

Case loses state air board seat Fresno Co. supervisor fails to be confirmed.

By E.J. Schultz / Bee Capitol Bureau
The Fresno Bee, Friday, Jan. 25, 2008

SACRAMENTO -- In a rare move, the state Senate on Thursday morning ousted Fresno County Supervisor Judy Case from the state air board.

With Democrats against her, Case fell six votes short of the 21 votes she needed to be confirmed to the California Air Resources Board, which sets statewide regulations for air pollution and greenhouse gas emissions.

Sen. Dean Florez, D-Shafter, led the charge against Case, who has been serving on the board since she was appointed last May by Gov. Schwarzenegger. Florez questioned her commitment to public health, citing her recent support of an extension of a Valley clean-air deadline.

Republicans supported Case, saying that as a registered nurse she was eminently qualified.

Case has until March 24 to step down. The governor then has 30 days to nominate a replacement. He must select a member of the San Joaquin Valley Air Pollution Control District board, where Case still serves.

By law, the Senate has one year to confirm an air board appointee. In recent history, lawmakers have approved almost every candidate, according to the Senate Rules Committee. But Democrats acted quickly to remove Case, holding her hearing Wednesday and ousting her a few hours later, on Thursday morning.

Democrats were particularly upset over Case's recent votes to extend a Valley clean-air deadline to 2024, more than a decade beyond the initial deadline set by the federal government. They also cited her opposition to legislation signed last year by Schwarzenegger that adds four members to the Valley air board.

The law, pushed by environmentalists, adds two Valley city appointees and two health experts chosen by the governor. None of the appointments have been made. Air activists are expected to line up behind one of the new appointees as their choice for the state board.

At her confirmation hearing Wednesday, Case defended her vote to extend the air deadline, saying that regulators had no other choice because technology does not exist to clean the air sooner.

Though she has disagreed with parts of Florez's clean-air legislation in recent years, she said she did not take an active role in lobbying against it, as Florez suggested.

"I did not attend rallies, I did not put out letters, that was not where I was spending my time," she said.

Florez told the full Senate on Thursday that "we need someone to get on the board that would actually fight, and at the end of the day [Case] is not a fighter."

Republican Sen. Roy Ashburn of Bakersfield accused Florez of unfairly targeting Case, noting that every other member of the state board approved the air-deadline extension.

The governor's office lobbied hard for Case.

"We're disappointed that her nomination was rejected and we commend her with her service to the state," said Schwarzenegger spokesman Aaron McLearn.

State Senate rejects governor's air board pick

By Matthew Yi, Chronicle Sacramento bureau
S.F. Chronicle, Friday, January 25, 2008

Sacramento -- The state Senate refused on Thursday to confirm one of Gov. Arnold Schwarzenegger's appointments to the California Air Resources Board after Democratic lawmakers questioned the nominee's commitment to fighting for cleaner air.

The air board has a high-profile task of crafting regulations to meet California's aggressive goal to reduce greenhouse gas emissions under AB32, the landmark legislation to fight global warming.

Judith Case was tapped in May by the Republican governor to serve a four-year term on the 11-member board. She is a member of the San Joaquin Valley Air Pollution Control District board, representing the region that has some of the worst air quality in the state.

The upper house of the Legislature had a year to confirm her appointment, but the Democratic-controlled chamber voted 20-15, along party lines, to reject her nomination. Case, who lives on a ranch in Sanger (Fresno County), has 60 days to leave her post.

The administration is "disappointed that the nomination was rejected," said Aaron McLearn, a spokesman for the governor. "We commend her for her service to the state and we will ask her to serve out her full term."

Democratic senators criticized Case specifically for her vote in June that gave the San Joaquin Valley an 11-year extension to meet federal ozone requirements.

"We face an asthma epidemic in the valley," said Sen. Dean Florez, D-Shafter (Kern County). "Students are not carrying just paper and pencils in their backpacks. They also have inhalers. At the end of the day, she is not a fighter" for public health.

But supporters of Case said she wasn't the only one who voted for the extension. The vote was unanimous, including air board chairwoman Mary Nichols, another Schwarzenegger appointee, who has been lauded as a longtime environmental lawyer by many Democrats.

At the time of the vote, air board members approving the extension said federal law required them to extend the deadline because there wasn't available technology to reduce smog as aggressively as previously thought.

Sen. Roy Ashburn, R-Bakersfield, accused Democrats of twisting Case's track record.

"She's not about words and rhetoric, she's about getting the job done," he said.

EPA chief sits and takes his punishment

By Zachary Coile, Chronicle Washington bureau
S.F. Chronicle, Friday, January 25, 2008

Washington -- Environmental Protection Agency chief Stephen Johnson faced a blistering critique from lawmakers and governors Thursday for rejecting California's attempt to set the nation's most stringent greenhouse gas regulations for cars and trucks.

At his first appearance before Congress since denying California's request for a waiver to enforce its new rules, Johnson was hit from all sides. Maryland Gov. Martin O'Malley, a Democrat, called the EPA chief's decision "shameful, outrageous and irresponsible." Vermont Gov. Jim Douglas, a Republican, said the ruling infringes on states' rights and undercuts state efforts to fight climate change.

