medical (marijuana)."

Smoking marijuana is a federal crime, but in California voters approved a law in 1996 allowing sick and dying people to use the drug. Since then, the Drug Enforcement Agency has raided growers and distributors of medical marijuana, despite protests from local law enforcement.

"The governor can't control the feds, but he has a bully pulpit and can raise his voice," said Bruce Mirken, spokesman for the Marijuana Policy Project in Washington D.C. "Perhaps a Republican like Schwarzenegger can have some influence with the White House."

Battles between California and the federal government

The Associated Press

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Here are a few of the legal battles between California and the federal government:

ENERGY:

California wants the Federal Energy Regulatory Commission to order energy companies to refund \$9 billion in electricity overcharges to California ratepayers, saying utilities illegally manipulated the power market to profit from the state's power crisis in 2000-2001. Ousted Gov. Gray Davis failed to persuade President Bush to impose a cap on energy prices in May 2001, and has largely come up empty in his demands for refunds.

Gov.-elect Schwarzenegger has been less specific. He vowed while campaigning to "restore stability to our energy system and stimulate private investment in electricity generation and transmission," but did not address the \$9 billion refund demand.

OFFSHORE DRILLING:

California has repeatedly sued to protect its coastline from offshore drilling. This summer, the Bush administration proposed new rules that would get around a federal appellate decision upholding the state's ban on new off-coast oil exploration.

State Attorney General Bill Lockyer shot back with a tough letter calling the Bush administration's proposals "a thinly veiled attempt" to reverse the court ruling.

Schwarzenegger said he's opposed to offshore oil drilling and will urge the federal government to buy up the remaining offshore oil leases, as has been done in Florida.

HEALTH CARE

Schwarzenegger must decide which side to support in a coming legal battle between employers and the state over the "pay or play" law Davis signed last week requiring large employers to provide health insurance to their workers or pay into a state fund. Employers expect to sue, claiming the law violates federal pre-emptions that prevent California from regulating health benefits offered by certain companies operating in multiple states.

Schwarzenegger also must decide whether to fight a Bush administration proposal to shift Medicaid payments to a block grant program that would no longer guarantee coverage to people now eligible for health care.

During his campaign, Schwarzenegger said "California's health care system is in crisis," but said the fix should not come from businesses.

AIR QUALITY

California is preparing to join as many as nine other states in suing the U.S. Environmental Protection Agency to preserve state efforts to control greenhouse gases, after the federal EPA declared in August that it lacks authority to regulate air pollution from motor vehicles.

California officials said the broad language in the EPA's decision suggests the federal government intends to block states from acting on their own to regulate emissions. Mark Merchant, a regional spokesman for the federal EPA, denied that was the case.

Shwarzenegger's campaign said he wanted to make the state Environmental Protection Agency more efficient and ensure that it works closely with the federal EPA.

MEDICAL MARIJUANA

Smoking marijuana is a federal crime, but in California voters approved a 1996 law allowing sick and dying people to use marijuana. Since then, seven other states (Alaska, Arizona, Colorado, Hawaii, Maine, Oregon and Washington) have enacted similar laws.

The Clinton administration first targeted California medical marijuana clubs, which carried over to the Bush administration. Under Bush, the Drug Enforcement Administration has been raiding medical marijuana cooperatives operating in compliance with California law. California Attorney General Bill Lockyer questioned the ethics of a string of federal raids last year and called on U.S. Attorney General John Ashcroft and DEA Director Asa Hutchinson to meet with him. No meeting was held, but Lockyer's position bolstered local police departments that have allowed medical marijuana operations.

Schwarzenegger, who admitted using marijuana in the past, said he supports medical marijuana use, but his staff said he has taken no position on the marijuana distribution clinics that have been raided by federal law enforcement.

New Smog Measures Are Ordered

Federal appeals court says the EPA erred in blaming Mexico for harmful haze in the Imperial Valley and must develop controls.

By Gary Polakovic, Los Angeles Times Staff Writer, October 10, 2003

A federal appeals court ruled Thursday that the U.S. Environmental Protection Agency had erred in blaming Mexico for unhealthy air quality in the Imperial Valley and that the agency must impose more stringent control measures on the U.S. side of the border.

The decision by the 9th U.S. Circuit Court of Appeals targets soot and dust in a remote corner of California — southeast of Indio along an 80-mile shared border with Mexico — where some of the nation's highest concentrations of harmful haze occur.

Although concentrations of microscopic airborne particles in Imperial County sometimes exceed health-based limits by a factor of two, the EPA two years ago concluded that industrial activity on the U.S. side of the border was not responsible. The agency determined that winds carried emissions north from the fast-growing Mexicali area, pushing pollution levels in the Imperial Valley beyond limits established under the federal Clean Air Act.

Environmentalists sued the EPA to force more stringent controls on farms, mines, factories and developers in the valley. The Sierra Club argued that the EPA should have declared the entire valley in serious noncompliance for haze-forming pollutants, called PM10, nearly a decade ago. That designation, which the court ordered on Thursday, triggers new emissions controls that must be developed by local, state and federal agencies.

"This is a big victory. It is long overdue," said David Baron, attorney for the Earthjustice Legal Defense Fund, which represented the Sierra Club in the case. "The Imperial Valley has some of

the highest childhood asthma rates in the state and high levels of death from respiratory disease. The high levels of PM10 pollution are undoubtedly a contributing factor. Yet it has fewer pollution controls than other communities with less-polluted air, like the Los Angeles Basin or the Coachella Valley or Phoenix."

Microscopic particles in haze lodge deep in the lungs. Many recent health studies have shown that the pollutants — a mix of diesel soot, tire fragments, oil droplets and soil — can cause cancer, respiratory disease and premature death. In 1997, the EPA developed new, more rigorous standards to control the pollutants.

But agricultural interests warned that new controls on farms would meet stiff resistance. Imperial County produces \$1.2 billion worth of carrots, lettuce, alfalfa, sugar beets and other products annually.

"We are seriously disappointed with the decision and very concerned with the ramifications of the decision. We want to look into it and make sure it doesn't affect the farmers," said Nicole Rothfleisch, executive director of the Imperial County Farm Bureau.

Rothfleisch said that a decision had not been reached on whether to appeal the ruling.

The valley was required under the Clean Air Act to meet federal standards for particle air pollution by the end of 1994, but missed that deadline. Next, the EPA was required to impose more rigorous cleanup standards, but the agency declined to do so. Instead, it blamed Mexico for the pollution and exempted U.S. sources from additional controls.

A panel of three judges on Thursday concluded that the EPA, which had relied on data provided by California agencies, had failed to prove that all of the excessive smoke and dust had been caused by activity in Mexico. The court concluded that the EPA had relied on faulty data and misinterpretations of pollution and wind measurements.

"Based on the data and the reports in the record, there simply is no possibility that Mexican transport could have caused the observed PM10 exceedences," the court concluded.