

Garbage in, garbage out: Transfer station planned

BY James Geluso, Californian staff writer

Bakersfield Californian, Tuesday, Sept. 18, 2007

Kern County and Bakersfield took a step toward a new garbage transfer station at a joint meeting Monday.

A conversion of the current Mount Vernon green waste station to a full-service transfer station is the best alternative, according to a Kern County study.

[Kern County Supervisor Michael Rubio said there is no step the city and county can take toward emission reductions more significant than implementing this station.](#)

Having the station in town would mean garbage trucks would bring their loads to the station, instead of driving them to the Bena landfill 17 miles east of Bakersfield. Larger, cleaner trucks would be used to take the garbage to the landfill.

"This will be a good project that will benefit everyone in the Bakersfield area," Supervisor Mike Maggard said.

The city and county hope to use grant funding from the state to finance the project, but Rubio said staff must think about how to finance the station if the grant funding doesn't come through.

Even with a grant, the cost of operating the solid waste system would be expected to rise about 11 percent, according to Daphne Harley, the county's waste management director. The cost to residents would be lower because of the savings provided by having the transfer station in town, she said.

The meeting was peaceful, in stark contrast to the Aug. 20 meeting of a joint city-county committee on transportation. Bakersfield Mayor Harvey Hall noted that county supervisors had praised city staff and even a city council member for their work.

"This is how we work to bring results for the community," Hall said.

In other action, the two boards:

- Approved the limited use of eminent domain to purchase properties in which the majority of owners is willing to sell, but some of the people with shares of the ownership can't be found. County Supervisor Jon McQuiston cast the sole dissenting vote.
- Received a brief and uneventful update on highway projects. County Roads Commissioner Craig Pope said disagreements between the city and the county will be addressed in the environmental studies process.

County Planning Director Ted James told the boards that a plan is in the works to preserve the right-of-way for the South Beltway project, a future highway designed to reroute Highway 58 south of Bakersfield.

Earth-friendly businesses clean up

Nine firms hailed for pollution prevention in S.J.

By Reed Fujii - Record Staff Writer

Stockton Record, Tuesday, September 18, 2007

STOCKTON - Preventing pollution involves a lot of hard work - whether it's collecting tons of consumer-electronic waste, building an artificial wetland to treat winery wastewater or draining sewage from boats throughout the San Joaquin Delta.

But it can be fun, too. Just ask Thornell Washington, co-owner of Septic Brothers, which collects sewage from boat wastewater tanks. He learned Monday that his company is one of nine winners of this year's TOPPS Environmental Excellence Awards.

"I'm on cloud 50 right now," Washington said, 50 being that much higher than cloud nine.

Not only have Washington and his partner Dennis Vanoni seen heavy demand since launching their service in November, but have gotten an overwhelming response from the boating community.

"The people of the Delta have supported us 100 percent," Washington said. "Many people have said, 'You know man, whatever it takes, I just want you guys to stay in business.' "

The business partners are discussing buying a second boat to be able to expand service at times when demand gets especially heavy and as a backup, in case of inevitable breakdowns or other problems.

"More than anything, I'd like to say thank you to everyone in the Delta because they have been just great to us," Washington said.

Named for Targeted Opportunities to Prevent Pollution in San Joaquin County, the TOPPS awards recognize programs that provide environmental, social and/or economic benefits to local businesses and communities.

Stockton Mayor Ed Chavez is expected to hand out this year's prizes Wednesday morning at a breakfast sponsored by TOPPS, San Joaquin County and city of Stockton.

Officials at Goodwill Industries of San Joaquin Valley, another award winner, said their free electronics waste collection service is growing rapidly. After receiving nearly 500,000 pounds of old television sets, computers, printers, monitors and other inoperative or outmoded gear in 2006, Goodwill is on track to collect 750,000 pounds this year.

With 10 regular collection points accepting materials seven days a week, the agency has seen donations of good used clothing and household items rise as well, said Sally Wooden, public relations director.

"We thought if it would make it really convenient for you to donate your computer, you might donate the rest of your stuff you no longer need," she said.

