

## High court rebukes Bush on car pollution

By MARK SHERMAN | The Associated Press

In the New York Times and Bakersfield Californian, Tuesday, April 3, 2007

The Supreme Court rebuked the Bush administration Monday for its inaction on global warming in a decision that could lead to more fuel-efficient cars as early as next year. The court, in a 5-4 ruling in its first case on climate change, declared that carbon dioxide and other greenhouse gases are air pollutants under the Clean Air Act.

The Environmental Protection Agency has the authority to regulate those emissions from new cars and trucks under the landmark environment law, and the "laundry list" of reasons it has given for declining to do so are insufficient, the court said.

"A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere," Justice John Paul Stevens said in the majority opinion. "EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change."

The politics of global warming have changed dramatically since the court agreed last year to hear its first case on the subject, with many Republicans as well as Democrats now pressing for action. However, the administration has argued for a voluntary approach rather than new regulation.

The reasoning in the court's ruling also appears to apply to EPA's decision not to impose controls on global warming pollution from power plants, a decision that has been challenged separately in court, several environmental lawyers said.

In the short term, the decision boosts California's and 11 other states' prospects for gaining EPA approval of their own program to limit tailpipe emissions, beginning with the 2009 model year. Those cars begin appearing in showrooms next year. Emission limits would become stricter each year until 2016.

Automobile makers have said stricter emission limits would be accomplished by increasing fuel-economy standards.

Reacting to the court ruling, the automakers called for an economy-wide approach to global warming, cautioning that no single industry could bear the burden alone.

Monday's ruling also improved the odds that Congress would take action on comprehensive legislation to reduce global warming, said business groups, environmental advocates and lawmakers. Several measures already have been introduced.

Sen. Jeff Bingaman, D-N.M., chairman of the Senate Energy and Natural Resources Committee urged President Bush "to work with Congress to enact a mandatory cap-and-trade proposal and other programs to reduce our nation's greenhouse gas emissions."

EPA spokeswoman Jennifer Wood said the agency is studying the court's ruling.

In the meantime, she defended EPA's voluntary partnerships to reduce emissions. "These national and international voluntary programs are helping achieve reductions now while saving millions of dollars, as well as providing clean, affordable energy," Wood said.

Ann R. Klee, who was general counsel at the EPA from 2004 through mid-2006, said the Bush administration's "options are now considerably more limited." She said EPA could still decide not to regulate carbon dioxide, but only if it also concluded that such emissions do not contribute to climate change or endanger public health and welfare.

That's an argument that could be difficult to make given the widespread view among climate scientists that carbon dioxide from burning fossil fuels is the principal heat-trapping "greenhouse" gas that, if not contained, will lead to significant warming of the Earth, rising sea levels and other marked ecological changes.

Carbon dioxide is produced when fossil fuels such as oil and natural gas are burned. One way to reduce those emissions is to have more fuel-efficient cars.

In handing an almost-total victory to Massachusetts, 11 other states, three cities and 13 environmental groups that sued the EPA, the court adopted many of their concerns and their belief that taking even limited action concerning new American cars and trucks is better than doing nothing.

The court's four conservative justices - Chief Justice John Roberts and Justices Samuel Alito, Antonin Scalia and Clarence Thomas - dissented.

"In many ways, the debate has moved beyond this," said Chris Miller, director of the global warming campaign for Greenpeace, one of the environmental groups that sued the EPA. "All the front-runners in the 2008 presidential campaign, both Democrats and Republicans, even the business community, are much further along on this than the Bush administration is."

Democrats took control of Congress last November. The world's leading climate scientists reported in February that global warming is "very likely" to be caused by man and is so severe that it will continue for centuries. Former Vice President Al Gore's movie, "An Inconvenient Truth" - making the case for quick action on climate change - won an Oscar. Business leaders are saying they are increasingly open to congressional action to reduce emissions of greenhouse gases, of which carbon dioxide is the largest.

The court had three questions before it.

- Do states have the right to sue the EPA to challenge its decision?
- Does the Clean Air Act give EPA the authority to regulate tailpipe emissions of greenhouse gases?
- Does EPA have the discretion not to regulate those emissions?

The court said yes to the first two questions. On the third, it ordered EPA to re-evaluate its contention it has the discretion not to regulate tailpipe emissions. The court said the agency has so far provided a "laundry list" of reasons that include foreign policy considerations.

The majority said the agency must tie its rationale more closely to the Clean Air Act.

In his dissent, Roberts focused on the issue of standing, whether a party has the right to file a lawsuit.

The court should simply recognize that dealing with the complaints spelled out by the state of Massachusetts is the function of Congress and the chief executive, not the federal courts, Roberts said.

He said his position "involves no judgment on whether global warming exists, what causes it, or the extent of the problem."

Justice Antonin Scalia, in a separate dissent, said the court should not substitute its judgment in place of the EPA's, "no matter how important the underlying policy issues at stake."

Whatever else comes of the decision, "this administration's legal strategy for doing nothing has been repudiated," said David Doniger, counsel for the Natural Resources Defense Council, an environmental group involved in the case.

Other states that have adopted California's standards on emissions of greenhouse gases are: Connecticut, Maine, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

The case is Massachusetts v. EPA, 05-1120.

## **Emissions law could still face hurdles**

**Despite a favorable Supreme Court ruling, another suit, the EPA or Congress could still stymie state legislation.**

By Janet Wilson and Tim Reiterman, staff writers  
L.A. Times, Tuesday, April 3, 2007

California won a major victory in its campaign to regulate greenhouse gases on Monday. But the battle is not over.

