

Developers, Sierra Club seek deal to avoid pollution lawsuits

Eliminating dirty-running engines, smog sources would help earn credits

By JAMES BURGER, Californian staff writer
Tues., Dec. 7, Bakersfield Californian

A chain of Sierra Club lawsuits aimed at forcing home builders to clean up their air pollution act may be having the effect environmentalists wanted.

Developers and the Sierra Club are planning to sit down with air pollution regulators and city officials to craft a plan that would let builders voluntarily shrink the air pollution created by their projects.

A Bakersfield City Council committee created the task force on Monday. Members would include the Sierra Club, the local Building Industry Association, the San Joaquin Valley Air Pollution Control District and city and county officials.

The goal would be to stop a stream of Sierra Club lawsuits against new home developments by creating a program that would let builders help clean up the air.

Under the conceptual program, builders would pay to replace dirty vehicles, engines and other pollution sources.

They would then earn credits they could use when their new homes are constructed.

There are already similar programs through the air pollution control district.

The twist with the city program is that builders would clean up enough dirty equipment to offset 100 percent of their own air pollution impacts.

The city, the Sierra Club and builders all say they're interested in eliminating the lawsuits the local chapter of the Sierra Club has been filing against area developers for 1-1/2 years.

Gordon Nipp of the Sierra Club said the suits were designed to pressure the city and developers to clean up the air.

The so called "zero impact mitigation" plan the task force will work on has been tried twice, off the cuff, by builders in the city and county.

But Sierra Club officials sued both projects, demanding instead a consistent program.

City planning director Stan Grady said the task force will use air district expertise and the input of the builders and environmentalists to craft a program that won't draw those lawsuits.

Nipp is supportive of the proposed program, which would be voluntary, but he has some reservations.

"One thing we're worried about is it's still voluntary," he said. "Do we become de facto enforcement" by suing developers who don't choose to use the program?"

Brian Todd of the Building Industry Association said he was worried how the city program would mesh with the California Environmental Quality Act. The state law sets its own limits for air pollution new home development is allowed to generate.

"Does CEQA allow you to have a voluntary mitigation program?" he asked.

In other activity at Monday's meeting, council members discussed the city ordinance that controls how shopping centers can install and prune shade trees in parking lots.

They shared concerns that there is no formal enforcement of the ordinance, which required shopping centers to plan for 40 percent coverage of their parking lots 15 years after trees there are planted.

The issue will come back to the committee at next month's meeting.

Refinery granted reprieve

Shell facility to stay open until March following deal with federal government

by ERIN WALDNER, Californian staff writer
Tues., Dec. 7, Bakersfield Californian

The Shell Bakersfield Refinery on Rosedale Highway has received a stay of execution.

The company announced Monday it reached an agreement with the U.S. Environmental Protection Agency and the U.S. Justice Department that will allow the refinery to stay open through March 31.

Had it not reached an agreement, Shell would have had to close the refinery by the end of this month.

Shell Oil Products U.S., part of Shell Oil Co., agreed to reduce an additional 62 tons in annual nitrogen oxide emissions, companywide, by March 31. The original deadline was Dec. 31, 2008.

In return, Shell received permission to come under its original nitrogen oxide emission reduction target for the year by seven tons. Nitrogen oxide is a pollutant.

The agreement between Shell and the EPA must now go through a period of public comment, which typically last 30 days. Court approval is also required. The timeline wasn't known Monday.

Shell said it plans to close the refinery by March 31 if the facility does not sell by then. The company said it is continuing discussions with a short list of bidders.

Industry experts have said the refinery's closure will lead to higher fuel prices. The refinery produces 2 percent of the state's gasoline supply and 6 percent of diesel.

Shell originally planned to close the refinery on Oct. 1. Under pressure from California Attorney General Bill Lockyer and Sen. Barbara Boxer, D-Calif., the company agreed to delay the closure to give time for the refinery to sell.

"We're pleased the refinery is going to remain open at least through March of next year," Tom Dresslar, a spokesman for Lockyer, said Monday. "The real prize is a sale agreement that keeps it open over the long term. We continue to have our eye on that prize."

Boxer said via an e-mail from her press office that she was pleased another obstacle to keeping the refinery open had been removed.