Other award winners are:

- » Port of Stockton. Port officials produced videos to educate port employees, dock workers and business managers on reducing storm-water pollution. As a result, the agency has seen a reduction in pollution cleanup and enforcement costs.
- » Escalon Premier Brands. The tomato processing plant recently retrofitted its four boilers to meet new air pollution standards, rejecting a low-cost alternative in favor of a higher-cost solution with additional environmental and cost savings benefits. The result is emissions that far exceed the new standards and lower energy bills.
- » Granite Construction Co. The heavy construction specialist makes a diverse effort to recycle waste materials, avoid polluting and toxic materials, cut energy use, employ solar panels and greatly reduce dust emissions from its operations. Its work has reduced materials going to landfills by tons, saved money and improved the community's environment.
- » LangeTwins Estates. The Lodi vineyard management company and winery has long incorporated a laundry list of sustainable practices in its operations, including integrated pest management, solar energy, cover crops, an artificial wetlands used to treat winery wastewater and riparian habitat restoration. Those efforts have cut chemical runoff, dust pollution, boosted habitat for rare and endangered species, and provided a myriad of economic benefits as well.
- » City of Ripon. An expansion of City Hall included installing solar panels to generate electricity as well as light-motion sensors throughout the building to turn off lights when no one was present. The solar panels provide at least 20 percent of the building's energy needs during peak months.
- » Commercial Exchange Club. One employee began collecting recyclable materials from the restaurant, redeeming them in for cash that was donated to a needy family. That inspired managers and other employees, who instituted a more comprehensive program of recycling materials, using environmentally friendly cleaning products and avoiding use of disposable paper

plates and cups and plastic utensils. The result is greatly reduced trash volumes and benefits to the family.

» Waverly Annex Middle School Behavior Change Program. This program, which works to resolve student behavior and emotional problems and move its young charges back into general school populations, has developed an extensive variety of "reduce, reuse and recycle" programs. Those include a vocational program in which students collect, sort and redeem recyclable materials from two campuses, composting, used-battery collection, clean-up days at local parks and a plastic-bag recycling challenge.

Judge dismisses state's lawsuit

Federal government should address global warming, ruling states

By Howard Mintz, Medianews Staff

Tri-Valley Herald, Tuesday, September 18, 2007

A federal judge in San Francisco on Monday poked a gaping hole in California's bid to make the auto industry pay for any contributions it makes to global warming.

In a 24-page ruling, U.S. District Judge Martin Jenkins dismissed the state's lawsuit against six automakers, concluding that the federal courts are not the place to resolve the complex issues surrounding global warming. The judge said it is up to Congress and the executive branch to address California's arguments, not judges.

The ruling is a major setback for Attorney General Jerry Brown, who has made global warming one of his cornerstone issues since he was elected last year. Even though Brown inherited the global warming lawsuit from his predecessor, Bill Lockyer, he pressed ahead with the controversial case when he took office.

California is the only state to sue the auto industry for damages over global warming, arguing that the "Big Six" auto makers violate the state's public nuisance laws because their vehicles emit greenhouse gases. General Motors, Ford, Chrysler, Toyota, Honda and Nissan were named in the lawsuit, which argues that they contribute to a range of environmental problems, including the decline of the Sierra snowpack and threats to wildlife.

The lawsuit sought unspecified money damages.

Deputy Attorney General Ken Alex, who argued the case for Brown, said he was "disappointed" in the ruling. His office is reviewing whether to appeal it to the 9th U.S. Circuit Court of Appeals.

"We're not totally surprised a district court wouldn't want to jump in with both feet into a global warming matter," Alex said.

Theodore Boutrous Jr., the lead lawyer for the automakers, called Jenkins' ruling "absolutely correct." Michigan backed the auto industry in the case.

"We have said all along that global warming presents exceedingly complex policy issues that must be addressed at the national and international levels by Congress and the President, not the federal courts," Boutrous said.

Jenkins, in siding with the industry's arguments, found that a lawsuit was a flawed way to deal with the global warming issue because it collided with the federal government's role in environmental regulation, as well as the Bush administration's foreign policy on regulating greenhouse gases.

But Jenkins' primary concern was the difficulty of sorting through what he called "a thicket" of issues that are best left to the political and scientific arena. In the ruling, Jenkins pointed out that the federal courts are ill-equipped to evaluate how much of a factor auto emissions may be in global warming.

"The court is left without guidance in determining what is an unreasonable contribution to the sum of carbon dioxide in the earth's atmosphere," the judge said, "or in determining who should bear the costs associated with global climate change."

