

## **CDF chief warns of fireplace dangers** **Even without pollution, fires can be dangerous**

By Greg Ubbelohde, Staff writer

Visalia Times-Delta, Saturday, Nov. 25, 2006

With colder weather creeping over the Valley, many residents are turning to their wood-burning fireplaces for heat.

Although fireplaces may give off a warm and cozy atmosphere, the California Department of Forestry and Fire Protection wants residents to be aware of the dangers.

"[We] have responded to several chimney fires recently," CDF Battalion Chief Mike Davidson said in a statement.

The damage has been minimal so far, but a chimney fire can lead to disaster, Davidson said. If you have one, he says, call the fire department right away — even if it seems to have been extinguished.

Firefighters will make sure the blaze hasn't spread to the attic, he said.

Another warning: After a fire, don't use the fireplace until it's been inspected by a professional.

CDF Chief Ed Wristen offers the following additional suggestions to minimize the danger of fire:

- Have all solid-fuel heating equipment inspected annually. That includes fireplaces, wood stoves, chimneys and chimney connectors.
- Make sure fireplaces have a sturdy screen to prevent sparks from flying into the room.
- Allow ashes to cool before dumping them, and use a metal container.
- Check all smoke and heat detectors monthly.

The San Joaquin Valley Air Pollution Control District expects Tulare County's air-pollution level to be moderate today. There are no restrictions on burning.

Burn-restriction status is updated daily through the district's "Check Before You Burn" program, which calls for fines for violators.

## **Air board warns residents against holiday fireplaces** **Officials say festive fires add to air pollution**

By Greg Ubbelohde, Staff writer

Visalia Times-Delta and Tulare Advance-Register, Thursday, Nov. 23, 2006

The Valley air board is appealing to residents to forego the use of wood-burning fireplaces on Thanksgiving Day.

San Joaquin Valley Air Pollution Control District spokeswoman Jamie Holt says Thanksgiving Day fires have fouled the air the last four or five years.

As a result, the air board is asking Valley residents to choose good air quality over a festive holiday atmosphere.

Although air quality levels aren't predicted to be at the most dangerous, a lot of people using wood-burning fireplaces could make conditions unhealthy, Holt said.

Wood burning isn't prohibited today, but it is discouraged, according to the district's Check Before You Burn program.

The program lasts from November through February and is designed to keep air quality healthy by telling people when it is fine to use a wood-burning fireplace.

"We have inspectors driving around neighborhoods looking for smoke coming from chimneys," on prohibited days, Holt said. If inspectors see smoke, the homeowner will be issued a \$50 ticket.

Recommendations are issued daily in the afternoon and are valid for 24 hours.

- To check air status before you light your fireplace, log onto [www.valleyair.org](http://www.valleyair.org) or call (800) 766-4463.

### **Fireplace use discouraged today**

Modesto Bee, Friday, Nov. 24, 2006

People in Stanislaus and Merced counties are asked to refrain from using fireplaces and older wood stoves today because of concerns about air quality. Forecasters say the air will be unhealthy for sensitive people - children, older adults and those with chronic breathing problems. The voluntary "burning discouraged" advisory comes from the San Joaquin Valley Air Pollution Control District. The next step is a prohibition on burning. On the Net: [www.valleyair.org](http://www.valleyair.org).

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### **Gas dealers battle Costco**

#### **Residents fear store expansion would increase traffic**

By Neil Gonzales, STAFF WRITER

Tri-Valley Herald, Sunday, Nov. 26, 2006

REDWOOD CITY - Shoppers at Costco can't wait to pump cheap gas, park their car and pick up goods from a larger selection than what's currently available - all in one location.

"I would love it," David Campbell, 37, of Felton said last week in the parking lot. "It would be convenient, because I work nearby."

Costco seeks to bring that enhanced one-stop shopping experience to its existing warehouse at Middlefield Road. A project would raze the building, construct a bigger one and install a 16-pump fueling center across the lot.

But the proposed gas pumps are fueling the ire of neighbors and local gas station operators.

Residents are concerned about the potential for traffic increases, pollution and safety issues. Local gas dealers fear Costco will drain their customers away.

The opposition reflects a scene being played out elsewhere across the country, as big-box retailers have delved more and more into the gas-selling business.

While 80 percent of the gas sold nationwide comes from the neighborhood pump, the large retailers such as Costco and Wal-Mart have cornered 10 percent of the market within a decade's span, according to Jeff Lenard, spokesman for the National Association of Convenience Stores.

"Who's not trying to sell gas?" Lenard quipped.

In Redwood City, those living near Costco say they don't mind seeing the warehouse grow from 121,400 square feet to 148,663 square feet.

Residents say they've lived with Costco for years - after all, and the company for the most part has been a good neighbor.

"We understand they want to improve the store," said Keith Daum, co-chair of the Redwood Village Neighborhood Association. "But we don't think the 16-pump station is a good thing for the neighborhood."

Residents have opposed the idea for the pumps since Costco first submitted its expansion plans to the city in 2005.

Now they have remobilized with the recent release of a draft environmental impact report for the project, and are preparing to voice their arguments in upcoming public meetings.

The report indicates that the project is not expected to cause significant environmental problems, given recommended measures to mitigate traffic, air quality and other issues.

Residents are not convinced.

They believe the traffic generated by the fueling center would only exacerbate the bumper-to-bumper congestion typically seen on Middlefield and Woodside roads.