Lynn Laverty Elsenhans, president of Shell Oil Products U.S., said in a statement, "We're pleased to be in a position to extend operations at the Bakersfield facility."

The company has been criticized for allegedly putting up roadblocks to the refinery's sale.

Shell critic Jamie Court said Monday that Shell's agreement with the EPA "puts the burden on Shell to negotiate reasonable terms for buyers."

If the refinery doesn't sell, he said, people won't be able to blame the government.

The refinery employs about 230 people and uses about 150 contractors. Workers there were thrown for a loop when Shell agreed in August to keep the refinery open through at least the end of the year.

According to Shell, about 125 employees had accepted transfers to other Shell locations -- primarily in Texas -- in anticipation of the Oct. 1 closure date. Some had already bought new homes.

Shell asked employees to stay on until the refinery closed. Those who were planning to retire Oct. 1 would still receive a severance package, after the refinery closed.

Ed Huhn, secretary-treasurer of the local union that represents workers at the refinery, said last week that Shell is paying employees who had accepted transfers a per diem and footing travel expenses so they can visit their families from time to time.

"The company is putting some money out on that, helping those people out financially, but there's still that thing of being away from your families for months and months and not knowing" the fate of the refinery, Huhn said at the time.

12 cited, accused of violating first burn ban of the season

Tues., Dec. 7, Fresno Bee

Twelve people were cited for violating the San Joaquin Valley Air Pollution Control District's first burn ban of the winter season for Tulare and Fresno counties.

Residents of those counties were ordered to refrain from burning wood in fireplaces, stoves and heaters on Friday and Saturday because air quality was unhealthy.

District spokeswoman Janelle Schneider said all 12 violations occurred in Fresno County. The violators face fines of \$50 to \$1,000. A ban is issued when the county's air quality index rises above 151, which means the Valley's air is unhealthy to hazardous.

The Valley's first burn ban of the season happened Nov. 20 in Kern County. The ban resulted in six written notices of violation.

Unhealthy air found inside churches

Tues. Dec. 7, By L.A. Times, in the S.F. Chronicle

Going to church may be good for the soul, but some Dutch researchers say it may not be so healthy for the lungs.

The candles and incense regularly burned during religious services emit high levels of particulate matter, tiny airborne flecks that are some of the most harmful forms of air pollution, according to a scientific study by Maastricht University in the Netherlands.

The researchers measured air quality at a small chapel and a large basilica in Maastricht, and found the air in both places contained particulate matter at levels up to 20 times higher than what is safe to breathe under European air pollution standards. The levels were similar to those found in the air beside roads driven by 45,000 cars a day, according to the findings published in the December issue of the European Respiratory Journal.

The researchers cautioned that the pollutants should not affect the well-being of most churchgoers, but that priests and especially devout congregants who spend long periods inside poorly ventilated chapels could be endangering their health.

"It cannot be excluded that regular exposure to candle- or incense- derived particulate matter results in increased risk of lung cancer or other pulmonary diseases," wrote Theo de Kok, the leader of the Maastricht University team. The paper, titled "Radicals in the Church," also noted that the air monitoring detected high levels of free radicals, or molecules that can aggravate asthma or bronchitis.

The researchers studied churches because of growing interest in the health risks posed by indoor air pollution.

Carmakers May Test Exhaust Law

Companies prepare suit that would challenge California's authority to force them to reduce emissions linked to global warming.

By Miguel Bustillo and John O'Dell, Times Staff Writers

Tues. Dec. 7, Los Angeles Times

Automobile manufacturers are preparing to sue California, perhaps as early as this week, in an attempt to derail a pioneering state law that seeks to force the companies to reduce tailpipe emissions of heat-trapping gases linked to global warming.

Representatives of two major automakers confirmed Monday that a coalition of companies has decided to file a lawsuit that would challenge the state's legal authority to force the reductions from carmakers.

One company official from a domestic automaker who had been briefed on the lawsuit described it as "imminent." However, a representative of a Japanese automaker cautioned that the suit may not be filed until January.