The auto industry is also squaring off with California in the courts in a separate case. That case takes a different legal tack, challenging a state law requiring automakers to reduce vehicle carbon emissions by 2009. A federal judge in Vermont last week rejected the industry's challenge to that state's nearly identical law, boosting California's hopes of prevailing in the courts here.

Gov. Arnold Schwarzenegger also has threatened to sue the U.S. EPA if it doesn't grant a waiver to its rules by October allowing the state to set its own emissions standards for cars and trucks sold here.

Federal judge rules against Calif, tosses global warming lawsuit

By Paul Elias, Associated Press

In the Fresno Bee and other papers, Tuesday, Sept. 18, 2007

It is impossible to determine to what extent automakers are responsible for global warming damages in California, a federal judge ruled in tossing out a lawsuit filed by California against the world's six largest automakers.

In his ruling Monday, District Judge Martin Jenkins in San Francisco noted that many culprits, including other industries and even natural sources, are responsible for emitting carbon dioxide.

The ruling was a defeat for California Attorney General Jerry Brown, who has made fighting global warming a priority. In its lawsuit filed last year, California blamed the auto industry for millions of dollars it expects to spend on repairing damage from global warming-induced floods and other natural disasters.

"The court is left without guidance in determining what is an unreasonable contribution to the sum of carbon dioxide in the earth's atmosphere, or in determining who should bear the costs associated with global climate change that admittedly result from multiple sources around the globe," Jenkins wrote.

The judge also ruled that keeping the lawsuit alive would threaten the country's foreign policy position.

The Bush administration has consistently opposed any international treaty - including the 1997 Kyoto Protocol - that would impose cuts on greenhouse gases.

"President George W. Bush opposes the protocol because it exempts developing nations who are major emitters, fails to address two major pollutants, and would have a negative economic impact on the United States," Jenkins wrote in his 24-page decision. To rule in favor of California would undermine the administration's position, Jenkins said.

Jenkins said it's up to lawmakers, rather than judges, to determine how responsible automakers are for global warming problems.

Jenkins ruled that a court "injecting itself into the global warming thicket at this juncture would require an initial policy determination of the type reserved for the political branches of government."

Ted Boutros, who represented the automakers, said that the global warming issue "is very complicated and this court said it's best left to national lawmakers to determine policy. We are pleased with the ruling."

The state sued Chrysler Motor Corp., Ford Motor Co., General Motors Corp. and the U.S. subsidiaries of Japan's biggest manufacturers, Honda North America, Nissan North America and Toyota Motor North America.

Michigan's attorney general also filed court papers backing the automakers, making many of the same arguments that Jenkins ultimately adopted.

Michigan said its economy would be severely crippled if automakers were forced to pay damages to California for contributing to global warming. Michigan said such policy decisions should be left for federal lawmakers.

The lawsuit was originally filed by former California Attorney General Bill Lockyer, who was elected state treasurer in November 2006. Brown took over the lawsuit after his election as attorney general.

Brown has successfully sued San Bernadino County to add a carbon emissions reduction scheme in its revised general plan. Last week, he wrested a \$10 million agreement from oil giant ConocoPhillips Co. to reduce or offset its carbon output. Brown also has sent threatening letters to about a dozen state agencies demanding they take climate change into account when making development plans.

"We need to study this closely," said Deputy Attorney General Ken Alex, who argued the state's case. "We will give serious consideration to an appeal."

Many scientists blame the buildup of carbon dioxide and other industrial gases for heating the atmosphere like a greenhouse.

While carbon dioxide is a naturally occurring gas, amounts of it have been increasing sharply since the beginning of the industrial age. It is produced by fossil fuels burned in manufacturing plants, motor vehicles and power plants.

U.S. judge throws out state global-warming suit against automakers

Henry K. Lee, Chronicle Staff Writer

S.F. Chronicle, Tuesday, September 18, 2007

San Francisco -- A federal judge in San Francisco has thrown out a lawsuit that the state attorney general filed against the six largest automakers, in what had been billed as a novel attempt to hold the companies financially liable for global warming.

The suit alleged that carmakers have damaged the state's natural resources and created a public nuisance by producing "millions of vehicles that collectively emit massive quantities of carbon dioxide." Those emissions required major expenses in firefighting and other areas, the suit said.

But in a 24-page decision Monday, U.S. District Judge Martin Jenkins said it would be inappropriate for the court to wade into the "global warming thicket" as it pertained to interstate commerce and foreign policy - matters he said should be left to the political branches of government.