The state still faces challenges on two fronts - at the U.S. Environmental Protection Agency and in a lawsuit by automakers - before it can implement its landmark law slashing greenhouse gas emissions

from car exhaust. Even if California prevails, Congress could end up passing weaker national legislation that would supersede the state's.

"I think it's a very tough call right now," Harvard University environmental law professor Jody Freeman said when asked whether the state's mandate to have cleaner cars on the road by 2009 would be met. "I don't think the chances are great, because I think there's reason to believe Congress will act before EPA." Freeman filed a brief supporting greenhouse-gas regulation in the case decided Monday by the Supreme Court.

But others said the defeat suffered by the auto industry and the Bush administration at the hands of the high court should greatly improve the chances of California and several other states that seek to follow its lead in curtailing gases that contribute to global warming.

At a San Francisco news conference, state Atty. Gen. Jerry Brown called the ruling a "resounding affirmation of California's actions to address global warming." Brown's office is defending the state's statute against the automakers' lawsuit.

The automakers argue in several pending cases that state regulation of greenhouse gases is illegal because it amounts to regulating the fuel efficiency of cars and only federal transportation officials can do that.

The Supreme Court ruled that greenhouse gases can be regulated as air pollutants. For the EPA to regulate, it must first determine that science shows global warming is harmful to human health and welfare.

But even if the EPA decides greenhouse gases should be regulated to protect public health, the agency could still deny California's long-delayed request to implement its own law by saying that the problem is global and not unique to the state, Freeman said.

Because of California's extreme air pollution and existing laws, it was granted the right under the Clean Air Act to pass its own air pollution rules, provided the federal government signs off with a waiver. Other states can then follow California's lead, and 10 have passed such laws and are waiting for the waiver.

To get a waiver, California must show compelling and extraordinary conditions, Freeman said.

"California is special. It's the only state in the country that can set tailpipe standards separate from federal standards," she said. "Everything depends on that waiver."

Gov. Arnold Schwarzenegger, who broke with President Bush by endorsing California's Democratic-sponsored emissions law, wrote the president and EPA a year ago asking them to grant the state's request to implement its own law.

The governor noted that California's emissions standards would begin with 2009 vehicles and cut global warming emissions nearly 30% by model year 2016.

An EPA spokeswoman, Jennifer Wood, said Monday that the agency had been reviewing the complex issues in the waiver request and would soon solicit public comments and hold hearings.

Schwarzenegger issued a statement Monday saying he was "encouraged" by the court decision.

"We expect the U.S. EPA to move quickly now in granting our request for a waiver, which will allow California and ... other states that have adopted our standards to set tougher vehicle emissions levels."

But because global warming is not just a California problem, its argument for special status might not work this time, some experts said. Environmental attorneys and legislators said Monday, however, that certain states do have a special problem with global warming, particularly California.

David Bookbinder of the Sierra Club, one of the lead attorneys on the Supreme Court case, and former Assemblywoman Fran Pavley, author of California's tailpipe legislation, said that because the Sierra Nevada snowpack, which provides crucial drinking water to Californians, is thinning and because warmer summer temperatures could increase the state's still-high smog levels, California's plight is unique.

The state also faces a challenge from a lawsuit by the auto industry in a federal district court in Fresno. The judge in that case had postponed a decision until the Supreme Court ruled. Deputy state Atty. Gen.

Ellen Peter, who is supervising the case, said the state will now seek a conference with the judge to assess the effect of the decision.

Spokesmen for the auto industry did not comment on the lawsuits it has filed in California and other states Monday, saying only that they thought federal regulations would work better.

"The Alliance of Automobile Manufacturers believes that there needs to be a national, federal, economy-wide approach to addressing greenhouse gases," Dave McCurdy, president and chief executive officer of the Alliance of Automobile Manufacturers, said in a statement.

But Vickie Patton, senior attorney with Environmental Defense, one of the petitioners in the Supreme Court case, said the ruling enhances California's chances and reinforces its pioneer status in setting standards.

"Today the highest court in the land put the full faith and credit of federal law behind California's extraordinary leadership," she said.

## **Ruling helps California battle global warming**

### **Supreme Court affirms that states can limit greenhouse gases, attorney general says**

Bob Egelko, staff writer

S.F. Chronicle, Tuesday, April 3, 2007

The campaign led by California to combat global warming at the state level took a giant step forward Monday when the U.S. Supreme Court rejected the Bush administration's hands-off approach to climate change and pushed the government toward regulation of greenhouse gases.

The 5-4 ruling, the most important environmental decision the court has issued in many years, clears the way for current and future federal administrations to set mandatory limits on motor vehicle emissions of carbon dioxide and other heat-trapping gases -- a leading cause of planet-wide temperature increases, according to an overwhelming majority of scientists.

The court's interpretation of the Clean Air Act, the 1970 law that authorizes regulation of air pollutants, also appears to help California and other states that are seeking to bypass the Bush administration and limit the emissions on their own.

State Attorney General Jerry Brown said that the court, by ruling that the Clean Air Act applies to emissions that cause climate change, strengthened California's defense of its groundbreaking law requiring new vehicles sold in the state to meet gradually tighter standards for greenhouse gases, starting with the 2009 models.

The ruling "makes it very clear that California has a right to regulate greenhouse gases," since the federal government has historically allowed the state to exceed federal standards in regulating air pollutants, Brown said at a news conference. But his interpretation was quickly disputed by an auto industry lawyer.

The court decided that only the federal agency could restrict greenhouse gases, which is "different from saying states can regulate," said attorney Theodore Boutsos. Although the court rejected the automakers' position Monday, he said, the ruling was "consistent with our position that global warming is an issue that needs to be addressed at the national and international level by federal policy-makers."