Mark Soulard, the other neighborhood association co-chair, said the increased traffic will slow emergency vehicles and pose road hazards for students from nearby Hoover School.

Residents also worry about lingering fumes from cars and trucks idling in line for the pumps, he said.

Gas station owners echo the residents' concerns, but also have bottom-line reasons to oppose Costco's fossil-fuel foray.

"Adding 16 more pumps is significant in an area that already has a lot of stations," said Art Hislop, co-owner of Valley Market and Gas on Spring Street. "Adding this 900-pound gorilla will ... take away from the existing operators."

According to a city economic analysis, the Costco pumps could force one or more stations to close. Then again, information from other cities with Costco gas stations don't show such closures are likely.

Currently, Redwood City has 26 gas stations - or 3.4 sites per 1,000 residents, according to the analysis. Similarly-sized South San Francisco - with the presence of the airport and numerous rental-car outlets - has close to five stations for every 1,000 residents.

The analysis does say a revamped Costco could result in the loss of about 200 full-time retail positions in the Redwood City market area.

However, the project will unlikely disrupt the existing retail shops "to the extent that urban decay would result," the analysis said.

A fiscal study added that the expanded Costco could funnel more than \$320,000 a year into city coffers.

A Costco representative could not immediately be reached for comment. But according to company executives in an annual financial report, Costco remains "committed to expansion, both domestically and abroad."

In 1998, the company, based in Issaquah, Wash., had 40 gas stations. But just seven years later, it had 225 stations, selling more than \$3 billion worth of gas.

"Members are willing to wait in line to get gas, knowing that Costco will give them the best value in town," executives said in their report last year. "We made a profit despite the turbulent market."

Even Home Depot is selling gas in some locations in the South, Lenard noted.

Indeed, the home-improvement chain projects having about 300 fueling centers by 2010.

That kind of big-box competition "puts enormous pressure" on the much-smaller local convenience store, Lenard said.

"These stores have had to rely less on gas for profits and more on what's inside," he said. "But whereas Costco hopes you fill up at the pump and go inside to buy a plasma TV, convenience stores hope you fill up and go in to buy coffee. So it's more challenging."

## **Tis the season for extra garbage, officials warn** **Holiday season can lead to a 25-percent increase in trash**

By Julia Scott, STAFF WRITER

Tri-Valley Herald, Friday, Nov. 24, 2006

As shoppers spread holiday cheer to their families and friends this season, local environmentalists hope they'll think of the Earth as well.

Every year between Thanksgiving and New Year's, holiday rituals contribute to more waste per household - from extra food in the trash to air pollution from all those shopping trips.

"You're looking at an extra 25 percent of waste in the last quarter of the year, and that's why it's such a great concern," said Dianne Anderson, a recycling program coordinator with San Mateo County RecycleWorks. "We want to be able to protect our environment and see that landfills have enough space for the current population."

Nonrecyclable gift packaging is a major pitfall for consumers at holiday time. This year, RecycleWorks is encouraging consumers to try to cut down on the amount of packaging they purchase with products, and use to wrap them, before they even go under the tree.

The RecycleWorks Web site contains a searchable database with a list of materials and locations to recycle them, from plastic wrap to Christmas trees. Its holiday section offers dozens of creative gift and energy waste reduction ideas families can easily adopt.

Some are common sense, like carpooling to the mall to cut down on car trips, buying low-energy LED Christmas lights and bringing a big cloth bag to the store to avoid accumulating shopping bags.

Original low-packaging gift ideas include buying an electronic audio book for an on-the-go friend to download to their iPod or purchasing a carbon gift certificate to make up for someone else's greenhouse gas emissions caused by driving or flying.

San Mateo County households throw away more food than anything else. Based on 2004 estimates by the California Integrated Waste Management Board, food and other organic materials such as leaves and yard clippings account for more than 45 percent of what gets sent to the landfill. Paper and plastic account for 27 percent and 9 percent of all waste, respectively.

Tammy DelBene, recycling coordinator for San Bruno Garbage Co., has seen firsthand the amount of excess food and non-recyclable gift packaging that winds up in the garbage during the holidays.

"We see a lot of Styrofoam," said DelBene. "People get electronics and the market for Styrofoam is inconsistent, so there's not always a place to recycle that."

"Consumers need to purchase things that have less packaging. It's up to us to make that decision at the point of sale," she added.

The packaging revolution has already begun. Last week, Britain's Environment Minister, Ben Bradshaw, issued a public statement encouraging all shoppers to dump what they consider to be excess product packaging at the checkout line in an effort to force shops to cut back on waste.

Some locals have already taken the recycling ethos to heart. Burlingame-based interior designer Carol Tanzi, who calls herself the "Goddess of Garbage," makes her own gifts every year out of "found" and recycled objects. She says it's easy to make a picture frame out of a CD case, or reuse a square piece of Styrofoam covered with crushed tissue paper as the backing for a small wall mirror.

Most of the tissue paper, ribbons and bows on the market are not recyclable, said Tanzi.

## **McCarty points to success**

### **He wants to ensure that residents of older areas get a piece of the pie**

By Ralph Monta - Bee Staff Writer

Sacramento Bee, Thursday, Nov. 23, 2006

I'm part of a project to curb smoke from wood burning. People can trade in their old fireplaces and get a rebate on the newer, cleaner ones (through the Sacramento Metropolitan Air Quality Management District).

Just last month, the district adopted new regulations on new home construction so that new homes can install only cleaner burning devices.