"In this case, by seeking to impose damages for the defendant automakers' lawful worldwide sale of automobiles, plaintiff's nuisance claims sufficiently implicate the political branches' powers over interstate commerce and foreign policy," Jenkins wrote.

The automakers aren't the only companies responsible for global warming, he said.

"In this case, there are multiple worldwide sources of atmospheric warming across myriad industries and multiple countries," Jenkins wrote.

The suit was filed in September 2006 by then-state Attorney General Bill Lockyer against General Motors, Toyota, Ford Motor Co., Honda North America, Chrysler Motors Corp. and Nissan North America.

Theodore Boutros, a Los Angeles attorney representing the automakers, said his clients were pleased that the lawsuit was tossed.

"Our bottom-line point is that global warming presents exceedingly complex policy issues that must be addressed at the national level by Congress and the president, not through lawsuits seeking damages in the federal courts," he said.

In announcing the suit last year, Lockyer noted that cars produce about 30 percent of the carbon dioxide emitted in California. "It is time to hold these companies responsible for their contribution to the (global warming) crisis," he said.

"Global warming is harming California, its environment, its economy and the health and well-being of its citizens," said the suit, which Attorney General Jerry Brown took over in January.

In his ruling, Jenkins said the state had not proved that there was a sound framework by which global-warming nuisance damages could be assessed.

At a hearing earlier this year, Jenkins said it could be difficult for a judge or jury to determine how much California residents were being harmed by one industry's contribution to a global problem.

Ken Alex, a supervising deputy attorney general, said the decision was disappointing.

"But we'll take some time to carefully review the decision and see what next steps are appropriate and whether it's appropriate to take an appeal," he said.

Alex said he recognized that the judge was reluctant to "jump into the middle of the global-warming dispute. On the other hand, we think it's such an important issue that it may be appropriate to ask the court to do just that."

The suit sought unspecified damages for the harm to state lands, waters and the air, as well as the state's costs in planning and prevention. Global warming can kill trees and habitat and change the state's annual precipitation. Rising sea levels will probably inundate roads and other infrastructure like sewage-treatment plants and public buildings.

Another federal judge is considering automakers' challenge to a California law that requires vehicles to limit emissions of greenhouse gases starting in 2009.

"When it comes to solving global warming, the eyes of the world are still on California," said Jeremy Symons of the National Wildlife Federation. "If the Bush administration will not lead on global warming, they need to get out of the way and let California pave the way forward."

Global warming lawsuit dismissed

A judge denies the state's bid for damages from carmakers.

By Marc Lifsher, Los Angeles Times Staff Writer
L.A. Times, Tuesday, September 18, 2007

California's attempt to collect billions of dollars in damages by accusing automakers of creating a global warming-related "nuisance" was dismissed Monday by a federal judge in San Francisco.

The courts aren't set up to deal with climate change and other "political questions" with international reach, U.S. District Court Judge Martin J. Jenkins said. That task belongs to Congress and the executive branch of the government, he said.

The suit, originally filed a year ago by former Atty. Gen. Bill Lockyer, claimed that emissions of carbon dioxide and other so-called greenhouse gases from automobile tailpipes cause environmental damage. It cited as examples melting Sierra snowpacks, prolonged droughts and dying forests.

Car makers denied that their products could be characterized as nuisances under California and federal law. "Our bottom-line point is that global warming presents exceedingly complex policy issues that must be addressed at the national and international levels by Congress and the president, not through lawsuits seeking damages in the federal courts," said Ted Boutros, lead attorney for the auto companies.

The defendants in the case included General Motors Corp., Toyota Motor North America Inc., Ford Motor Co., American Honda Motor Co., DaimlerChrysler Corp. and Nissan North America Inc.

Those same auto companies, independently and through trade groups, are suing the state of California in U.S. District Court in Fresno, challenging a 2002 California law that would limit vehicle greenhouse gas emissions.

That case revolves around states' rights to control pollution under the U.S. Clean Air Act of 1967. California and other states got a boost last week when a federal judge in Vermont ruled against automakers in a similar suit. The Vermont and Fresno cases, however, deal with legal questions different from those argued before the judge in San Francisco.

California Deputy Atty. Gen. Ken Alex said he was disappointed with the San Francisco judge's decision and was considering an appeal. "We recognize that it's a difficult decision for a district court judge to jump into a global warming public nuisance case," Alex said.