Monday's decision rejects a 2003 declaration by the Environmental Protection Agency that it lacked authority to regulate greenhouse gases under the Clean Air Act -- a reversal of the Clinton administration's interpretation of the law -- and said it would not use that authority in any event.

The EPA's position was consistent with President Bush's policy of relying on industry to reduce emissions voluntarily and his withdrawal of the United States from the Kyoto Protocol, which requires industrial nations to cut those emissions 5 percent below 1990 levels by 2012.

California, 11 other states and most major environmental organizations sued the agency, arguing that the emissions are pollutants covered by the Clean Air Act. Their arguments prevailed in a ruling that stopped just short of requiring the EPA to set binding standards on tailpipe emissions of greenhouse gases.

Federal law for at least three decades has required the EPA to regulate "any air pollutant that may endanger the public welfare," said Justice John Paul Stevens in the majority opinion, which found that greenhouse gases easily fit the law's definition of air pollutants.

The court left the final regulatory decision up to the EPA. But Stevens said the agency's rationales for its inaction to date -- that voluntary measures were adequate, that mandatory U.S. controls could hamper Bush's ability to negotiate emissions reductions with nations like China and India and that "piecemeal" regulation of vehicle emissions was ineffectual -- fell short of the scientific justifications demanded by the law.

"Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do," Stevens said.

Chief Justice John Roberts and Justice Antonin Scalia wrote separate dissents, each signed by the court's most conservative members.

Roberts said state governments lacked legal standing to sue the EPA because they could not show that the federal regulation they sought would have any measurable impact on their land, water or air. New cars sold in the United States play only a "bit part" in the planetary problem, he said, and any reductions caused by EPA regulation "are likely to be overwhelmed many times over by emissions increases elsewhere in the world."

Scalia said the court should not second-guess the EPA's position that nationwide regulation would interfere with the Bush administration's policy and that mandatory controls are unjustified because of lingering scientific uncertainties about the causes of global warming.

The ruling also addressed an issue that is crucial to a separate lawsuit by auto dealers and manufacturers challenging the California law on vehicle emissions. In the suit, pending before a federal judge in Fresno, the companies argue that the state is effectively requiring their vehicles to burn less fuel, violating exclusive federal authority to regulate fuel economy.

The EPA offered a similar argument for not regulating greenhouse gases -- that it could do so only by increasing mileage standards, which are controlled by federal transportation officials rather than environmental regulators. But Stevens, in the majority opinion, said the existence of federal fuel economy standards "in no way licenses EPA to shirk its environmental responsibility" to curb air pollution.

Stevens' rationale should be used to uphold the California law, said David Doniger, a lawyer with the Natural Resources Defense Council, which has joined the state in defense of the law.

The EPA issued a statement saying it was reviewing Monday's ruling while touting the Bush administration's "unparalleled financial, international and domestic commitment to reducing greenhouse gas emissions."

Brown, whose office represents the state in the case, said the ruling virtually requires the EPA to grant the state permission to enforce its law by adopting stricter emissions rules than the nationwide standard -- a waiver that could have been denied if the court had ruled that greenhouse gases were not subject to government regulation.

Gov. Arnold Schwarzenegger predicted that the ruling would lead to EPA waivers for California and 13 other states to restrict greenhouse gas emissions. "Our state remains committed to carrying on the fight against global warming because the political will is here and Californians demand action," he said in a statement.

The case is Massachusetts vs. EPA, 05-1120.

## **Court: Clear the Air**

### **Justices' call to enforce pollution law paves way for state's tougher rules**

By MATT WEISER and JIM DOWNING - THE SACRAMENTO BEE

In the Sacramento Bee and the Modesto Bee, Tuesday, April 3, 2007

California's plan to restrict greenhouse gas emissions from cars and trucks cleared a major obstacle Monday when the U.S. Supreme Court ruled that the Bush administration has the authority and duty to regulate carbon dioxide emissions.

The court ruled that carbon dioxide is considered a pollutant under the Clean Air Act. California filed the lawsuit, along with 11 other states and 13 environmental groups, to obtain permission to impose its own carbon dioxide standards on new cars and trucks.

"Today's ruling makes it clear the federal government is going to have to be part of the solution to the global warming problem" said Dan Skopec, undersecretary of California's Environmental Protection Agency, which oversees the Air Resources Board. "That makes it all the more likely auto manufacturers will try to cooperate with this effort."

The court did not order the federal Environmental Protection Agency to regulate greenhouse gases. Instead, it rejected EPA excuses for avoiding regulation and directed the agency to justify why it has not enforced the Clean Air Act specifically.

Some observers said the decision will increase pressure on the Bush administration to do more to counteract the causes and effects of climate change.

If the ruling ultimately allows California to write its own carbon dioxide rules, consumers could get a wider range of vehicles that use fuel more frugally because greenhouse gas emissions are directly tied to fuel efficiency.

The full impact of Monday's ruling hangs on the outcome of another lawsuit, this one brought against the state by carmakers and 10 dealerships, including Central Valley Automotive in Modesto. But Monday's ruling could prove decisive in that case.

Had the court rejected the plaintiffs' challenge, plans in several states to cut greenhouse gases could have been jeopardized.

"It would have been very problematic," said Dan Sperling, director of the Institute of Transportation Studies at the University of California at Davis.

Monday's decision "reinforces what the American people are coming to believe, which is that climate change is an important challenge, and that it is appropriate, if not imperative, that government take more leadership."

### **Court's 1st global warming case**

The 5-4 decision, which followed the court's ideological split, stemmed from the first global warming case it has considered.

"It's so decisive and so forceful that I think this is a landmark decision in the course of environmental law in the United States," said Tom Jennings, chief counsel at the California Air Resources Board.