I'm working on a couple of other issues in the area of air quality. Gross-polluting vehicles: We've got to get the bad ones off the streets. One bad car does more harm than 100 good ones.

I'd also like to see multifamily units setting aside some of their apartments as non-smoking. We are looking to start with some Sacramento Housing and Redevelopment Agency housing. We are trying to work with the Apartment Owners Association on this.

### **Granite Park**

I call it our 200-acre hidden gem. This month, we are opening a world-class skateboard park and a 2-acre dog park. In the spring, we are opening a \$1.5 million, 24-hour soccer field.

Lastly, we have smart growth in that area -- 500 units of housing and retail proposed at Power Inn Road and Folsom Boulevard, next to the light-rail station so residents can use rail transit.

### **After-school, preschool**

I'm passionate about opportunities for kids, which is why I brought baseball back to the Glen Elder neighborhood at Sim Park. There are now between 180 and 200 kids involved in the Junior Giants program (the community service program of the San Francisco Giants baseball team). We have to go neighborhood by neighborhood and expand the opportunities for kids.

I also started a nonprofit Sports Foundation to provide sporting opportunities for kids in my district who otherwise may not be able to afford them.

We need to continue making sure kids have productive things to do after school. Last year, we stepped up and authorized \$800,000 to expand after-school programs. I also hope that we as a city can be aggressive in applying for the recently approved \$550 million statewide for after-school programs from Proposition 49. Our city share should be in the ballpark of \$7 million, which could provide a lot of after-school opportunities.

Lastly, the city set aside \$100,000 to begin planning a major preschool expansion. And, this past year, the state set aside \$50 million to expand preschool (education). We need to be aggressive to get our fair share. It would be great to expand quality preschool slots in Sacramento.

### **Commercial corridors**

Nowhere does the old and new dynamic hit home like it does in the commercial corridors of District 6. All my constituents live near these corridors.

We want places where we can walk or ride our bike and have retail and restaurant amenities. We don't want to have to get in a car and drive downtown or to Arden Fair mall.

At 65th Street, we have a great opportunity to open up California State University, Sacramento, to the rest of the city. The development there will serve the students and our neighborhoods as well.

Also on 65th Street, we've been installing sidewalks. We want to make sure the whole neighborhood is walkable, pedestrian-friendly and easy to get to.

On Folsom Boulevard, we recently committed to a "streetscape" master plan. It's a 20-year plan to enhance the look, use and function of Folsom Boulevard. We are looking for funding for the first phase of the plan.

Stockton Boulevard's commercial corridor has seen a heck of a lot of improvements. We just went to groundbreaking on a project that includes selling condos to the business owners on south Stockton Boulevard. They will be able to buy a condo and a business and a piece of the American dream. A Vietnamese parade is being planned for the coming year. This kind of project has been very successful in San Jose. We are looking to bring that success to Sacramento.

### **Quality-of-life issues**

The city has expanded its code enforcement department. It's a down payment on a growing city.

We are growing, and we need police protection. We need more officers and better response time. There are 67 new officers who will be hitting the streets shortly.

Old neighborhoods also have problems with rental properties. There are problem rentals throughout the city. No neighborhood is immune to the problem of absentee landlords. We need to be vigilant and more proactive in inspecting problem rentals.

The headlines we see are usually about what's new in Sacramento. The new things like the railyard and Natomas get a lot of publicity. But in order for it to be one great city, we have to remember old Sacramento. We cannot have two Sacramentos, the old and the new. Most Sacramentans live in these older neighborhoods. I want to make sure we all get a piece of the pie.

### **Top court to hear emissions argument**

#### **Justices to decide if greenhouse gases are air pollutants**

By Bob Egelko, staff writer

S.F. Chronicle, Monday, November 27, 2006

The U.S. Supreme Court often hears disputes over how much authority the federal government has to stop businesses from polluting.

But rarely, if ever, in nearly four decades of environmental regulation has the government argued that it has no power over an entire category of potential pollutants -- or that if it had the power, it wouldn't use it.

That's the position, though, that the Bush administration is taking in a lawsuit seeking federal limits on vehicles' emissions of greenhouse gases. The Supreme Court is to hear arguments Wednesday in the case, which was filed by California, 11 other states and most of the nation's major environmental organizations.

The court's ruling, due by next summer, also will resolve a similar lawsuit over the government's power to regulate greenhouse gases emitted by factories and other industrial sources. And it may decide a challenge by automakers of a California law requiring them to limit tailpipe emissions of greenhouse gases starting in 2009. That law has inspired similar statutes in 10 other states.

An overwhelming majority of scientists agree carbon dioxide and other common substances known as greenhouse gases trap heat in the atmosphere and are causing worldwide temperature increases that threaten to become catastrophic in coming decades.

The U.S. Environmental Protection Agency argues in the case before the Supreme Court that greenhouse gases are not air pollutants, and therefore are not subject to government regulation. Even if the common gases are pollutants, the EPA says, nationwide regulation would be premature at best and might cause more harm than good.

The agency's position is consistent with President Bush's policy of relying on industry to reduce emissions voluntarily, and withdrawing the United States from the Kyoto Protocol, which requires industrial nations to cut greenhouse gas emissions 5 percent below 1990 levels by 2012.

Justice Department lawyers argue that a one-nation solution, particularly if imposed by a court, is inappropriate for a global problem.