Car companies and an automobile industry trade group repeatedly have argued that the California law - which requires a nearly 30% cut in greenhouse gas emissions from all passenger vehicles sold in the state by 2016 - sets a new fuel efficiency standard, which only the federal government has the power to do.

The easiest known way to reduce exhaust of carbon dioxide and other heat-trapping gases is to build cars and trucks that burn less fuel. State officials concede that the new rule probably will lead to more fuel-efficient cars and trucks elsewhere.

Still, the rule-makers maintain that they are regulating only air pollution, not fuel economy, as the auto industry contends.

A spokeswoman for the Alliance of Automobile Manufacturers, a trade group of leading carmakers that includes General Motors, Toyota and Volkswagen, said the group was still deciding whether to sue.

"We are still considering our options and I am not going to predict when and if we might do something," said spokeswoman Gloria Bergquist.

State officials said they hoped to avert a legal dispute.

"We hope that we and the automakers can work out our differences and find some common ground," said California Air Resources Board spokesman Jerry Martin. "We have been doing our best to work with them in hopes of avoiding a lawsuit."

Environmental groups said they hoped that automakers, some of which have tried to cultivate a "greener" image in recent years, would consider polls in California showing that the public supports the greenhouse gas rule. But they acknowledged that they expected a legal showdown.

"They can choose whether to innovate or litigate. We were hoping that leaders in that industry would recognize that the public wants cleaner cars. But it looks as if they are choosing to draw a hard line in California," said David Doniger, a senior attorney at the Natural Resources Defense Council and head of a legal team of environmentalists that plans to help defend the rule.

The first regulation of its kind in the world, California's greenhouse gas rule is being closely watched around the globe. A number of states, including New York, Massachusetts and New Jersey, have indicated that they would like to adopt similar regulations. Canada also has discussed developing a similar standard modeled in part on the California requirement. As a result, auto industry experts said, the state rule could lead to major changes in cars sold throughout North America.

The technology needed to reduce tailpipe emissions of greenhouse gases already exists and is in use in many cars. State officials have cited innovations currently in use that can reduce exhaust, including continuously variable transmissions that shift to find the most efficient gear, engines that shut off cylinders when they are not needed and air-conditioning systems that use alternative coolants.

However, the technology costs more, and requiring it on all California cars and trucks will

undoubtedly raise prices. State officials estimate that the average car would cost about \$1,000 more by the time the rule is fully implemented in 2016. Car company representatives estimated that the increase would be three times that.

David Cole, chairman of the nonprofit Center for Automotive Research in Ann Arbor, Mich., said car companies were worried that tougher requirements would force them to build vehicles with smaller engines that were less able to tow trailers and boats. Cole and other automotive industry experts said the expected filing of the suit should lead to more frank talks between California and automakers, which have largely avoided discussing their differences with state regulators.

"The car companies see this as an unfair tax on their consumers because it will add to the cost of vehicles and detract from the utility that consumers have come to expect," Cole said.

In addition to arguing that California is attempting to set a new fuel-economy standard, car companies have maintained that the state is overstepping its legal authority by regulating carbon dioxide as a pollutant.

Under the Clean Air Act, California is the only state that can set air pollution standards stronger than those imposed by the federal government. Other states are then free to follow California's standards. Many have done so.

However, the Bush administration ruled last year that it did not consider carbon dioxide a pollutant under the Clean Air Act. A number of states, including California, have challenged the U.S. Environmental Protection Agency decision in court.

State officials also maintain that they can regulate carbon dioxide even if the federal government chooses not to do so.

Dairymen need clean air help

The state must remove roadblocks to use of renewable ag energy.

[Tues., Dec. 7, Bakersfield Californian, Editorial](#)

It is time for the state's utilities to stop milking dairymen statewide, but especially here in Kern County. And it is vital that the state be active in forcing needed changes.

Kern County is the target of choice for dairies being forced out of more urbanized Southern California regions. The move creates significant potential air quality degradation and resulting health risks for residents.

Although the new dairies are vastly larger than they have been in the past, and some of the adverse impacts can be mitigated by traditional regulation, more needs to be done with new technology and economic incentives.

Some technology to help is well-known and effective; the problem lies in economics. Just ask dairyman John Bidart, whose southwest facility is on Old River Road.