He said the state sued the automakers because Congress and the Bush administration had taken no meaningful action to deal with the threat of global warming. "In fact, they are standing in the way of California doing something," he said.

Industry response polite at meeting on cutting greenhouse gases

Tom Chorneau, Chronicle Sacramento Bureau
S.F. Chronicle, Tuesday, September 18, 2007

Sacramento -- Regulations aimed at reducing greenhouse gas emissions in California drew polite response from industry representatives at a workshop Monday after regulators and environmentalists had braced for a bigger push back.

The California Air Resources Board, charged with implementing the state's landmark global warming law, is set next month to adopt nine proposed rules that they hope will result in the elimination of 16 million metric tons of emissions - or about 10 percent of the state's goal to reduce emissions by 25 percent of 1990 levels by the year 2020.

Among the "early action" rules is a plan requiring that big-rig trucks be retrofitted with devices that reduce aerodynamic drag. Oil-change technicians would be required to ensure proper tire inflation as part of the service, while ports would be required to provide electrical outlets to allow docked ships to shut down their auxiliary engines.

Big business had been expected to strongly oppose the rules, but most industry representatives who spoke at Monday's workshop said they were willing to work with state air regulators.

"We're not arguing about whether or not to do something, we're past that now," said Joe Sparano, president of the Western States Petroleum Association, which represents about 30 companies that produce most of the refined petroleum in Arizona, California, Hawaii, Nevada, Oregon and Washington.

"It's in the best interest of everyone in this state and our industry to work as best we can to be on the front end of how that law is implemented," he said. "The stakes are too high. We cannot afford not to get things right."

The air board appears to be positioned to move aggressively on implementing the global warming bill, which attracted international attention last year and stands as the centerpiece of Gov. Arnold Schwarzenegger's legislative accomplishments.

But the administration is trying to mend fences with environmentalists after the governor's controversial firing in June of air board Chairman Robert Sawyer, who had accused the governor's office of moving too slowly to impose regulations on industries.

The board's new leader, environmental attorney Mary Nichols, has promised to push ahead with the new global warming laws as fast as possible.

At its meeting in October, the board is expected to begin making the nine new rules into law - a process that could take more than two years to complete. A list of 35 other rules is also expected to receive initial backing from the air board next month.

Leo Kay, air board spokesman, said the first group of rules is considered to be commonsense ideas that business should be able to adapt to without much trouble.

"These are the low-hanging fruit that shouldn't be too tough to comply with," he said. "The more difficult regulations will come further down the pike. So we're not surprised that so far the reaction has been muted."

Bill Magavern, a lobbyist for the Sierra Club, said he expects more opposition from the business community as the air board gets closer to adopting the rules.

"They are being polite because we are only at the workshop stage," he said. "What we heard today was grumbling from the trucking industry and cement manufacturers. We know that the oil refiners are already trying to weaken some of the proposals."

But Dominic DiMare, vice president of government relations at the California Chamber of Commerce, said his members want the law, AB32, to be implemented so that emissions are cut without hurting the economy.

"We fought the battle over AB32 and we lost," he said. "Now it's the law, so we've shifted gears."

For New Center, Harvard Agrees to Emissions Cut

By Felicity Barringer

N.Y. Times, Tuesday, September 18, 2007

Harvard has agreed to limit greenhouse gas emissions from the university's proposed four-building science center in the Allston section of Boston, the state's environmental officials announced yesterday.

The agreement, which Harvard entered voluntarily at the state's suggestion, will cut emissions 50 percent below the levels required by the national standard, said the state's energy and environment secretary, Ian A. Bowles. Mr. Bowles said the Harvard agreement represented the first legally enforceable limits on emissions from a large real-estate project. The complex is 537,000 square feet.

"I expect the Allston project is going to be watched carefully around the country as other institutions and other states step forward to take on such commitments in years to come," Mr. Bowles said.

Mandatory controls of the heat-trapping gases that scientists have linked to global warming have thus far been considered largely in the context of industry and vehicle emissions.

But the design of buildings - how they are heated, cooled, insulated and a host of other details - plays a significant role in determining national energy use and emissions.

This year Massachusetts announced a greenhouse gas emissions policy that covers major real-estate projects. All qualify for regulation under the state's environmental protection laws, and their developers must quantify the total greenhouse gas emissions associated with the projects and detail what they are doing to reduce those emissions, a news release from Mr. Bowles's office said.