California Sen. Barbara Boxer, who chaired the hearing, accused Johnson of trying to hide documents from Congress showing that he had overruled his staff in denying the waiver last month. EPA first refused to release the documents, then turned over papers that were mostly whited out. Finally he allowed Boxer's staff this week to hand copy them under the eye of EPA lawyers.

"I have never seen such disregard and disrespect by an agency head for Congress and for the committees with the responsibility for oversight of his agency," Boxer said.

Johnson, an EPA career veteran, attempted a rope-a-dope strategy: He sat placidly while taking the pounding from lawmakers, then insisted again and again that he'd made the right call.

"While many urged me to approve or deny the California waiver request, I am bound by the criteria in the Clean Air Act, not people's opinions," he said. "My job is to make the right decision, not the easy decision."

The hearing highlighted the high stakes in the clash between California and the Bush administration over the proposed rules. Fourteen other states have now adopted California's standards and four more plan to adopt them - meaning more than half the nation's population has embraced the state's tougher regulations for vehicles.

In his testimony, Johnson tried to explain the rationale for his decision: He said the state did not show the compelling and extraordinary conditions required under the Clean Air Act to grant a waiver because global warming is an international problem and requires global, not a regional, solutions.

"Unlike pollutants covered by other waivers, greenhouse gas emissions harm the environment in California and elsewhere, regardless of where the emissions occur," he said. "Therefore, this challenge is not exclusive or unique to California."

But lawmakers were skeptical of his explanation. Many said the administration was simply seeking to block the states from taking more aggressive action to combat climate change.

"Your agency's decision to deny California a waiver just defies logic to me," said Sen. Amy Klobuchar, D-Minn. "And it's clearly a decision, I believe, that's based on politics and not on fact."

Democrats on the committee also seized on documents showing that EPA's lawyers told Johnson that California could prove that it had compelling and extraordinary conditions because of the impacts of warming on the state, from an increase in wildfires to water shortages to flooding of coastal areas.

"This is what your staff told you, and then you come out and say, 'It doesn't meet ... the test for compelling interests,'" Boxer said. "You're walking the American taxpayers into a lawsuit that you are going to lose."

Johnson argued that it was better for the country to pursue a single national standard - such as the new fuel economy standards, passed by Congress and signed by President Bush last month - instead of what he has called a patchwork approach of regulation by the states.

But several lawmakers took strong issue with his characterization. Under the Clean Air Act, if California is granted a waiver other states are allowed to adopt the state's standards.

"The California standards do not threaten us with a regulatory patchwork," said Sen. Joe Lieberman, independent-Conn., a chief sponsor of climate change legislation in the Senate. "Two standards - one applying to the half of the country that chooses to adopt California standards and one applying to the other half - simply do not make a patchwork."

While the new federal rules would require cars and trucks to get 35 miles per gallon by 2020, California's rules would require vehicles to get significantly better mileage: 44 miles per gallon by 2020. State officials estimate the California rules would cut greenhouse gases 74 percent more than federal law.

Johnson had only one major ally Thursday: Oklahoma Sen. James Inhofe, the panel's ranking member and Congress' leading climate change skeptic. He was the only Republican lawmaker to show up at the hearing, which he denounced as political theater.

"The effect that California's politicians are trying to achieve through this waiver provision is something they cannot achieve through federal legislation - even tighter fuel economy standards than what the Congress passed in the energy bill just last month," Inhofe said.

Boxer, who has long clashed with Johnson, said she plans to continue an investigation of how he made his decision. She is requesting e-mails between the White House and EPA, which Johnson said he expects to deliver by Feb. 15.

Johnson admitted he had spoken with the president and other White House officials, but said the decision was his own.

"I was not directed by anyone," he said.

Boxer told Johnson his ruling undermines the central role of his agency in protecting public health and the environment. "You are going against your own agency's mission and you are fulfilling the mission of some special interests," she said.

Boxer, Sen. Dianne Feinstein, D-Calif., and 14 other senators introduced a bill late Thursday that would override the EPA and grant the waiver request to California and the other states.

EPA chief grilled over California rejection

U.S. Environmental Protection Agency Administrator Stephen Johnson testifies before the Senate Committee on Environment and Public Works on Capitol Hill.

By Richard Simon, Los Angeles Times Staff Writer
L.A. Times, Friday, January 25, 2008

WASHINGTON -- Under grilling by a hostile Senate committee Thursday, Environmental Protection Agency Administrator Stephen L. Johnson defended his decision to deny California permission to implement its own global-warming law, even as legislators launched an effort to force its reversal.

"I was not directed by anyone," Johnson said at a hearing before the environment and public works committee, denying he had been influenced by political pressure from the White House or anyone else. "This was solely my decision."

Johnson failed to mollify Sen. Barbara Boxer (D-Calif.), the committee chairwoman and perhaps his fiercest critic, who vowed to press ahead with her investigation into how the EPA chief reached his decision. Within hours of his testimony, she introduced legislation -- co-sponsored by 17 senators, including Democratic presidential front-runners Hillary Rodham Clinton of New York and Barack Obama of Illinois -- to overturn the decision.

In his first Capitol appearance since denying California's request late last month, Johnson drew the ire of other Democratic senators whose states also want to enact greenhouse-gas-emission standards for new cars and trucks that are more stringent than the federal government's.

"Your agency's decision to deny California a waiver just defies logic to me," Sen. Amy Klobuchar (D-Minn.) told Johnson. "It's clearly a decision, I believe, that's based on politics and not on fact."