Cows produce huge amounts of waste. As it degrades it gives off chemicals that promote creation of smog. But those same waste gasses can be used to generate electricity -- which is what Bidart wants to do.

A device called a digester uses a biological process to break down waste and produces methane as a byproduct. Methane is a flammable gas that can be used to generate electricity.

Bidart's problem is that he cannot sell the electricity he generates from his proposed methane digester to Pacific Gas & Electric for anything close to the same price he has to pay the utility for the power he buys from them.

Without that offset, he cannot make his proposed \$4 million-plus digester system economical and thus cannot make his operation as environmentally clean as possible.

And the economics of his power bills are daunting -- between \$25,000 and \$60,000 per month depending on herd size and weather. Bidart pays PG&E 11.8 cents per kilowatt for the power he buys but can only sell power back to utilities at 6.5 cents per kilowatt.

The disparity makes no economic or environmental sense. Try to find out what the problem is and watch more excuses fly than patties in a cow-chip throwing contest.

Clearly, legislation is needed to create greater incentives for private production of all forms of renewable energy, not only digesters. And the state's Public Utilities Commission should also look at rate structures that suppress energy production.

Although it has no direct role in the process, the San Joaquin Valley Unified Air Pollution Control District ought to be lobbying within state government to enhance the use of proven clean air technologies.

As Bidart told *The Californian* about digesters, "It's not anything ground breaking, nothing other states haven't already put into effect."

Why not here? And why not now? The San Joaquin Valley needs answers, not excuses.

Tough questions about air clean-up fees need answers

By MIKE MAGGARD, Bakersfield

[Tuesday, Dec. 7, Bakersfield Californian, Commentary](#)

Gov. Schwarzenegger tells us if we add \$2 to our annual Department of Motor Vehicle fees and raise \$5 million a year to help clean up our miserable valley air, he will match it with millions more from the state.

So, what's the problem? Why wouldn't San Joaquin Valley Unified Air Pollution Control District board members immediately say yes to such a proposal?

The board didn't just arbitrarily say no. Rather we unanimously agreed to bring the issue back to our Dec. 16 meeting for a more in-depth review.

Although I cannot speak for other members of the board, serious questions must be asked prior to authorizing an expansion of the district bureaucracy and the establishment of yet another incentive program without first being assured of the effectiveness of our current programs.

On June 30, 2004, the district had \$46 million on hand, and \$50 million the year before. And, even more the year before that. If additional money will, indeed, clean up our air, then let's find it - - but first I want to know that we will get what we pay for.

District staff must answer a number of very crucial questions:

- Is it reasonable for the district to maintain such cash balances?
- How large should we allow district bureaucracy to become?
- Are current district incentive programs working?
- How fast and efficient are we at modifying our programs so they are an adequate incentive for government, industry and the public to clean up our air?

Bottom line, is the taxpayer getting the biggest possible bang from every buck?

Should each and every individual who drives a vehicle share in the cost of cleaning up our air?

Absolutely, since the vast majority of our air problems result from vehicle emissions. A \$2-per-vehicle fee seems a reasonable price to pay.

However, for too long we who live in this valley have been held 100 percent responsible for solving the valley's air pollution problem, even though we are only partially responsible for creating it.

Let's consider whether every vehicle registered in the state should participate in helping us mitigate our air quality problem, not just those of us who happen to breathe the air pollution that blows into the valley from the Bay Area and from the tail pipes of vehicles from Southern California as they drive through our valley.

Air district board and staff are all hard working and well intentioned, but we must work harder and smarter to achieve our goal of cleaner air. We need your help and insight in how to utilize this money to most effectively clean up our air.

I encourage you to call the district at 1-800-766-4463, write the district staff and board of directors, or contact us through our Web site at www.valleyair.org.

Real, substantive questions must be answered before we proceed with business as usual at the district. Every resident of this valley deserves clean air, and our very best effort to clean the air as soon as possible.

I sincerely hope you will join us in this most worthwhile effort.

Mike Maggard is a Bakersfield City Council member and a director of the San Joaquin Valley Unified Air Pollution Control District. Community Voices is an expanded commentary that may contain up to 500 words. The Californian reserves the right to reprint commentaries in all formats, including on its Web page.