In an interview, Chris Gordon, the chief operating officer of the Allston Development group at Harvard, said he welcomed the opportunity to commit the university to the new standards. And, while he declined to estimate publicly how much the science complex would cost, he said he did not expect the new design measures to add significantly to the overall bill.

"First of all, the technology associated with green construction has dropped dramatically in the last decade," Mr. Gordon said. "Geothermal wells, natural ventilation, natural lighting - most of it doesn't cost a premium anymore. Also, we think the operating costs will go down. When you save 50 percent on greenhouse gases, you're burning less fuel and buying less fuel."

Mr. Gordon said it was not possible, in a short span of time, to quantify the exact tonnage of the greenhouse gas reductions to which the university had committed.

Harvard's commitment to reductions mirrors what colleges and universities across the country are doing, including Carnegie Mellon and Arizona State.

To date, 399 college presidents have signed the American College and University Presidents Climate Commitment, pledging to assess their greenhouse gas emissions and develop a strategy for reducing them, or buying offsets, with the goal of becoming carbon neutral, or adding no carbon-dioxide emissions to the atmosphere.

"We are acting as a model for the rest of society saying we are going to do everything we can to reduce our emissions," said an organizer of the initiative, Anthony Cortese. "The bigger commitment we are making is that we are going to create the knowledge and the graduates that will help society" achieve the same goals.

Harvard is not a signatory to the climate initiative, but Mr. Gordon said in a statement: "Harvard's Allston campus ultimately will be the university's greatest expression of environmental sustainability. Today's decision continues progress towards an environmental strategy that benefits both the university and the community."

Residents of the Allston neighborhood have been skeptical, if not prickly, about the university's expansion from Cambridge. The move is part of a 50-year plan that would increase the campus footprint by about 50 percent. Construction on the science complex, the first part of the expansion, is set to begin this fall and end in 2011.

This year, two members of a task force formed by Mayor Thomas M. Menino of Boston criticized the development plans in an article in *The Boston Globe*. They singled out the science complex for its 125-foot height, which they said was incompatible with the smaller neighborhood homes.

But, when contacted yesterday about Harvard's agreement with the state, Brent Whelan, one of the critics, said the green component of the construction was one good aspect of a project that had raised concerns about the future of the neighborhood, and about communications between the university and Allston residents.

Although some of the new design elements will add to the height of the complex, Mr. Whelan said that was an acceptable trade-off. "There are some consequences for the green construction," he said, "but I think most people agree that it's a really, really good thing they're doing."

After approving the plans for the science complex, with the commitment to keep greenhouse gases from energy use 50 percent below the national standard of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Mr. Bowles signed documents setting the terms for the coming environmental reviews of the rest of the Allston project, as it develops.

These establish greenhouse gas limits about 30 percent below those in the national standard.

Showdown Over Hawaii Superferry Heats Up

By Jaymes Song, The Associated Press

In the Washington Post, Tuesday, September 18, 2007

HONOLULU -- Operators of the first passenger-vehicle ferry between major Hawaiian Islands hoped to provide a convenient and luxurious alternative to air travel. Instead, they got protests _ Hawaii-style _ focused on the environment.

The Hawaii Superferry, a high-speed catamaran that can carry more than 850 passengers and 250 cars, remains idle in bustling Honolulu Harbor as judges on two islands hold hearings to determine whether it can operate while an environmental assessment is conducted.

The state plans to conduct such an assessment on the potential impact the ferry could have on harbors statewide. The review is expected to take at least eight months, and possibly longer if it is challenged.

That could be too long, said an official of the privately held Superferry, a \$300 million venture whose largest investor is the private equity firm J.F. Lehman & Co.

The Superferry, with 300 employees, said it will be forced to shut down if it isn't allowed to sail while the environmental review is under way.

"We are unable to sustain operations for that length of period without revenue," said John Garibaldi, the ferry's president and chief executive.

If the Superferry folds, the state and the federal government could wind up losing millions. The state has provided \$40 million worth of harbor upgrades and equipment, and the federal government has approved \$140 million in loan guarantees for the ferry.

A second ferry is under construction in Alabama, set for service in 2009 between Oahu and the Big Island.

Environmentalists worry that the sleek, four-story vessels could collide with whales, spread invasive species and worsen traffic and pollution. The Superferry voluntarily suspended service Aug. 28 after two days of demonstrations at Nawiliwili Harbor on Kauai, where dozens of protesters on surfboards, canoes and kayaks blocked the \$95 million ferry.