Boxer called Johnson's decision "unconscionable" and accused him of going against the advice of his legal and science advisors and siding instead with the auto industry, which has resisted California's efforts to implement its tailpipe law.

'The right decision'

Johnson responded: "I am bound by the criteria in the Clean Air Act, not people's opinions. My job is to make the right decision, not the easy decision."

Johnson's only Senate defender at the hearing was James M. Inhofe of Oklahoma, the sole Republican in attendance and perhaps Congress' leading skeptic on global warming. Inhofe dismissed the proceedings as "theater."

Thursday's hearing was intended to help build support for a legislative effort to overturn the decision, but critics may stand a better chance in the courts than in Congress. California and 15 other states have sued the administration to overturn the decision; legislation is likely to face a presidential veto.

In denying California's request, Johnson has said that a nationwide climate change strategy is preferable to a "patchwork of state rules."

He has said that the tougher fuel-economy rules in the recently enacted federal energy bill would go a long way to reduce emissions nationwide.

Climate change, Johnson said at the hearing, is "a global problem requiring a global solution -- at least, at a minimum, a national solution."

He added: "It's not exclusive to California."

Boxer has accused Johnson of stonewalling the committee's request for documents on how he reached the decision. She displayed oversize copies of largely blank documents provided by the EPA.

The EPA agreed to let Boxer's staff see some documents, as long as they did not photocopy the

documents and as long as they inspected them under the supervision of agency employees.

Boxer's aides copied the documents by hand and made the contents public anyway, saying they show that Johnson acted against the recommendations of his legal and scientific staff.

Johnson said that, since California is suing the EPA over the issue, his agency was protecting documents under attorney-client privilege. Boxer replied that Johnson had "no privilege" to withhold documents from Congress.

Reminder of oath

Democrats expressed skepticism that Johnson was not influenced by political considerations, reminding him a number of times that he was under oath. Officers of unions representing EPA scientists, engineers and other technical specialists also weighed in, sending a letter to Johnson on Thursday that expressed "dismay and concern over the damage to EPA's reputation" after his denial of California's request.

"We lament that your decision -- perceived by many as having been politically motivated and prompting congressional investigations -- has cast a negative light on our agency," they wrote.

Johnson refused to discuss his conversations with President Bush. "Any conversations that I have with the president are between the president and myself," he told the panel. But he said he made his decision "based upon the facts presented to me."

Democrats used the hearing to attack the Bush administration as failing to confront global warming aggressively enough.

"This administration has taken the word 'environment' out of 'Environmental Protection Agency,'" said Sen. Bernie Sanders (I-Vt.)

Sen. Frank R. Lautenberg (D-N.J.) added: "It's bad enough when the federal government fails to lead. But it's even worse when the federal government gets in the way of states that are trying to act in the interest of the public and in the absence of leadership from the EPA."

Boxer grills EPA chief over emissions waiver

Stephen Johnson denied state's request despite staff approval

BY DIANA MARRERO, Gannett News Service

Visalia Times-Delta and Tulare Advance-Register, Friday, Jan. 25, 2008

WASHINGTON — Senators, governors and environmental groups are mounting a fierce legal and public relations campaign against the Environmental Protection Agency for denying California the license to regulate its own greenhouse gas emissions.

California and 15 other states have filed suit against the EPA and its administrator Stephen Johnson over the decision. Under the Clean Air Act, California can regulate its own emissions as long as it gets approval from the EPA.

Johnson denied California's request in December, saying the state could not prove it needed to regulate emissions to meet "compelling and extraordinary conditions."

California lawmakers want to require auto manufacturers to cut emissions by 25 percent from cars and light trucks and 18 percent from sport utility vehicles by 2009.

So far, 14 other states have agreed to adopt California's standards.

Sen. Barbara Boxer, D-Calif., who chairs the Senate Environment and Public Works Committee, questioned Johnson at a hearing Thursday about how he reached his decision.

Boxer accused Johnson of flouting his agency's mission to protect human health and the environment in order to protect special interests. She also repeated her request that the agency provide her committee with all agency documents relating to the decision.

"The people need to know why this happened," she told him.

Johnson's defense

Johnson defended his decision, saying he followed the law.

"My job is to make the right decision, not the easy decision," he said.

On Wednesday, Boxer released excerpts of documents she received this week that show EPA officials had told Johnson that California did have "compelling and extraordinary conditions" in terms of geography, climate and the number of people and cars in the state to justify a waiver from his agency. Staff documents describe California's coast communities, overextended water resources and propensity for wildfires as key areas of special concern for the state.

The excerpts also showed the staff informed Johnson the agency would likely lose a lawsuit by California if it denied the request.

Johnson said the agency would provide Congress additional documents by Feb. 15. The governors of Maryland, Pennsylvania and Vermont also testified at Thursday's hearing, arguing the government should step aside and let states lead on the issue.

O'Malley Attacks EPA Greenhouse Gas Decision

Governors Testify Against Block in Emission Cuts

By David A. Fahrenthold, Washington Post Staff Writer
Washington Post, Friday, January 25, 2008

Maryland Gov. Martin O'Malley (D) joined other governors and several U.S. senators yesterday in criticizing a recent decision by the Environmental Protection Agency blocking California and effectively a host of other states from cutting greenhouse gas emissions from vehicles.