Greenhouse gases are evenly spread around the world, so a nation that regulates on its own "may bear a substantial economic burden but will receive only a small share of any resulting benefit," the lawyers wrote in papers they filed with the Supreme Court. "Countries -- particularly developing countries -- may seek a 'free ride' from expensive regulation self-imposed by other nations," they wrote.

What's more, they said, the causes of global warming remain a subject of "substantial scientific uncertainties" -- and the Clean Air Act allows the government to make that call.

Such assertions dismay the plaintiffs and their supporters, who say the EPA is fiddling while the planet burns.

"Global warming is not merely a future threat, but a present deadly reality," said a supporting brief submitted by organizations representing mayors, county governments and several cities across the country, including San Francisco.

The brief cited a World Health Organization estimate that already 150,000 deaths caused each year by malnutrition, malaria and other illnesses can be traced to global warming. And scientists cite forecasts of increasing air pollution, droughts, melting snowpacks and more intense hurricanes.

Nicholas Burns, a deputy California attorney general, said the court should give little weight to the EPA's assertion of scientific uncertainty about the exact causes of global warming. Under the law, "they're required to regulate even in the face of some uncertainty," he said.

"There's always going to be some uncertainty," Burns said. "The level of uncertainty as to whether or not global warming is occurring is very low."

The ultimate issue in the case is whether the federal government must regulate vehicle emissions of greenhouse gases under the provision of the Clean Air Act mandating regulation of pollutants that "may reasonably be anticipated to endanger public health or welfare." The law includes climate and weather in its definition of welfare.

The EPA said in 2003 that the law did not even authorize it to regulate greenhouse gases, let alone require it to.

The plaintiffs want the court to order the agency to reconsider its position in new proceedings that would include only scientific evidence, not political or financial arguments.

But first the court will face the question of whether greenhouse gases should be classified as air pollutants. And, for California and other states with their own global warming laws, that is the most critical issue in the case.

If the substances are pollutants, state lawyers say, the EPA -- regardless of its own regulatory stance -- is compelled to grant waivers from more lax federal standards and allow the states to enforce their laws.

But if the substances aren't defined as pollutants, federal approval of state regulation is unlikely.

The Clean Air Act defines a pollutant as a potentially harmful physical or chemical substance emitted into the air. The states and environmental groups, represented by Massachusetts Attorney General Tom Reilly, say carbon dioxide and other greenhouse gases -- methane, nitrous oxide and hydrofluorocarbons -- "fit easily within the (law's) definition."

But the EPA and its backers say it's not so simple.

The air pollution law, passed in 1970 to combat specific sources of smog and contaminants, is "not appropriate for addressing a global problem believed to be caused by ... a wide range of human activity and natural processes around the world," said a brief filed by major U.S. industries.

Martin Kaufman, general counsel of the Atlantic Legal Foundation, representing a group of scientists who oppose federal regulation of greenhouse gases, said carbon dioxide, "an essential and inevitable product of metabolism," isn't necessarily a pollutant.

But he said the definition is less important than the question of whether greenhouse gases are pollutants that one nation should regulate -- a decision, he contended, that should be left to the EPA.

The federal government and its supporters also argue that the suit should be dismissed because states can't show they are being harmed by the absence of federal regulation. If they aren't being harmed, the states and their residents lack legal standing to challenge the EPA's inaction.

The United States is the largest single source of greenhouse gases, but regulation of new motor vehicles sold in the United States would achieve "at most a tiny percentage reduction in worldwide greenhouse gas emissions," government lawyers said. They argue that individual states would not notice the reduction.

In response, plaintiffs' lawyers catalogued the harm that they said states already suffer because of global warming -- loss of coastal land, worsening smog, dwindling glaciers -- and said there's little question that one cause is motor vehicles sold in the United States, which contribute 6 percent of the world's greenhouse emissions.

Although California and other states have adopted their own laws, they have a stake in federal action because the issue is too monumental for them to tackle without federal help, said Doug Kendall, executive director of the Community Rights Council, which filed arguments on behalf of local government officials.

"No matter how much they do, state and local action alone will not fully address this problem," he said.

### **Case at a glance**

The issue: Whether the federal government can restrict vehicle emissions of greenhouse gases under a provision of the Clean Air Act mandating regulation of pollutants.

The positions: The U.S. Environmental Protection Agency argues that carbon dioxide and other greenhouse gases are not pollutants subject to Clean Air Act regulation. The state of California and other challengers say the gases clearly trigger the law's application.

What's at stake: The case could force the government to change its policies on reducing emissions of gases that most scientists say contribute to global warming.

### **High Court to Weigh Climate Change Case**

By H. Josef Hebert, Associated Press Writer

In the S.F. Chronicle, N.Y. Times, Sacramento Bee and other papers, Sunday, Nov. 26, 2006

WASHINGTON, (AP) -- The Supreme Court hears arguments this week in a case that could determine whether the Bush administration must change course in how it deals with the threat of global warming.

A dozen states as well as environmental groups and large cities are trying to convince the court that the Environmental Protection Agency must regulate, as a matter of public health, the amount of carbon dioxide that comes from vehicles.

Carbon dioxide is produced when fossil fuels such as oil and natural gas are burned. It is the principal "greenhouse" gas that many scientists believe is flowing into the atmosphere at an unprecedented rate, leading to a warming of the earth and widespread ecological changes. One way to reduce those emissions is to have cleaner-burning cars.