DEVIN NUNES Q & A

[Monday, Dec. 6, Visalia Times-Delta, Editorial](#)

You have come to the end of your first congressional term. What did you learn about in your role in Congress that surprised you?

I wasn't surprised by the process or what the job entailed.

I was pleasantly surprised by the outcome of the election. Republicans did very well, which will help me as a Republican, of course. I always thought that President Bush would win, but I didn't anticipate winning as many seats in the Senate as we did. Now it puts a lot of pressure on Republicans next year to produce.

Now that you are no longer a freshman, are you going to pursue any further leadership roles in the Congress, and which ones?

I would like to maintain my position as House Majority Assistant Whip, and I have already been asked to do that.

There's an opportunity for me to get on the Ways and Means Committee. It's a slim chance, but if it's there, I have to take it, because it's such a powerful committee, even though I really love the committees I'm on -- Agriculture and Resources.

Virtually every piece of legislation goes through the Ways and Means Committee, so I would have input on those bills that come out of Ag and Resources anyway, as well as other committees. Not only that but trade -- all trade issues go through Ways and Means. So virtually everything we do goes through Ways and Means.

You have been outspoken in wanting a change in the redistricting of congressional districts. Are you making any progress?

Well, in the past election, there was no change in party in the California congressional delegation. There wasn't even a close election.

I sure hope this election opened some people's eyes. This issue to me is absolutely the most important issue for California. If I could do one thing in my career, it would be change this process.

It's fundamental to our democracy that districts are fair and that they make sense in terms of their makeup.

The redistricting was a bipartisan gerrymander, and it was an insult to voters. It worked out well for me, but only because of the population growth. Not one incumbent member of Congress had to run a campaign, basically.

Your district works for you and for your constituents, though.

Well, thank you. This district is one of the better ones. Look at the 20th District, the Dooley seat, which looks like two fish hooks. The worst seat is the one along the coast that stretches from Ventura to Santa Cruz. The joke is it disappears at high tide. At one point it is only 500 yards wide.

Quite frankly, it's insulting that politicians did this. They shouldn't be able to do it, period.

What's your solution?

I am supportive of the Ted Costa plan. He needs 900,000 signatures to get it on the ballot. It would create a commission that would have to abide by a set of rules, and the main thrust of those rules is -- and that part is my piece to this -- is that must minimize, if not eliminate, the number splits of counties and cities. Mathematically, there is a way to do that so you do not divide counties or cities.

The next step then is to get the governor to support the initiative and get it passed.

Why is this a problem?

Our Legislature is dysfunctional because nobody has a constituency that knows them or they know. For instance, the representative of the district on the coast from Pismo Beach doesn't know the mayor of Ventura or the mayor of Santa Clara. So you have representatives who don't know their constituents, and constituents who don't know who their representatives are, so they end up being loose cannons -- they're not beholden to anyone.

What is there to report on your efforts to develop new water sources in California?

We finally passed CalFed this year, which clears the way for a feasibility study for the San Joaquin River and a dam at Temperance Flats.

And we have made it easier to move water around the state, from the north of the delta to the south, in wet years. That will mean more water for agriculture as well as the cities and environment.

What about the lawsuit by environmentalists over the San Joaquin River?

We cannot let one more drop of water go down that river the way the environmentalists want it. Basically they want the dam torn down. We are proposing a plan to put water back in the river 365 days a year and then pump it back so that farmers can continue to use it, and that's the proposal we are pushing.

Your office has been instrumental in procuring support for several local projects, including the downtown parking garage near the hospital, the contract for federal prisoners for the Tulare County Pre-Trial Jail and the Mineral King cabins. Any others you see coming up?

One thing we try to do in this office is work hard and good things will happen, and the results of that are things like the prison issue.

That took us a year and a half to work something out, so people work very hard on these things to get some progress on these issues.

One of the things we were able to do is to get \$200,000 appropriated for the International Agri-Center, which will go toward the design and construction of a new two-story exhibit pavilion, the second floor of which will be dedicated to classroom space. We are in the process of putting together a university center with College of the Sequoias, Cal Poly and Fresno State, among others down the road. The concept is to develop the center so that students would be able to earn a four-year degree by taking classes at the university center. COS is working on the agreements with the other colleges. We've been working on that for more than a year now.