Testifying before the Senate's Environment and Public Works Committee, O'Malley said Maryland had been prepared to follow California's lead and cut vehicle emissions about 30 percent by 2016. But now that plan is in limbo, O'Malley said, because California was denied an EPA waiver required to set its own emissions standards.

"I find this decision . . . shameful, outrageous and irresponsible," O'Malley said. "It amounts, in essence, to the EPA saying to the states, 'How dare you make greater progress against climate change' " than the federal government?"

During the hearing, there were contentious exchanges between senators and EPA Administrator Stephen L. Johnson, who was making his first appearance on Capitol Hill since announcing the decision Dec. 19.

"The federal government is not doing nearly enough to reduce America's greenhouse gas emissions," Sen. Joseph I. Lieberman (I-Conn.) told Johnson. "It should, at the very least, stay out of the road that many state governments are taking."

Two senators said they believed the decision was based on a desire to protect businesses instead of the environment.

"You're going against your own agency's mission," said Barbara Boxer (D-Calif.), the committee chairman. "And you're fulfilling the mission of some special interests."

Boxer introduced a bill yesterday that would direct the EPA to reverse its decision.

Johnson said his decision complies with the Clean Air Act. To set its own standards, he said, California needed to prove that it had a "compelling and extraordinary" problem.

But greenhouse gases -- and the climate change they cause -- are a global problem, Johnson said. So California does not have its own "extraordinary" need.

"My job is to make the right decision, not the easy decision," Johnson said. "This challenge is not exclusive or unique to California."

Johnson faced one Republican, Sen. James M. Inhofe (Okla.), and up to eight Democrats or independents. Senators interrogated Johnson about his beliefs on climate change. Sen. Frank

Lautenberg (D-N.J.) wanted to know if he believed global warming posed a "serious problem" for human health. Johnson said the EPA has not made an official determination.

Sen. Bernard Sanders (I-Vt.) asked whether "bold action" was needed to reverse warming. Johnson said there should be "action."

" *Bold* action?" Sanders asked.

"As I said, action," Johnson replied.

Johnson's decision on the California waiver is causing controversy because of a quirk in U.S. air pollution policy. For many years, California officials were able to set more stringent standards for other pollutants, as long as the EPA granted permission. In dozens of previous instances, it had.

In this instance, Johnson denied California's request, despite advice from EPA staff. Aides wrote in a PowerPoint presentation that the EPA is "likely to lose suit" if California's waiver is rejected.

On Jan. 2, the EPA was sued by California and 15 other states.

Governors from three of those states -- O'Malley, Pennsylvania's Edward G. Rendell (D) and Vermont's Jim Douglas (R) -- participated in yesterday's hearing.

In Maryland, O'Malley said, potential harms of climate change could include sea-level rise and the loss of heat-sensitive grasses in the Chesapeake Bay. He told the panel that there is a demand in his state for faster action.

"The people of Maryland do not understand why on earth would we not do this before the Chesapeake Bay is irreparably damaged," he said.

EPA emissions ruling defended

Rejecting California proposal was 'right decision,' chief says

By Frank Davies, MEDIANEWS STAFF

In the Tri-Valley Herald and the Contra Costa Times, Friday, Jan. 25, 2008

WASHINGTON — The head of the Environmental Protection Agency on Thursday defended his decision to turn down California's landmark bid to regulate vehicle emissions during a contentious Senate hearing. On the same day, 16 senators launched a rare effort to reverse that decision through legislation.

Stephen Johnson, administrator of the EPA, told the Environment Committee that he decided not to "rubber-stamp" California's request — joined by 14 other states — for a waiver of agency rules that would allow the state to enact its own restrictions on greenhouse gas emissions, reasoning that the impact of global warming was not "unique and exclusive" to California.

"My job is to make the right decision, not an easy decision," Johnson testified, adding that past waivers were granted to the state under the Clean Air Act because of specific air pollution problems in the state. He said the state's request did not meet the criteria of "compelling and extraordinary conditions" required by the Act.

Sen. Barbara Boxer of California, who chairs the committee, was joined by other Democratic senators and three governors in criticizing Johnson, saying he ignored law, precedent and science in turning down the states' efforts to combat the effects of climate change.

Boxer called the decision "unconscionable" and blasted Johnson for turning over documents about the decision to the committee that had some information blacked out.

The EPA relented earlier this week, and the documents, including a PowerPoint presentation, revealed that some top EPA staffers supported California's request and predicted the EPA would lose a lawsuit over the case. Maryland Gov. Martin O'Malley, a Democrat, denounced the decision as a "shameful denial" of states' efforts to tackle global warming in the absence of federal action.

He was joined by Govs. Ed Rendell, a Pennsylvania Democrat, and James Douglas, a Vermont Republican.

Johnson's lone defender on the committee was Sen. James Inhofe of Oklahoma, the only Republican to attend the hearing.

Inhofe called the hearing "just theater," and said the EPA decision was correct because California officials were trying to enact regulations they could not get through Congress.

Johnson announced his decision at a hastily called press briefing Dec. 19, after a quick call to Gov. Arnold Schwarzenegger, who had pressed for the waiver. That was the day President Bush signed a new national energy bill with higher fuel efficiency standards that Johnson said were preferable to piecemeal state efforts to restrict emissions.