The Bush administration intends to argue before the court on Wednesday that the EPA lacks the power under the Clean Air Act to regulate carbon dioxide as a pollutant. The agency contends that even if it did have such authority, it would have discretion under the law on how to address the problem without imposing emissions controls.

The states, led by Massachusetts, and more than a dozen environmental groups insist the 1970 law makes clear that carbon dioxide is a pollutant - much like lead and smog-causing chemicals - that is subject to regulation because it poses a threat to public health.

A sharply divided federal appeals court ruled in favor of the government in 2005. But last June, the Supreme Court decided to take up the case, plunging for the first time into the politically charged debate

over global warming. The ruling next year is expected to be one of the court's most important ever involving the environment.

"Global warming is the most pressing environmental issue of our time and the decision by the court on this case will make a deep and lasting impact for generations to come," says Massachusetts' attorney general, Thomas Reilly.

David Bookbinder, a lawyer for the Sierra Club, says a legal clarification of the EPA's authority could determine whether the current administration must regulate carbon dioxide emissions and whether a future one will be able to demand such limits.

At issue for now is pollution from automobiles. But the ruling indirectly may affect how the agency deals with carbon dioxide that comes from electric power plants.

In a separate lawsuit, the EPA says the Clean Air Act also prevents it from regulating such emissions from those plants. That claim would be undercut, Bookbinder says, if the high court rules in the states' favor in the auto emissions case.

President Bush has rejected calls to regulate carbon dioxide. He favors voluntary steps by industry and development of new technologies to reduce the amount of greenhouse gases released into the atmosphere.

"We still have very strong reservations about an overarching, one-size-fits-all mandate about carbon," James Connaughton, chairman of the White House Council on Environmental Quality, recently told a group of reporters.

The administration says in court papers the EPA should not be required to "embark on the extraordinarily complex and scientifically uncertain task of addressing the global issue of greenhouse gas emissions" when other ways are available to tackle climate change.

The United States accounts for about one-quarter of the world's greenhouse gas emissions. The amount of carbon dioxide from U.S. motor vehicles, power plants and other industry has increased on average by about 1 percent a year since 1990.

Now that Democrats will control the House and Senate in January after their election victories this month, there is expected to be increased pressure in Congress for mandatory limits on carbon emissions.

The election results "have signaled a need to change direction" on dealing with global warming, three Democratic senators who will play leading roles on environmental issues recently wrote the president.

But whether there is such a shift actually may depend, in the end, on the Supreme Court.

Plaintiffs in the suit are California, Connecticut, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington. They were joined by cities such as Baltimore, New York and the District of Columbia; the Pacific island of America Samoa; the Sierra Club; the Union of Concerned Scientists; Greenpeace; and Friends of the Earth.

The case is Massachusetts v. Environmental Protection Agency, 05-1120.

## **States will tell Supreme Court feds must act on warming**

### **The EPA must address warming, California and others will tell justices.**

By David G. Savage, Times Staff Writer

L.A. Times, Saturday, November 25, 2006

WASHINGTON - The polar icecaps are melting, summers growing hotter and hurricanes becoming more powerful, but the Bush administration has insisted it cannot regulate the gases that many believe are responsible.

On Wednesday, a coalition of 12 states, led by California and Massachusetts, will try to persuade the Supreme Court that the nation's environmental regulators have the legal authority and responsibility to control greenhouse gas emissions linked to global warming - which many scientists describe as the biggest environmental threat to the planet.

It is a rare day when state lawyers travel to Washington hoping to win new powers for the federal government. As David Bookbinder, a Sierra Club lawyer, noted, "How often do federal authorities insist they lack the authority to do something?"

The administration's approach to another global issue - terrorism - has been to assert broad powers to act at home and abroad. On the environmental front, the administration says, it is studying the problem and "seeking a cooperative international approach to addressing global climate change," Solicitor General Paul Clement wrote in his brief to the court.

Putting new limits on motor vehicles and power plants is out of the question, at least for now, he added, saying, "the Environmental Protection Agency lacks authority under the Clean Air Act ... to regulate greenhouse gas emissions."

The case before the Supreme Court tests that conclusion. It begins with a simple question: Is carbon dioxide an "air pollutant" under the Clean Air Act? The answer may determine not only whether federal regulators must tackle global warming, but also whether California and other states may do so on their own.

Four years ago, California adopted stricter rules. The state Legislature declared its intent to "achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions" from motor vehicles. These standards for new cars and trucks are to take effect in 2009.

### **The California way**

Because of California's notorious smog problem, Congress permitted the Golden State to adopt stricter exhaust standards for cars and trucks under a special provision in the federal air pollution laws of the 1970s. Other states are allowed to follow California's lead, and 10 - from New England to the Pacific Northwest - have plans to do so.

"Global warming is a national and international crisis. And even if the federal government won't do anything, many states will," said California Atty. Gen. Bill Lockyer, who filed one of several lawsuits challenging the Bush administration's decision not to act on greenhouse gases.

The legality of California's new vehicle emission standards remains in doubt. They must be approved by the EPA. But the agency has yet to do so, mostly because of its view that carbon dioxide and other greenhouse gases are not air pollutants under the Clean Air Act.

The automakers have sued to block California's rules, citing the EPA's stand.

Humans and animals exhale carbon dioxide, and plants absorb it. It is also emitted from tailpipes and smokestacks when fossil fuels are burned. Once in the atmosphere, carbon dioxide absorbs the sun's radiation and traps heat in the atmosphere. This is known as the greenhouse effect.