What progress is there on getting a designation for Highway 99 as an interstate?

My goal for Highway 99 is we absolutely have to get it to three lanes on each side. That's important to get another lane for truck traffic to move through the corridor, both for traffic and air pollution.

We got that funding into the transportation bill, by designating Highway 99 as a farm-to-market corridor, but the bill never passed, so now we have to start over again.

The change to an interstate might cost billions of dollars, but what we really want to do is widen the highway. Whether it's interstate or corridor, we still need to widen that highway to six lanes.

Do you foresee any developments in the near future on improving air quality in the Valley?

One of the things that is most important is getting the infrastructure up to par for the amount of people you have here. That helps. Like upgrades to the Highway 99 corridor.

Secondly, we have been a promoter of clean technology such as cleaner burning cars and buses, improvement in city and county infrastructure.

Where folks need to know is -- I'm a little upset at the Air Pollution Board because they operate their own little bureaucracy. I'll be blunt with this: As a local representative, I sent them a very pointed letter asking them for answers to some simple questions. They totally ignored my request.

When you are unwilling to work with your federal and state representatives, you are a bureaucracy out of control, and that's what we have here. We have an air pollution control board that is unresponsive to the needs of the community.

I have yet to receive a response to a letter I sent a year ago, and since then have had follow-up phone calls. It's not right. Whether it was the city of Visalia or the county -- you can't just ignore your representative. How can I help people when I can't get any responses from people who are supposed to be cleaning the air?

Anything to report in free-trade agreements?

We need to open up more markets. We really need a free-trade agreement with South Korea. We just had some problems with them with citrus that we just straightened out. But we need overall agreements with more countries so that kind of thing doesn't happen. We especially need them for our specialty crops -- fruits, almonds, pistachios -- the crops that grow here in the San Joaquin Valley but not many other places. We need to open markets to get them into places where we don't have markets now.

Other than that, the ongoing issue of the World Trade Organization and the subsidy issue with the European Union.

What do you think about the new Secretary of Agriculture, Nebraska Gov. Mike Johanns?

It wasn't a surprise they wanted something from the Midwest. It's funny -- he wasn't on any of the lists I saw.

It's important he gets out here to California and see this area as soon as possible, so I will be in contact with him as soon as I can.

The guy grew up on a dairy, so he must not be too bad.

What do you make of the shakeup in President Bush's cabinet and top leadership?

It's probably healthy. It's not unusual there will be turnover. Hopefully you give new people a chance to make some progress on the agenda President Bush has laid out for the American people.

Most important for me is that the bureaucracy work with the public and try to be cooperative. That's the main thing we look for.

My goal would be to establish relationship with the new cabinet members and agency secretaries as soon as I can.

What do you anticipate from the Bush administration in its second term?

Tax reform, changing the tax code. I am all for eliminating the IRS. However, you have so many opinions that I don't see that happening. What you will see is a continued reduction in the tax rates. And I really feel the estate tax could be, if not eliminated, at least changed from where it stands.

I would also like to see Social Security reform. I would like to see us go to national retirement accounts, which is only the program that every federal employee has already. I would like to see people save their money, because we need to keep Social Security solvent.

And on resources issue, I think there's a good chance we will finally open up the Arctic National Wilderness Area to oil drilling, which is long overdue.

What issues do you think will be the most critical in the next Congress?

We're going to keep our focus on constituents. We're going to try to keep working hard on their behalf, as the last link to the federal government.

That's always been my focus and what I promised to do.

And after that, we have to focus on the important issues: Pushing harder on water issues. Work hard on the Lake Success dam. We need \$180 million for a new dam, which even for Congress is a lot of money.

I'll continue to work on rural issues -- health-care issues and poverty we have in this area, and immigration. A lot of these are related: Poverty, immigration, health care, unemployment -- they are all contributing to this pocket of hardship in this nine-county region. The biggest issue is related to illegal immigration. It's a big problem.

There's no reason we can't have a guest-worker program in this area. If we had that, we could do a lot of other things, like basic health care for workers.

So I'll be working on water, rural issues and the infrastructure.