One month later, the EPA has not yet formally filed its decision in the Federal Register, which will require legal and scientific justifications. Johnson said that will not happen until the end of February.

California officials filed suit Jan. 2 in federal court, seeking to overturn the decision. "You're walking the American people into a lawsuit you are going to lose," Boxer told Johnson. But state officials, environmental allies and members of Congress conceded that securing a court victory could take months or years.

Boxer and 15 other senators introduced a bill late Thursday that would effectively override the EPA and grant the waiver request to California and the other states.

"If the Bush administration refuses to combat climate change, they at least need to get out of the way when the states do it," said Sen. John Kerry, D-Mass.

Boxer's bill was co-sponsored by 13 Democrats, including Dianne Feinstein of California, along with Joe Lieberman, a Connecticut independent, and Susan Collins, a Maine Republican.

The two Democratic front-runners in the presidential campaign, Sens. Hillary Clinton and Barack Obama, also signed on as co-sponsors.

EPA head still rejects California's tougher smog stance

Sen. Boxer introduces bill to overturn his emissions decision.

By Dena Bunis

The Orange County Register, Thursday, January 24, 2008

WASHINGTON -- EPA Administrator Stephen Johnson told Sen. Barbara Boxer's environmental committee today that he stands by his decision to deny California's tailpipe emissions waiver and he shed no light on how much he considered staff recommendations to approve it.

His comments made it clear that he has no intention of changing his mind. Several hours after the hearing, Boxer, D-Calif., Sen. Dianne Feinstein, D-Calif., and 14 other senators introduced a bill to order EPA to grant California's waiver.

"It's become clear that Administrator Johnson's denial of California's waiver was based on politics, not science," Feinstein said. "Even the EPA's own experts have said that there was a compelling need for action."

At the hearing this morning before the Environment and Public Works Committee, Johnson said: "This was solely my decision based upon the law, based upon the facts presented to me. I'm not only satisfied, I'm confident and comfortable" with the decision."

California asked for the waiver under the Clean Air Act so it could put into place a standard that says all new cars and trucks must emit 30 percent less greenhouse gases by 2016.

The EPA administrator said he based his decision denying California's application on the fact that global warming is a problem that cuts across state lines. He said he didn't want to see different solutions in different states. The criteria for approving a waiver, he added, include that California has to show that it has unique circumstances.

Democrats on the panel said states are acting because the federal government is not. So far 19 states have either adopted or are in the process of adopting California's standard.

"The federal government is not doing nearly enough to reduce America's greenhouse gas emissions," said Sen. Joe Lieberman, I-Conn, one of the authors of the global warming bill regulating carbon emissions that has been sent to the Senate floor. "If the administration will not work to respond with federal action in this regard, it should at the very least stay out of the road.

Many state governments are taking real forward-looking action to protect our citizens from global warming."

The committee's ranking Republican member, Sen. James Inhofe, R-Ok., came to Johnson's defense.

"Tell me how California differs from other states when it comes to global warming?" asked Inhofe, the only Republican at today's hearing. "Carbon is a global issue."

Also testifying at today's hearing was Douglas Haaland, representing California's Assembly Republican caucus.

In testimony prepared for the committee, Haaland thanked Johnson for denying California's waiver.

"I believe his decision is a reasoned response to a process that has been allowed to spin out of control in California" Haaland's testimony said. Gov. Arnold Schwarzenegger sent a letter to the committee opposing Johnson's decision and the state has sued to overturn it.

Boxer went after Johnson for not turning over documents the committee asked for that would show how his decision was made, documents that she said show that the staff recommended he approve the waiver.

Boxer's staff this week was given access to limited documents. She made public excerpts showing staff comments saying California had "compelling and extraordinary" conditions justifying the waiver.

"The mission of the EPA is to protect human health and the environment," Boxer said. "The administration's decision does neither. The people who pay the administrator's salary have a right to know how he came to a decision that is so far removed from the facts, the law, the science and the precedent."

Johnson said his staff asked Boxer to withhold excerpts from documents EPA has turned over to the committee because the waiver decision is the subject of litigation.

"The staff presented me with a range of options," Johnson said, and that included recommendations that he approve and that he deny the waiver. "Ultimately it fell to me to make the decision." So far, the excerpts of documents Boxer's staff has released only contain staff comments recommending approval.

Sen. Sheldon Whitehouse, D-R.I., pounded away at Johnson about whether the EPA staff gave the administrator a single recommendation.

Johnson said that they gave a range of options; something Whitehouse said wasn't the logical way to proceed. That process, he said, "raises the suggestion that here had been a manipulation of the agency process in this case."

Following Johnson's testimony the governor's of Maryland, Vermont and Pennsylvania testified. They criticized Johnson's decision. But Michigan's attorney general supported it before the committee.

EPA staff favored California emissions waiver

Memo: Agency 'likely to lose' if sued over denial

By David Whitney, Bee Washington bureau
Modesto Bee, Friday, Jan. 25, 2008

WASHINGTON -- Environmental Protection Agency head Stephen Johnson was told by staff members that California had a compelling case for the federal Clean Air Act waiver that he later denied and that the agency was likely to lose in court if sued, Sen. Barbara Boxer said Wednesday.