Writing one of two minority opinions, Chief Justice John Roberts said "redress of grievances of this sort" is the function of Congress and the chief executive, not the federal courts.

Roberts was joined in dissent by Associate Justices Antonin Scalia, Clarence Thomas and Joseph Alito.

Associate Justice John Paul Stevens, writing for the majority, said the federal government did not contest the basic claim that carbon dioxide is harming the plaintiffs.

"The court attaches considerable significance to EPA's espoused belief that global climate change must be addressed," Stevens wrote.

Carbon dioxide is produced by burning fossil fuels. Most scientists agree that an overabundance of carbon dioxide in the atmosphere has caused a dramatic warming of the climate over the past century.

Friday, the Intergovernmental Panel on Climate Change, a consensus body of the world's climate scientists, will issue its second major report of the year. This one will focus on the effects of global warming.

In California and the West, scientists have documented a rising sea level, amplified weather extremes, more forest diseases and wildfires, more flooding and water scarcity because of a shrinking snowpack, and altered species diversity and habitats.

California has moved aggressively to address climate change. Under federal law, it is the only state with the power to craft its own automobile emission rules. But the state needs EPA approval, in the form of a waiver of federal regulations, to enforce such rules.

### **Waiting on federal waiver**

In late 2005, the state asked the EPA to approve the waiver so it could enforce Assembly Bill 1493. The 2002 state law called for new vehicles sold in 2009 to meet strict carbon dioxide limits. As of 2016, new cars would emit, on average, 30 percent less carbon dioxide than those sold in 2000. These reductions are considered vital to satisfying new state greenhouse mandates.

The federal government has not acted on California's waiver request, despite repeated urging by state officials, and a letter from Gov. Schwarzenegger to President Bush.

Jennifer Wood, EPA press secretary, said her agency is considering the court ruling, but it plans to move ahead with California's waiver request.

"EPA has reviewed the complex issues contained in the waiver request and will issue a notice of a public comment and hearing period shortly," Wood said via e-mail.

John Sprankling, a professor at the University of the Pacific McGeorge School of Law in Sacramento, said it may be too early to draw conclusions about the long-term impacts of Monday's decision.

The Clean Air Act, he said, focuses mainly on threats to human health, not the environment, and the EPA might argue successfully that greenhouse gases do not pose a significant health risk.

Susanne Moser, a research scientist at the National Center for Atmospheric Research in Boulder, Colo., said the political and legal delays embodied in Monday's ruling ultimately raise the stakes in responding to climate change.

"The challenges we're facing are considerable," she said, "and we shouldn't be nonchalant and postpone everything."

### **EPA can regulate emissions, court says**

By Mike Taugher and Douglas Fischer, MEDIANEWS STAFF  
Contra Costa Times, Tuesday, April 3, 2007

The U.S. Supreme Court dealt a blow to the Bush administration and gave a boost to California's efforts to combat global warming, ruling Monday that federal regulators wrongly decided not to limit greenhouse-gas emissions from cars.

"It's a great victory for California -- a landmark decision," said Jerry Martin, spokesman for the California Air Resources Board.

Capping an eight-year debate on whether carbon dioxide is a pollutant, the court said in a 5-4 decision that the U.S. Environmental Protection Agency has authority to regulate carbon dioxide and other heat-trapping gases from automobiles. The court overturned the EPA's 2003 rejection of a petition from environmentalists to regulate greenhouse gases from cars.

It accused the agency of coming up with a "laundry list" of reasons not to regulate carbon dioxide rather than taking a more straight-forward approach to its responsibilities under the Clean Air Act.

Observers said the ruling does not necessarily mean the federal government will be forced to curtail greenhouse gases, but it made it more likely that either federal regulators or Congress would take action to control emissions.

The decision also appeared to bolster California's defense of state rules adopted in 2004 that require new cars sold in the state beginning in 2009 to reduce carbon dioxide emissions.

The automobile industry sued to block the rules, saying they would be too costly and would require the fuel efficiency of new cars to increase to 43 miles per gallon by 2016. In that lawsuit, which was put on hold in January to await the outcome of the Supreme Court case decided Monday, the industry contends the state rules are illegal because only the federal government can set fuel-efficiency standards.

While not specifically addressing that issue, the Supreme Court rejected a similar argument from the EPA, which argued it lacked the authority to regulate carbon dioxide emissions because it cannot set fuel-efficiency standards.

The court said that the fact that another agency is assigned to set mileage standards, "in no way licenses EPA to shirk its environmental responsibilities."

"This is the light at the end of the tunnel," said Amy Luers, the California climate program manager for the Union of Concerned Scientists. "Today's ruling permanently wipes away all of the (Bush administration's) rationales for not granting California and 10 other states permission ... to reduce global-warming pollution."

California officials agreed.

"The fight continues, but California's positions have been strengthened," Attorney General Jerry Brown said.

EPA press secretary Jennifer Wood said her agency was still evaluating how to respond to the court's decision, adding that the Bush administration "has an unparalleled financial, international and domestic commitment to reducing greenhouse-gas emissions."

Critics contend the Bush administration has done little to address mounting evidence that global warming is a real threat and that its record on reducing greenhouse gases is marked more by refusing to regulate carbon dioxide, minimizing the gravity of the problem and attempting to muzzle government scientists.

Howard Fox, a lawyer who represented the Sierra Club during the lawsuit, said the federal government's efforts have been insignificant.

"The voluntary programs it talks about are still allowing emissions to go up. We need to stabilize them and bring them down," Fox said.

He also took exception to efforts by federal lawyers to prevent the case from being heard in court by arguing the states involved in the case lacked legal standing to file the lawsuit.

"Here's the worst environmental problem ever, and they're saying the states can't get inside a federal courthouse to protect their land," he said.