As these greenhouse gases - including methane, nitrous oxide and fluorocarbons - have become more concentrated in the atmosphere, temperatures have increased slowly but steadily. Though some scientists and politicians once dismissed this link, most now acknowledge it.

Bush administration lawyers do not discount the importance of global warming, but they argue it is not covered by the Clean Air Act. That measure, they say, targets pollutants, such as ozone, that are dangerous to breathe - not ones that occur in nature and are essentially harmless to breathe, such as carbon dioxide.

Disagreeing, the states' lawyers point to the language of the law. It says an air pollutant is "any physical, chemical (or) biological ... substance or matter which is emitted ... into the ambient air."

In their brief to the court, they point out, "Motor vehicles emit the physical and chemical matter carbon dioxide, methane, nitrous oxide and hydro-fluorocarbons into the ambient air." Motor vehicles are the source of about 25% of the nation's greenhouse gas emissions.

### **It says 'shall'**

Another provision appears to require regulation of such gases. It says the EPA "shall" regulate any pollutant from cars or trucks "which may reasonably be anticipated to endanger public health or welfare." The law defines the public's welfare to include effects on "climate" and "weather."

The state lawyers argue that because it is now apparent that greenhouse gases are endangering the public welfare, the EPA must regulate them.

Administration and auto industry lawyers say the high court should dismiss the states' lawsuit. They argue that the nation's global warming policy is a political issue to be decided by Congress and the president, not a legal issue to be decided in court.

This argument may well appeal to Chief Justice John G. Roberts Jr., who has said the court should adopt a more modest role and allow politicians to set policies.

But environmental activists and the state lawyers were pleasantly surprised in June when the Supreme Court voted to take up the case, *Massachusetts vs. EPA*, despite the objections of the Bush administration.

If the court rules squarely on the question of whether the Clean Air Act regulates greenhouse gases, the stakes will be high for environmentalists, California's regulators and the auto industry.

"If we win, it will free California and other states from a legal threat," said Bookbinder, the Sierra Club lawyer. "But if the Supreme Court says the Clean Air Act does not cover climate change, it would be hard for California to say it has the authority to regulate greenhouse gases."

If the court rejects the Bush administration's stand, the automakers will be under pressure to produce vehicles that get better gas mileage.

The court could also issue a split decision.

It could rule that carbon dioxide is an air pollutant under the Clean Air Act, but that the EPA's administrator is free to decide whether to issue new emissions standards for it. In the past, the court has been very reluctant to require an agency to issue new regulations.

A split decision would not force the federal agency to regulate greenhouse gases, but it could clear the way for California and the states to do so on their own.

Besides Massachusetts and California, the states challenging the Bush administration's policy are Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont and Washington.

They were joined by the cities of New York, Washington and Baltimore, and several environmental groups.

## **Groups Upset by Claim in Clean Air Suit**

By PETE YOST, The Associated Press

Published in the Washington Post and San Francisco Chronicle, Friday, Nov. 24, 2006

WASHINGTON -- A prominent member of the Supreme Court bar, the small circle of lawyers who regularly appear before the justices, infuriated environmental groups by presenting an argument the groups say is demonstrably incorrect.

The claim a month ago by Washington attorney Carter Phillips that the federal government had changed course in regulating emissions from coal-fired power plants is simply not true and a paper trail of the industry's own documents proves it, the groups say.

The case, *Environmental Defense v. Duke Energy Corp.*, could determine the fate of an Environmental Protection Agency initiative targeting some of the biggest utilities in the nation. Phillips, representing Duke, is managing partner at the Washington office of the law firm Sidley Austin and has argued more than 50 cases at the Supreme Court.

"These companies are bent on getting away with 20 years of illegal pollution by trying to deceive the Supreme Court," said Natural Resources Defense Council clean air director John Walke, who is a former EPA attorney.

Utility industry attorney Scott Segal jumped to Phillips' defense, saying that "for these environmental groups to go after one of the best lawyers in the country is a travesty. Phillips leads a legal dream team

with a spotless record." Segal, a partner at the law firm Bracewell & Giuliani, was responding to a list of questions a reporter sent to Phillips' office at Sidley Austin. With the case pending before the Supreme Court, Phillips did not respond.

The government enforcement action against Duke is one of more than a dozen brought by the Clinton administration in 1999 and 2000.

It is aimed at forcing power companies to install the latest pollution-control equipment on aging coal-fired plants which were renovated so they could be operated longer hours.

On Nov. 1, Phillips told the justices: "Our basic argument is that all along" EPA interpreted the regulatory requirements "in a certain way. And then 19 years later, they reversed course" and suddenly sued the companies.

The environmental groups say internal industry documents clearly show that Duke understood long ago that EPA was interpreting the requirements in the same way it did in 1999 when the government went to court. Some of the documents are part of the record before the Supreme Court and all were brought to light in lawsuits against Duke and other utilities.

Among the documents, according to a Justice Department court filing, are 10 memos from an industry trade association spelling out the EPA's position for Duke starting in the late 1980s. It was the same regulatory approach EPA took a decade later when it sued the company. The Justice Department document was filed publicly in 2003, but at Duke's request it was put under seal, barred from public view.

The day after the Supreme Court argument, the Natural Resources Defense Council provided journalists with copies of industry documents the environmental groups say contradict the tack taken by Duke's lawyer before the high court.

One of them is a Duke company training guide on environmental compliance from 1991 that appears to characterize the EPA's approach in the same way the federal agency did nine years later when it sued Duke.