EPA spokesman Jonathan Shradar didn't dispute Boxer's conclusions, based on a Senate committee investigation.

"Her staff has been shown all the information unfiltered," Shradar said. "What this shows is that the administrator was provided a wide range of opinions upon which to make his decision. He feels he made the right decision."

Johnson's denial of the waiver stopped California from moving ahead with its tough laws to reduce greenhouse gas emissions from cars and trucks. Sixteen other states were prepared to follow California's lead had the waiver been issued.

Boxer, D-Calif., heads the Senate Environment and Public Works Committee, which is investigating the EPA's rejection of the waiver. Under the Clean Air Act, California is the only state that can obtain a waiver allowing it to have tougher emission standards than those imposed by the federal government. But once a waiver is granted, other states can adopt similar rules.

Boxer said in a statement that she'll closely question Johnson about his decision when her committee holds a hearing today on the waiver denial.

Johnson denied California's request in December, saying there was nothing unique about its situation that supported issuance of a waiver. A briefing document prepared for Johnson was handed over last week to Boxer's investigators, but virtually all the text was redacted.

Investigators were permitted to look at the full documents and take notes from them, however. At a news conference Wednesday, Boxer released excerpts from the notes showing that EPA staff members apparently believed California had a solid case for the waiver.

The notes quoted Johnson's briefing memo as saying that the agency was likely to be sued regardless of the decision it reached.

The memo said that the EPA was "almost certain to win" if a lawsuit were brought by the auto industry because the waiver had been granted and that the EPA was "likely to lose" a lawsuit brought by California if the waiver were denied.

"California continues to have compelling and extraordinary conditions in general (geography, climatic, human and motor vehicle populations - many such conditions are vulnerable to climate change conditions) as confirmed by several recent EPA decisions," Boxer's staff quoted the memo as saying.

Boxer challenges EPA over emissions

By Lisa Friedman, Washington Bureau
In the LA Daily News, Friday, January 25, 2008

WASHINGTON - California Sen. Barbara Boxer moved Thursday to force the Bush administration into allowing states to create their own vehicle emission standards.

Several lawmakers, including Democratic presidential hopeful Sen. Hillary Rodham Clinton, immediately backed Boxer's bid to overturn the decision Environmental Protection Agency Administrator Stephen Johnson made last month denying California the ability to enact stricter cuts in tailpipe emissions than those mandated by the federal government.

Boxer introduced the bill hours after hauling Johnson before her Environment and Public Works Committee and skewering him for his ruling.

"You are walking the American taxpayers into a lawsuit that you are going to lose," Boxer told him.

For more than two hours, Johnson faced a firing line of Democrats. Many of them represented states that had adopted California's landmark 2002 law requiring automakers to reduce emissions in cars, trucks and sport utility vehicles 30 percent by 2016.

Govs. Ed Rendell of Pennsylvania, Martin O'Malley of Maryland and Jim Douglas of Vermont all testified that the ruling has crippled their ability to address air quality problems in their states.

Meanwhile they, Gov. Arnold Schwarzenegger and the governors of Arizona, Connecticut, Maine, Massachusetts, New Mexico, New York, Oregon, Rhode Island and Washington submitted a letter to

Johnson accusing him of "ignoring the rights of states, as well as the will of more than one hundred million people across the U.S."

Johnson stood firmly behind his decision to deny the waiver and said he based it on existing law.

"I'm not only satisfied, but confident and comfortable" with the ruling, he said.

The administration maintains that while previous waivers to address pollutants have been granted to California because of unique circumstances in the state, problems associated with global warming are not specific to the state.

He added that the challenge "is not exclusive or unique to California and differs in a basic way from the previous local and regional air pollutional problems addressed in prior waivers."

Boxer, who has explicitly accused Johnson of working to protect the auto industry, noted that EPA scientists opposed Johnson's decision.

According to an analysis the agency's staff members prepared for the administrator in the months leading up to his ruling, aides apparently listed a number of California's "compelling and extraordinary circumstances" - including the increase in wildfires, its variety of ecosystems and ozone conditions.

Johnson allowed Boxer aides to view and manually copy - but not photocopy - the technical documents the agency used to make its decision. They were allowed to see the documents only in the presence of EPA staff.

According to those who saw the analysis, EPA officials also warned Johnson that California would sue if it was denied the waiver, and that the state would likely win.

The administrator's lone congressional defender Thursday, Oklahoma Republican Sen. James Inhofe, called Johnson's appearance before the panel "courageous."

Panel backs smog plan delay

Local officials want deadline extended six years to 2018.

By Chris Bowman

Sacramento Bee, Friday, Jan. 25, 2008

Sacramento-area elected officials unanimously backed a bid Thursday to extend the federal deadline for meeting national clean-air standards by six years - to 2018 - saying they already had imposed almost every politically achievable smog control on local business.

Although regional pollution forecasts show the pall of eye-watering smog continuing to wane, the projected reductions fall far short of those needed to bring the six-county metropolitan area into federal compliance by the current deadline of 2012, according to the Sacramento Metropolitan Air Quality Management District.

Less smoggy areas such as Elk Grove, Davis, Woodland and Vacaville are expected to reach the clean-air mark, but the federal Clean Air Act requires regions as a whole meet the health-based standards.