The case began with a petition from environmental groups to the EPA in 1999 seeking new rules to curtail greenhouse-gas emissions from cars.

The environmentalists' petition was rejected in 2003, and an appeals court upheld the agency's decision. The Supreme Court agreed in 2005 to hear the case.

In many ways, the debate over climate change has moved beyond this issue in the two years since the Supreme Court agreed to hear its first global-warming case.

The Democratic-controlled Congress has promised legislation capping carbon emissions from major emitters.

The scientific community in February issued a landmark report concluding that global warming is "very likely" caused by man and is so severe that it will "continue for centuries."

Gov. Arnold Schwarzenegger this winter called for a new low-carbon fuel standard, part of a landmark state effort independent of federal policy, to slash California's global-warming footprint.

"On this issue, our country is clearly leaving a dwindling circle of talk radio hosts and the president behind," said Assembly Speaker Fabian Nunez, D-Los Angeles.

The majority opinion was written by Justice John Paul Stevens. Joining Stevens were liberal colleagues justices Stephen Breyer, Ruth Bader Ginsburg and David Souter, and the court's swing voter, Justice Anthony Kennedy.

The court's four conservative justices -- Chief Justice John Roberts and justices Samuel Alito, Antonin Scalia and Clarence Thomas -- dissented.

The lawsuit was filed by Massachusetts, California and 10 other states plus 13 environmental groups that had grown frustrated by the Bush administration's inaction on global warming.

The case is Massachusetts v. EPA, 05-1120.

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#### How They Voted

How Supreme Court justices voted Monday in ruling the government can regulate greenhouse-gas emissions:

Majority	Minority
Kennedy	Roberts
Breyer	Alito
Ginsburg	Scalia
Souter	Thomas
Stevens	

## Smelly mystery remains unsolved

### Loose caps may be cause of stink in Union City, but source uncertain, district says

By Matthew Artz, STAFF WRITER

Tri-Valley Herald, Monday, April 2, 2007

UNION CITY - After a month of tests, the Union Sanitary District can't say for sure if it has found the source of odor complaints near its plant.

Tests conducted in the Ponderosa Landing neighborhood, west of Union City Boulevard, showed dozens of homes were potentially emitting gases from poorly maintained sewer cleanout boxes, said Andy Morrison, the district's collection manager.

The boxes, usually built into driveways under a round encasing, give plumbers easy access to clogged sewer lines. In Ponderosa Landing, Morrison said, about four dozen to six dozens of the boxes had plastic caps that were either loosely threaded into place or completely unhinged.

"It certainly would be a source for gases to escape," said Morrison, who expected at most to find about a dozen unfastened caps.

But the sewer district can't say for sure if the caps are the cause of the smell, he added, mainly because no unusual odors were detected in the neighborhood during the tests.

There are no plans right now for additional tests, Morrison said.

Earlier this year, the sewer district and Union City formed an odor response team to determine the source of odor complaints made by residents who live near the sewer plant.

They have described the pervasive smell as anything from "pungent" and "gag inducing" to "mild" and "not quite sewer-like."

Mayor Mark Green described it as a "disinfectant" type smell at last week's city council meeting.

Although several residents say the smells must be coming from the nearby plant at 5072 Benson Road, the district has ruled out itself as the source of the odors.

No odor complaints against the district in recent years have been confirmed by the Bay Area Air Quality Management District.

The recent tests by the sewer district, were conducted on about 20 streets directly east and southeast of the plant.

District workers pumped smoke into open manholes to determine if gases were escaping from the sewer system other than through vents in the roofs of homes.

The district reinstalled all of the caps that were found to be loose and emitting gas, Morrison said.

## **Free-speaking oncologist is year's top doc**

### **Physician praised for his leadership and dedication**

By KEN CARLSON

Modesto Bee, Saturday, March 31, 2007

It's no stretch to say that Dr. Steve Benak was the father of modern radiation oncology in Stanislaus County.

In the early 1970s, he established the radiation oncology department at Memorial Medical Center in Modesto.

He was the only radiation oncologist in town, and the hospital installed supervoltage equipment to replace X-ray machines that local doctors had used to treat tumors, he said.

This week, the Stanislaus Medical Society gave Benak the 2007 John Darroch Award for his dedication to patient care, service as an educator and commitment to medicine. The Physician of the Year award goes to doctors who have a high level of professionalism and community involvement.

Besides praising Benak's leadership and dedication to medicine, they described one other personal attribute: He speaks his mind.

"Unfortunately, I'm famous for it," said Benak, the son of a truck driver who attended Catholic schools on the south side of Chicago.

"I had eight years of Dominican nuns and four years with the Irish Christian Brothers. I don't know how to lie."

Benak first was a pharmacist, but used his earnings from dispensing medication to put himself through medical school.

He interned at Chicago's Cook County Hospital, on which the hospital in the television series "ER" is loosely based, where the single interns worked 24-7 for room, board and \$100 a month.

Benak noticed that married interns got \$200 a month and started what he called a "revolution" to get higher pay for the singles.

"The director finally called us into a meeting and said, 'OK, all the interns will get \$200 a month - next year.'"

To get his military service out of the way, Benak served in the Air Force from 1963 to 1965, including a tour in Vietnam.

He took care of a fighter unit that flew missions out of Thailand, and suddenly was dealing with a strange outbreak among the 100-plus personnel. He diagnosed it as dengue, an infectious tropical disease that hadn't afflicted American troops since the Korean War.

"It was spread by mosquitoes, like West Nile fever," he said. "They evacuated four of the guys, but I took care of everyone else."

### **Started practice in Modesto**

After his military service, Benak completed his medical training at the University of California at San Francisco, where he served a six-year fellowship in the emerging field of radiation oncology and was on the teaching staff for three years.