George Washington University law professor Jonathan Turley reviewed some of the industry files and said, "I find the statements Phillips made hard to square with these documents."

Turley said the complexity of the case makes it easy to suggest uncertainty or confusion, and that "Phillips' comments in court are more likely to be treated as attorneys gilding the lily for their client" rather than attempting to mislead.

The dispute between the utilities and the environmental groups and Justice Department lawyers is whether emissions increases should be measured on an annual basis or under a two-part test.

The industry says EPA regulations always have required an hourly rate increase in emissions before measuring for annual increases. Such an approach would enable the companies to run their revamped coal-fired plants without having to install additional pollution controls, as long as the hourly emissions rate doesn't rise. Pollution would rise significantly, however, because of the longer hours of operation. In his arguments to the justices, Phillips pointed to two EPA officials who in the early 1980s appeared to interpret the rules in the way industry favors.

The EPA and environmental groups say the regulations call for calculating emissions increases annually, which would force the installation of costly pollution controls on plants because of their longer hours of operation. One document environmentalists point to is a 1988 memo by an attorney representing Duke in the Supreme Court case. The document specifies an annual test "instead of" an hourly test.

But Segal, representing the industry, says focusing on that language in the 42-page document "mischaracterizes the memo." The company documents "all assume that you've already cleared the first hurdle of an hourly rate increase, so it's not surprising that the documents sometimes refer to an annual test."

"That's ridiculous," responded Keri Powell, a staff attorney with the not-for-profit environmental law firm Earthjustice.

It was "depressing to listen to Duke's attorney present a sob story to the Supreme Court about how the power companies had no idea that EPA would interpret its rules the way it did in 1999, when the power companies' own documents from years before so clearly show otherwise," Powell said.

Duke spokesman Thomas Williams said the environmentalists' criticism is "an after-the-fact, made-for-litigation theory that was correctly rejected by the lower courts."

[Hanford Sentinel, Editorial, Sunday, Nov. 26, 2006:](#)

### **Our view: 'Dairy air' is win-win for farmers, consumers**

We have said it before and we'll say it again: Farmers and growers are getting stuck with an undue share of cleaning up the air and water quality in California. They are facing tougher and tougher rules each year, it seems.

But all is not lost. We believe that difficult problems pave the way to creative solutions.

That appears to be the case with three local dairies who intend to pipe the methane gas from their cow manure into Pacific Gas & Electric Co. pipelines.

We give this effort an absolute thumbs-up for finding such a creative solution to such a -- well, to such a stinky problem.

Under a recently announced agreement, Cloverdale Dairy, Lancing Dairy and Hollandia Dairy have contracted with Microgy, Inc. to deliver enough methane gas to meet the needs for up to 50,000 homes a day.

The three dairies are located off Highway 43, about halfway between Hanford and Corcoran.

For years, we heard rumors about studies within the University of California about expensive studies of "cow gas." While it sounded funny and resulted in many questions, the simple fact is that work seems to now be paving the way for some innovative solutions.

The simple fact is that manure does increase the amount of methane gas in the atmosphere.

And although methane is not a component of the Central Valley's smog, it is a component of the greenhouse effect causing global warming.

All jokes aside, sucking the methane gas from manure is a perfect example of how win-win situations can be created to improve our environment while also helping out those providing us our food.

Kudos to our local dairies and to PG&E. We hope this will lead the way to further innovative efforts that take care of the environment while also taking care of our growers and farmers.

[Visalia Times-Delta, Editorial, Monday, Nov. 27, 2006:](#)

### **Public comes through with late donations**

Thumbs up to all those who contributed so generously to the many charitable drives for the needy at Thanksgiving.

And we hope they remember that Christmas is just around the corner.

With just days before Thanksgiving, charitable organizations were lamenting the lack of food they had received in contributions to their holiday food giveaways and dinners. Visalia Emergency Aid, which conducts one of the largest one-day giveaways in Tulare County, pointed to a nearly empty meat locker where there should have been hundreds of turkeys.

Visalia Emergency Aid was not alone. Many agencies throughout the Valley reported slower than normal donations, especially of food.

Maybe it was the extra-early date for Thanksgiving. Maybe it was simple oversight. Whatever the reason, the alarm about low donations had an immediate effect. Visalia Emergency Aid ended up feeding more than 1,000 families, which was about its usual pace.

The Visalia chapter of the Salvation Army had the same experience. The agency was worried as late as last Tuesday that it didn't have enough food for all those who would apply for help. But like a modern loaves-and-fishes parable, the Salvation Army distributed meals for several hundred people with enough left over.

It was much the same everywhere. The Tulare AMVETS expected to feed as many as 500 people, even though they usually have about 300 people to feed on Thanksgiving Day.

And Visalia Rescue Mission reported that it served 400 meals on Thanksgiving Day, which is about what it serves nearly every day.

The point is that after a slow start, people responded to the need and donated as freely as ever.

The need doesn't let up at the holiday season.

Although the Thanksgiving holiday had a happy ending, that doesn't mean that Christmas has to be a last-minute afterthought, either. Plan now to contribute to your favorite charity and get your check in early. Those agencies will appreciate it. And plan to attend one of the many fine fund-raising events that occur this time of year, such as the annual Visalia Chamber of Commerce Christmas Tree Auction at 7 p.m. Friday at the Visalia Convention Center, any number of canned food and clothing drives, and local toy drives.