The smoggiest areas are along the Valley's eastern edge - Folsom and Roseville - and in the foothills, particularly Grass Valley, Auburn and Cool. Prevailing southwesterly winds carry pollution aloft from the Bay Area and Sacramento and on up the Sierra. Much of the big-city pollution doesn't convert to smog until it has reached the foothills.

The pollutant at issue is ground-level ozone, the corrosive gas in smog that inflames airways, triggers asthma attacks and aggravates respiratory and heart disease. Long-term exposure can reduce breathing capacity and lead to chronic respiratory illnesses.

Air district officials say the bulk of the cleanup will come not from local efforts but from already adopted state and federal rules requiring progressively cleaner vehicle fuels and reduced tailpipe emissions.

Local air pollution control districts are limited to regulation of businesses, ranging from auto paint shops to oil refineries.

"We have analyzed every possible measure we could implement," said Larry Greene, the Sacramento district's executive officer, speaking before Thursday's vote.

The local officials voted 11-0 to ask the U.S. Environmental Protection Agency to extend its compliance deadline. The officials - representing Sacramento County and the cities of Citrus Heights, Elk Grove and Folsom - sit as the governing board of the Sacramento Metropolitan Air Quality Management District.

The request also requires the approval of the state Air Resources Board and locally elected officials on the boards of four other air districts covering portions of El Dorado, Placer, Solano, Sutter and Yolo counties.

Greene said these districts' boards are expected to endorse the proposal and together present their case to the EPA by Feb. 15.

Greene said he alerted local environmental groups of the district's proposed extension in advance of Thursday's meeting, but received no response. No one spoke in opposition.

Only one board member expressed reluctance.

Lauren Hammond, a Sacramento City Council member, raised the prospect of imposing no-drive days rather than prolonging the scourge of unhealthy air.

"What if we assign days to drive by a person's last name?" Hammond asked.

The EPA actually threatened to impose driving restrictions in 1994 if the Sacramento district did not adopt more aggressive pollution controls on business and industry, as Sacramento County Supervisor Roger Dickinson recalled.

"That was not a popular move," Dickinson deadpanned.

"That was 14 years ago, Roger, and we're still not in attainment," Hammond retorted.

Greene put the debate to rest with computer models showing the region could not meet the current 2012 deadline without taking even more "Draconian" action than that suggested by the EPA.

"If no cars or (passenger) trucks were on the road, we still wouldn't meet the deadline," Greene said.

Ventura County growers brace for strict pesticide rules

State cracks down on poisonous gases that are injected into fields.

By Marla Cone and Gregory W. Griggs, Los Angeles Times Staff Writers
L.A. Times, Friday, January 25, 2008

Growers in Ventura County may have to forgo planting thousands of acres of strawberries and other crops this spring to comply with a state pesticide regulation slated to go into effect today.

Facing a court-ordered deadline to combat smog, the state Department of Pesticide Regulation is cracking down on the use of poisonous gases that are injected into fields to kill insects, weeds and pathogens before crops are planted.

The new regulation is projected to be the most costly pesticide rule in California history, with state officials estimating that it could cost growers \$10 million to \$40 million annually.

The biggest burden will fall on Ventura County, where growers will face strict caps on fumigants because their crop acreage and pesticide use has surged over the last two decades.

State officials have estimated that Ventura County growers could have to stop using fumigants on 5,800 to 7,500 acres, about one-third of the approximately 20,000 fumigated acres.

The new rules will mean the difference between profits and losses for many growers in the region, industry leaders say. About a quarter of the nation's strawberry crop is grown in Ventura County, with the local crop valued at \$366 million.

Strawberry growers are the biggest users of methyl bromide, metam-sodium and other fumigants, although the chemicals also are applied to fields planted with other crops, mostly tomatoes and bell peppers.

"You might see barren farm ground out there," said Edgar Terry, whose Terry Farms has 1,400 acres of crops from Ventura to Fillmore. "We've never run into anything like this, nor has any other county.

"I know for a fact we will have to reevaluate all of our ranch lands and decide which ones to keep in strawberry production, which ones to go organic and which ones to go fallow," Terry said. Terry Farms has about 300 acres normally used to grow strawberries and bell peppers that would be subject to the new rules because they are fumigated during the smoggiest time of year, generally from May through October.

The U.S. District Court in Sacramento ordered the state to reduce pesticide emissions by 20% from 1991 levels in areas that violated national health standards for smog. When fumigants evaporate from the soil, smog-causing gases waft into the air. In addition, some of the fumes are carcinogenic and can trigger respiratory and other health problems if farm workers or neighbors are exposed.

The state's administrative law attorneys must first approve the regulation before it can go into effect today. They will review the rules in a meeting with pesticide officials today, but any delay would violate the deadline set by the federal judge.

State officials and industry leaders say the full economic effect of the regulation is unknown because it was put together hastily to meet today's deadline. First, growers must request a fumigation permit by the end of February. Then, in April, they will learn their individual "emission caps," the specific limits on how much fumigant they can use from May through October. That will determine the fate of their spring, summer and fall crops.

Ventura County growers say it's not a viable option to switch to non-fumigated crops because they don't yield enough profits to justify the high cost of leasing land.

Strawberries are the last crop to be grown on a large scale in Ventura County.

"Ventura County has become so costly to do business in. Vegetables have moved out," Terry said. "If there is no alternate crop that you can make money on, you may just give up those leases."