He established the radiation department and a tumor board at then-Franklin Medical Center in San Francisco.

He decided to start a Modesto practice after noticing many patients were traveling to San Francisco from the valley.

Within seven weeks of starting the program at Memorial, it was treating 47 patients a day. Today, it treats close to 200 daily, Benak said.

Radiation often is a second treatment course after surgery removes tumors from cancer patients. The focused radiation shrinks the remaining cancer tissue, then chemotherapy seeks to rid the body of cancer cells.

Today's radiation equipment is 60 times more powerful than the machines used 30 years ago. Oncologists are aided by CT scanners and sophisticated computer programs, which enable them to calculate doses and target the radiation.

"We are able to spare the normal tissues while treating the cancer," Benak said. "The patient has fewer side effects."

About 50 percent of cancer patients survive today, compared with 30 percent when Benak started his practice, he said.

It's why he considers oncology the most rewarding medical specialty.

"How many specialists can say that they cured a patient with diabetes?" he noted. "We can cure people who have cancer."

Benak founded an oncology medical group and built the Modesto Radiation Oncology Center at 1316 Nelson Ave. In 1998, he sold the practice and the center, which is now called the Prigge Radiation Oncology Center.

Since his retirement, he continues volunteer service with the Stanislaus County Health Services Foundation Board, [the San Joaquin Valley Air Pollution Control District](#), and the county Indigent Health Care Program Fair Hearing Panel.

He has served as president of the Stanislaus Medical Society, the Stanislaus Foundation for Medical Care and the Physicians Service Bureau.

Thursday mornings, he still attends the consultative tumor board held in Modesto, where doctors look at glass slides of tumors and discuss treatment strategies.

He enjoys golf, skiing and hunting. He has three grown sons.

"I think he is an outstanding physician," said Dr. Richard Cercle, a gastroenterologist and longtime friend. "He has contributed significantly to the community."

Cercle's friendship with Benak goes back to Chicago and is an odd coincidence.

They happened to attend the same pharmacy and medical schools in Chicago and were interns at Cook County Hospital.

As Benak ricocheted from Chicago to Vietnam to San Francisco and then Modesto, Cercle was stationed at Castle Air Force Base in Atwater.

After his discharge and a two-year fellowship at UC San Francisco, Cercle decided Modesto needed a gastroenterologist, and he bumped into his friend again.

"Our names were close together in the alphabet so we frequently were lab partners in medical school," he explained. "We got to be pretty good friends."

[Opinion in the Capital Press Weekly, Friday, March 30, 2007](#)

## **Researchers fuels innovation when funded Nanotechnology may be key to biofuel and food safety developments**

Spring is the best time of the year for me and I think it is for farmers as well. There is something about the green of the grass and wheat in the fields, the leaves sprouting and now finally the blooms filling the trees that is so full of hope and promise that I can't help but be optimistic.

It's good to have a sense of optimism once in awhile because frankly there are some issues out there that require it. Recently a couple of hot topics have come to the forefront again and for me they are linked. Each one could have history-making implications for U.S. agriculture. I'll tell you up front that the link for me is technology and specifically nanotechnology, an area I've looked into and written about many times.

One of the areas continues to be biofuels and the impact it is having both positive and negative on the entire farming community. The demand for ethanol has jumped corn prices up to the point where farmers this year have a very definite choice on what to plant. Alternatively, this is causing disruption in the mix of acres for traditional row crops and even national commodities like cotton. If you feed cattle or milk cows you probably are not enamored with ethanol right now. The effect of ethanol on the dynamics of price and acreage of many crops right now is huge.

The second area is one I've expressed concern about many times. Food safety and the impact of foodborne diseases hit the national news media waves last week with another report about how little of our food products, especially imported foods, ever get inspected. The Centers for Disease Control reports some staggering numbers about how many people in the U.S. are affected - 76 million illnesses, 325,000 hospitalizations and 5,000 deaths annually from food pathogens. That gets my attention.

So here we have two issues of concern to agriculture and both in need of solutions. Regardless of whether biodiesel or ethanol will solve our energy needs we in the U.S. have to find an alternative to petroleum-based fuel.

Make no mistake, our food supply is the safest it has ever been and miles ahead when compared to the rest of the world's, but the numbers are alarming. Some predict we are on the edge of major food safety outbreaks and this is not even taking terrorism into account.

It seems to me that we are going to have to be successful in our efforts to solve these two issues. I'm a firm believer that solutions to both of these areas will come from research and development in technology if - and it's a big if - we invest enough in our research institutions, both private and public.

This brings me to nanotechnology. It has been more than a year since I last checked into what was happening with this new technology specifically related to agriculture. Back then there really wasn't much more than ideas and talk when it came to ag. Today the web search comes up with 50 pages of links directly related to ag and that describe research with products ready to be put into use.

Start with food safety, clearly the one area for ag that is ripe with innovative applications.

Nanomaterials in food packaging will include anti-microbial properties, self-cleaning surfaces, dirt repellent coatings, self-repairing materials and something called photo catalysis, the ability of a material in the presence of UV light to break down, i.e. disinfect, a product. There are also tagging and monitoring products, useful with the new ID requirements for cattle and anti-counterfeit tracking devices. These are just a few examples.

On the biofuel horizon look no further than Oregon State University for some of the most promising new developments. Goran Jovanovic of the Bioresource Engineering Department has developed a working microreactor that could revolutionize the way biodiesel is produced. The product is about the size of a credit card and is essentially a micro comb that does the work 10-100 times faster and without some of the wasteful byproducts. He is working now on a nanomaterial to coat the surface that will be less corrosive. His work has been well reported, but it serves as the perfect example of how thinking out of the box can create quantum leaps in our ability to deal with an issue with as yet unimagined ideas.