The public came through again in Visalia as they always do at Thanksgiving. It would be good if people took some of the suspense out of Christmas.

Thumbs up to those who participated in Visalia Emergency Aid's annual Race Against Hunger on Thanksgiving morning. More than 900 runners and walkers participated and raised \$25,000, compared with about 350 people in the first Race Against Hunger last year, which raised \$9,000.

This has the potential for becoming a venerable holiday tradition, with appeal to all kinds of people from throughout the Valley, but especially for families who want to experience the spirit of giving on the holiday most devoted to gratitude.

Congratulations to Visalia Emergency Aid on this event. We know it will continue to grow through the years.

Thumbs up to those who are conscientious about sparing the air quality of the Valley, especially in the wintertime.

The San Joaquin Valley Air Pollution Control District reports that air quality in the Valley is improving. One reason is the aggressive position the district has taken toward use of fireplaces and wood-burning devices.

It is also because people are complying with cleaner air by refraining from using their fireplaces.

Residents ought to continue to monitor the air board's recommendations for wood burning and adhere to them. They should be especially attentive on days when an inversion layer of air traps smoke and particulate matter near the ground in the Valley.

Residents don't have to wait for the air board, though. As festive and inviting as those fireplace fires are, they contribute to poor air quality. Learning to spare the air, especially in susceptible conditions, will make for a healthier holiday, in this and many more holiday seasons to come.

[Editorial in the Washington Post, Sunday, Nov. 26; page B06](#)

## **Climate in the Court**

### **The justices take up global warming.**

ON WEDNESDAY, the Supreme Court will hear oral arguments in what could prove to be one of the most fateful environmental cases in a generation -- or not, depending on what the justices do with it.

*Massachusetts v. Environmental Protection Agency* is a challenge by states and environmental groups to the Bush administration's refusal to regulate greenhouse gases as pollution.

The question of how to handle global warming is the chief environmental issue of our era. Yet the Environmental Protection Agency has refused to assume regulatory authority over greenhouse emissions. It claims that the Clean Air Act gives it no power to do so. The law, however, gives the EPA power over "any air pollutant from any class or classes of new motor vehicle . . . [that] may reasonably be anticipated to endanger public health or welfare." What's more, it specifically identifies effects on "climate" as an aspect of that public welfare.

The EPA goes on to argue that even if it has the power to regulate carbon emissions, it doesn't have to -- and it doesn't want to. The government cites "scientific uncertainty as to the mechanisms of global climate change." But the law on this point is clear as well: The EPA, it says, "shall" regulate any pollutant from new motor vehicles that it expects to do harm. And while all the mechanisms of climate change are not understood, greenhouse gases certainly can be expected to do harm.

The tricky legal question is whether the states and environmental groups -- or anyone else, for that matter -- have standing to bring the case. To establish standing, one has to show both that an actual injury has occurred and that winning the case would redress that injury. The problem of climate change is so huge that it creates a paradoxical barrier to litigation: Regulating one relatively small component of the problem -- emissions by new vehicles in the United States -- probably wouldn't do much overall to stop global warming. Depending on how the justices treat this question, the case could peter out.

That would be frustrating and unfortunate. Nowhere is this administration's resistance to action on global climate change more aggravating than in its persistent refusal to use the legal powers already at hand. What an irony it would be if its lawless inaction survived judicial review because the problem is too big.

[Letter to the Editor, Merced Sun-Star, Wednesday, Nov. 22, 2006:](#)

### **Endorsement Off Track**

Editor: The Sun-Star delivered bad news to our community when its Saturday editorial endorsed the raceway. By trivializing the noise and air-quality impacts of this project, the editor revealed a lack of familiarity with the findings of the Environmental Impact Report. For example, noise generated by races "would exceed the Merced County Zoning Code noise standards." This noise impact remains significant and unavoidable after mitigation measures have been applied. Similarly, raceway operation "would result in noticeable increases in traffic noise levels along area roadways." This impact remains significant and unavoidable, with no mitigation measures available.

Turning to air quality, the Sun-Star limits its concern to the Health Risk Assessment that was performed in conjunction with the EIR. This assessment addressed only the effects of on-site emissions on the health of nearby residents. The larger issue, by far, is the air pollution from vehicles traveling to and from the raceway, which "would be considered to have a potentially significant contribution to regional ozone concentrations." Following such measures as planting trees and paying into the pollution control district's mitigation fund, this impact also remains significant and unavoidable.

Traffic congestion is another significant and unavoidable impact that the Sun-Star for some reason left out of its editorial. According to the EIR, "substantial traffic congestion would be anticipated" at numerous intersections in the Atwater-Winton-Merced area. The way to get around these impacts is to grant the raceway an amendment to the general plan, permitting the roads in question to carry more vehicles than their "Level of Service" designation. The same traffic mess would be there on feature and major-feature weekends, but it would no longer be contrary to the general plan.

Employment provided by the raceway "could translate into as many as 125 full-time jobs," according to the Sun-Star. Setting aside the fact that RMP has refused to pledge a "living wage," the jobs in question would consist of carpenters, plumbers, secretaries, bookkeepers, maintenance workers, and so forth, plus a handful of raceway experts brought in from the outside. Is this supposed to go to the heart of Merced County's unemployment problem?

It is time for the Sun-Star to take another look at the raceway project, perhaps by reviewing some of the 34 "significant and unavoidable" impacts listed in the EIR.

KARA MIDDLEBROOKS, Merced