Terry said the new rules may force more growers to farm in western Arizona, Mexico or other areas.

Strawberry growers say no pesticides protect their crops as well as fumigants. Converting to organic methods is expensive, and it takes three years for a field to be certified as organic.

But Rex Laird, executive director of the Ventura County Farm Bureau, said he was confident that local growers would find new ways to cut emissions and retain their position as a major provider of strawberries this year.

"This is significant, but they've had significant challenges in the past and managed to survive," Laird said.

Under the new rules, growers in three smoggy areas -- Ventura County, the San Joaquin Valley and the southeastern Mojave desert -- must use low-emission fumigation techniques from May through October.

Low-emission methods include placing heavy tarps on fields, injecting the chemicals more deeply into soil and using special water treatments and drip irrigation systems.

But in Ventura County, emissions are so high that such techniques will probably fall far short of achieving the court-mandated reductions, state pesticide officials said.

Growers in other areas, including Orange County and the Sacramento region, won't face restrictions because pesticide emissions there have already declined at least 20% since 1991.

California's crackdown comes more than 10 years after the state first promised to force farmers to help clean the air. The emission reductions were supposed to be implemented in 1997 under the state's 1994 smog plan.

"They've basically been getting a free ride for the past 10 years," said Mary Haffner, a board member with Community and Children's Advocates Against Pesticide Poisoning in Ventura, a plaintiff in the lawsuit that forced the new rules.

Crop acreage and pesticide emissions have increased in Ventura County since 1991, making its smog target the most difficult to achieve. Fumigants there created 4.8 tons of emissions a day in 2004, nearly twice the court-ordered limit of 2.6 tons daily, according to state pesticide officials.

"The amount of acreage under strawberry production has increased dramatically," said Brent Newell, staff attorney with the Center on Race, Poverty and the Environment, which filed the lawsuit. "Unfortunately, the public in Ventura County has borne the effect of that lack of regulation."

The state had planned to phase in the restrictions to ease the burden on Ventura County growers. But a federal judge ruled in December that they must go into effect by Jan. 25. The state and farm industry groups have filed appeals, but the industry must comply in the meantime.

For more than 15 years, strawberry growers have been trying to find safe and effective alternatives to fumigants.

[Fresno Bee editorial, Friday, Jan. 25, 2008:](#)

Air board members must be aggressive

Judy Case's voting record had a lot to do with her short tenure.

The state Senate has ended Fresno County Supervisor Judy Case's short tenure on the California Air Resources Board, rejecting her nomination Thursday on a party line vote. The vote had as much to do with politics as with air quality issues, but it does mark a broader issue that the Valley air district's governing board must now face.

Case had angered Democrats -- especially state Sen. Dean Florez, D-Shafter -- for her opposition to a series of air quality measures pushed by Florez, and for opposing a measure last year that added four members to the air district board. She also voted -- along with a majority of her erstwhile colleagues on the ARB board -- to extend a cleanup deadline for the Valley until 2024, adding a decade to our wait for better air.

That put Case squarely in the sights of environmentalists, who urged Florez to begin the push that ended this week with her ouster from the ARB board.

The executive director of the San Joaquin Valley Air Pollution Control District, Seyed Sadredin, was in Sacramento on Thursday to plead in Case's behalf-- sent there by the Valley district board. That's a measure of the larger problem we have with the local air district.

Since its inception, the Valley air board has been dominated by members, mostly supervisors from the eight counties that make up the district, who have strong ties to agriculture and industry. That has led at times to the district being more of an obstacle than a force for change. That's why The Bee and others energetically supported the addition of the four new members, who will come from Valley cities and from the scientific and medical communities.

Case's departure doesn't mean the end of Valley representation on the state air board. The seat she held -- briefly -- is reserved for a member of the Valley air district board. It's time it was handed to someone with a more forceful approach to cleaning up the Valley's air than has been evident among Case and a majority of her colleagues at the regional air district.

Gov. Arnold Schwarzenegger signaled his approval of a more aggressive effort when he fired the last ARB executive director and signed the bill that expanded the Valley district board. We hope his next choice for the Valley seat on the ARB board will reflect that attitude, and not just be business as usual.

[Note: The following clip in Spanish discusses EPA's chief defends call against California's waiver. For more information on this article, contact Claudia Encinas at \(559\) 230-5851.](#)

Defiende EPA negativa de permiso a ley ambientalista de California

Noticiero Latino

Radio Bilingüe, Friday, Jan. 25, 2008

El administrador de la Agencia federal de Protección Ambiental (EPA, por sus siglas en inglés), Stephen Johnson defendió en audiencia ante el Senado su negativa para permitir a California poner en vigor la ley que se considera más estricta contra la contaminación del aire, hasta hoy en el país.

Johnson dijo al Comité de Obras Públicas y Medio Ambiente del Senado que la EPA tiene sus propios planes uniformes para todo el país.

La ley de California reduciría en 30 por ciento la contaminación vehicular entre el 2009 y el 2016; el plan de la EPA bajaría la contaminación en 40 por ciento, pero a partir del año 2020, sin mayor control los siguientes 13 años.

Procuradores y gobernadores de 16 estados participan en las audiencias. La senadora y presidenta de dicho comité, Barbara Boxer dijo que nunca en 20 años vio tanta falta de respeto para su comité.