The possibility of finding solutions all starts with the researcher who is given the resources and the opportunity to dream and reach for the (nano) stars. The ingenuity and resourcefulness of the human mind has always come through, when given the chance. We have to trust ourselves.

I wonder, though, if we have the collective will to invest deeply enough in where the real solutions will come from and not be swayed by the promise of a quick fix. I'd like to think we would. But, then again I'm optimistic this time of year.

*John Burt is executive director of Farmers Ending Hunger and a retired Oregon State University Extension Service agent who writes from Keizer, Ore.*

## News Analysis

### Ruling Undermines Lawsuits Opposing Emissions Controls

By Felicity Barringer

N. Y. Times, Tuesday, April 3, 2007

Yesterday's Supreme Court ruling on carbon dioxide emissions largely shredded the underpinning of other lawsuits trying to block regulation of the emissions and gave new momentum to Congressional efforts to control heat-trapping gases linked to climate change.

Environmental groups and states that have adopted controls on carbon dioxide emissions from vehicle tailpipes responded with jubilation, while the auto industry and some of its backers, like Representative John Dingell, the Michigan Democrat who is chairman of the House Energy and Commerce Committee, offered statements of resigned disappointment.

"This is fantastic news," said Ian Bowles, the secretary of environmental affairs for Massachusetts, the state that had petitioned the Environmental Protection Agency to control the emissions from cars and trucks, which represent slightly less than one-quarter of the country's total heat-trapping gases.

The E.P.A. had argued that it had no authority to do so under the Clean Air Act, and that even if it did, such regulation would run afoul of other administration plans to combat climate change. The Supreme Court rejected those arguments.

"You've seen the Bush administration hiding behind this argument to avoid action, and this puts that to rest," Mr. Bowles said.

Pennsylvania's secretary of environmental protection, Kathleen McGinty, added, "We hope it means any further opposition and challenge to the legal standards will go away and we can get about the job of cleaning up the auto fleet and making a dent in greenhouse-gas pollution."

The arguments rejected by the court have been invoked in other legal challenges, including a case pending in California in which auto industry trade groups argue against that state's law controlling carbon-dioxide emissions from cars, and one in the United States Court of Appeals for the District of Columbia Circuit, where electric utilities are fighting the E.P.A.'s authority to regulate their emissions of heat-trapping gases like carbon dioxide.

Both cases had been stayed awaiting yesterday's ruling.

Some companies may now find new affection for proposals in Congress for a cap-and-trade system to aid emissions control. Under this type of system, companies that had reduced emissions beyond a set limit could sell credits earned by their excess reductions to companies that failed to meet emissions limits.

"This flips the debate from an environment in which Congress must act if there is to be federal action," said Tim Profeta, the director of the Nicholas Institute for the Environment at Duke University, "to one in which the E.P.A. can act as soon as an administration friendly to the concept is in power."

"If there is a President Clinton or President McCain," Mr. Profeta added, "he or she doesn't have to go to Congress to get action."

The reaction from Capitol Hill underscored this point.

"While I still believe Congress did not intend for the Clean Air Act to regulate greenhouse gases, the Supreme Court has made its decision and the matter is now settled," Mr. Dingell said in a prepared statement. "Today's ruling provides another compelling reason why Congress must enact, and the president must sign, comprehensive climate change legislation."

Senator Barbara Boxer, Democrat of California and a sponsor of the most stringent of the global-warming proposals currently before Congress, said in a statement: "This decision puts the wind at our back. It takes away the excuse the administration has been using for not taking action to deal with global-warming pollution."

Another prod for federal action is the likelihood that California will be able to use the new ruling to parry legal challenges to its new law calling for a cut of nearly 30 percent in carbon dioxide emissions on passenger vehicles sold in the state starting in 2016. A dozen other states, including Connecticut, New

Jersey and New York, have enacted laws adopting the California standard. These states are home to more than a third of the vehicles sold in the United States.

But before those standards can take effect, the environmental agency must grant the states a waiver.

"I am very encouraged by the U.S. Supreme Court's decision today that greenhouse gases are pollutants and should be regulated by the federal government," said Gov. Arnold Schwarzenegger of California, a Republican. "We expect the U.S. E.P.A. to move quickly now in granting our request for a waiver."

The prospect of separate state and federal emissions standards is one of Detroit's worst nightmares.

Walter McManus, director of automotive analysis for the Transportation Research Institute at the University of Michigan, argued that the environmental agency was best suited to regulate automotive emissions and fuel economy.

"They are the ones who really have the expertise about fuel economy and greenhouse gases," Mr. McManus said.

*Nick Bunkley contributed reporting from Detroit.*

[Fresno Bee, Commentary, Tuesday, April 3, 2007:](#)

### **MIKE VILLINES: Taking Central Valley concerns to Washington**

Recently, I led more than 30 of my Assembly colleagues on an important bipartisan trip to our nation's capital, Washington, D.C. We traveled not as Democrats or Republicans, but rather as Californians, demanding action from our national leaders on the important issues facing our state.

The decisions being made today at the national level are having a tremendous impact on the Central Valley. In meeting with key leaders in Congress and the Bush administration during my trip, I used the occasion to take the concerns of Central Valley families back with me to Washington, discussing how the federal government can help us meet the major challenges facing our state and our region.

During a meeting with Sen. Dianne Feinstein, I made the case for dedicating more federal dollars to important local priorities like improving the region's air quality and expanding local highways. We also discussed the need for improved water storage in California to meet our state's growing demands.

For too long, local motorists have been stuck in traffic gridlock on overcrowded highways like Highway 99, which are also critical transportation arteries used to transport locally-grown produce from the Central Valley across the nation. Getting more money from Washington to expand local highways will help us ease traffic congestion and speed up the flow of goods.

It is simply wrong that for every dollar hard-working Californians send back to Washington, we receive just 79 cents in return. Central Valley taxpayers have been short-changed for far too long, and it's time our national leaders provide our state and our region with the critical funds that are long overdue.

Redistricting reform was another important priority during our trip. The first bill I introduced this year was a redistricting reform measure that takes the drawing of district lines out of the hands of the politicians and restores those powers to the people in the form of a citizens' commission. Assembly Republicans stand committed to passing bipartisan redistricting reforms that restore a healthy democracy in California.

In my discussions with our bipartisan California congressional delegation, I reminded them of the importance of including the redrawing of congressional district lines in any reform measure we craft this year. I don't believe it is truly honest redistricting reform if politicians in Sacramento are still drawing congressional district lines, and not the people. I urged them not to let our golden opportunity to fix a broken system be caught up in the usual political games.

During meetings with the White House, Cabinet officials and congressional leaders, I talked about health care reform, and how Washington can be our partner in shaping California's health care future. As we work to strengthen health care, we will not be able to implement some of the common-sense reforms proposed by Assembly Republicans to maximize choice, reduce costs and increase access without the approval of the federal government.

In our discussions, I urged the officials I talked with to allow California to utilize free market health care reforms, such as permitting out-of-state insurers to offer health plans to California consumers. Allowing more competition will give consumers greater choices at lower costs.

Addressing the impact of illegal immigration on California was also an important priority for Assembly Republicans during our trip. In our meetings, we urged Congress and the federal government to do their job, and take every necessary step to secure our borders.

We also stressed the need for the federal government to reimburse our state for the incarceration of illegal immigrants. Last year, we spent \$662 million to house illegal immigrants in our prisons, which is supposed to be fully reimbursed by the federal government. Unfortunately, California received just \$107 million in reimbursements, and taxpayers were left holding the bill.

Our bipartisan trip to Washington was a great opportunity to meet face-to-face with our leaders in Congress and the federal government to discuss the unique and diverse challenges facing a state as complex as California. I hope the members of our bipartisan congressional delegation, especially those now in the majority party, will use their new leadership positions in Washington to secure the additional resources California needs.

By building good relationships with our national leaders, I am confident that our trip will help pave the way for new partnerships that will benefit California.

*Assembly Republican Leader Mike Villines, of Clovis, represents the 29th Assembly District in the California Legislature.*

[L.A. Times, Editorial, Tuesday, April 3, 2007:](#)

### **Supreme Court clears the air**

**The high court ruled in favor of California and 11 other states on limiting greenhouse-gas emissions.**

THE STAKES WERE much higher - about as high as the Earth's atmosphere - but California won a gratifying victory Monday in the Supreme Court. In a case that could easily have been called *Science vs. Bush*, the court ruled 5 to 4 that the Environmental Protection Agency has the authority to regulate carbon dioxide emissions that contribute to global warming - and that states can go to court to demand that the EPA do its duty.

The decision puts pressure on the EPA to revisit the question of regulating greenhouse gases, and it adds momentum to an effort in Congress to legislate tighter controls. It also should make it easier for California to enforce its own strict controls on greenhouse gases. Last year, Gov. Arnold Schwarzenegger signed California's landmark global warming law, which seeks to reduce greenhouse gas emissions by 25% by 2020.

Justice John Paul Stevens' majority opinion begins with a science lesson. "A well-documented rise in global temperatures has coincided with a significant increase in the concentration of carbon dioxide in the atmosphere," it reads. "Respected scientists believe the two trends are related. For when carbon dioxide is released into the atmosphere, it acts like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat."

After establishing the scientific framework, the opinion disposes of two arguments for dismissing the lawsuit brought by Massachusetts, California and 10 other states: that the Clean Air Act does not cover greenhouse-gas emissions and that, even if it does, state governments lack the legal standing to sue the EPA in federal court.

On the first point, the decision relies on the plain language of the Clean Air Act, which refers broadly to "air pollutants." As for the states' standing to sue, it cites past decisions holding that states are not "normal litigants." As Justice Oliver Wendell Holmes wrote in a 1907 case: "[T]he State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air."

For Californians, the decision is especially satisfying. By recognizing that greenhouse gases are covered by the Clean Air Act, the court has made it possible for California to seek a waiver from the EPA for controls stricter than those that the federal government imposes. California's EPA, which predates the federal agency, is entitled under federal law to set higher standards for tailpipe emissions. Other states can then follow California's standards or the federal government's.

Even more gratifying is the effect this decision could have on the environment. If the EPA declines to follow the lead of California - and 11 other states - on global warming, Congress should step in with new legislation.

[Letter to the Fresno Bee, Tuesday, April 3, 2007:](#)

### **Healthy dairies**

In the near future, there are plans for large dairies establishing a presence in Fresno County. A group of concerned citizens have formed a Healthy Dairy Commission to monitor the standards for protection of Fresno's air and water quality potentially harmed by the functioning of large dairies. Our studies have shown that there are methods for lessening the threats of dairy pollution with appropriate standards.

We have received the initial written guidelines prepared by the Fresno County Department of Public Works and Planning dealing with standards for dairies. On April 10, public hearings are scheduled for 6 p.m. at the County Plaza Ball Room at Tulare and M streets. It is hoped that all citizens concerned with air pollution and water pollution will attend this public session to help in the establishment of the final standards for Fresno County dairies.

The ideals of welcoming new industry and safeguarding the health of our children can both be achieved.

*Lee J. Snyder, M.D., Fresno*