Last month, the state Supreme Court unanimously ruled that the state should have required an environmental review before Superferry service began. Now, judges on Maui and Kauai are holding hearings to determine whether service can resume while the impact on the environment is studied.

Garibaldi said he needs "actionable information" within four to six weeks to determine whether to shut down for good. He wouldn't elaborate, and he wouldn't comment on a possible backup plan or how much money his company is losing while the 350-foot ferry sits idle.

"Our current efforts are focused on the resumption of services," he said in a recent e-mail.

Gov. Linda Lingle, a strong supporter of the ferry, has argued the state followed the law, determining in 2005 that an environmental review wasn't necessary because the project fell under an exemption.

"It was only recently that the Supreme Court came out with its own interpretation of the law, which was different than everyone in the state had interpreted," she said.

Lingle said there's no doubt the ferry will go out of business if it isn't allowed to resume operation while an environmental review is conducted.

"I don't think the majority of the people in the state want to see that happen," she said.

University of Hawaii law professor Jon Van Dyke, an expert on environmental and maritime law, said environmental reviews have been required in the U.S. since 1969 and are needed to protect Hawaii's fragile environment.

"This is a well-established procedure that's now done all over the world," he said. "So the idea that you would try to leapfrog over this logical and important requirement is to me a little bizarre."

On both Maui and Kauai, the issue is the need for an environmental assessment, but much of the protest on Kauai is rooted in anti-development sentiments and a desire to preserve the island's rural nature.

Jeff Mikulina, director of the Sierra Club's Hawaii chapter, said the group's goal was never to sink the Superferry but to get an environmental review completed.

"This is a brand-new sort of operation, unlike anything we've had previously. It comes with a certain amount of risk and we just want to understand that risk," he said.

Mikulina said his group requested an environmental review three years ago, so the Superferry's present challenges could have been avoided. He said companies and government officials are trying to "cut corners" and ignore laws, creating bad business practices.

"We have clear rules to play by," he said. "If you come here and abide by the rules, we'll get along just fine."

Ferry supporters point to the obstacles and possible shutdown as feeding the idea that Hawaii is an unfriendly place to do business.

"We share the business community's concern about the message this sends to the outside world about investing in Hawaii or undertaking a viable business venture here," Garibaldi said.

[Washington Post Commentary, Tuesday, September 18, 2007:](#)

Recyclers Used to Burning Rubber Are Now Idling

By Cindy Skrzycki

A new industry that recycles old tires into fuel, saving companies millions of dollars and reducing a billion-tire national stockpile, is in limbo after a U.S. appeals court tossed out some federal clean-air rules.

In the past decade, owners of industrial boilers considered themselves do-gooders because they had the Environmental Protection Agency's blessing to burn alternative fuels, including old tires. Yet environmental groups said the practice dodged clean-air requirements by classifying incinerators as boilers, which have less stringent emission rules.

On June 8, a panel of the U.S. Court of Appeals for the District of Columbia agreed, heading off a new EPA rule that was to go into effect last week and forcing the agency to come up with a new definition of "solid waste."

"Tires will become a pariah if they are classified as a solid waste," said Michael Blumenthal, senior technical director for the Rubber Manufacturers Association in the District, which represents major tire manufacturers. He said the impact of the ruling would be "monumental."

Michael Sorcher, president of M.A. Associates, a marketer of tire-derived fuel based in Overland Park, Kan., said the new industry has been thriving. It saves more than \$100 million a year for such customers as International Paper of Memphis, and Holcim of Jona, Switzerland, the world's second-largest cement maker, he said.

"This regulatory change doesn't just affect end users but the whole industry structure," Sorcher said, referring to makers of crumb rubber and other forms of recycled tire rubber. "It would be devastating for the industry in general."

The court said facilities burning tires, wood, bark and other industrial wastes had been improperly classified by the EPA. The agency allowed facilities that "recovered energy" to be designated as boilers instead of following language in the Clean Air Act designating units that burn any solid waste as incinerators.

"Had Congress intended to exempt all units that combust waste for the purpose of recovering thermal energy, it could likewise have expressly provided for their exemption in the statute," the ruling said.

Robert Wayland, leader of the EPA's Energy Strategies Group in the Office of Air Quality Planning and Standards, said the agency wanted to encourage the use of alternative energy sources, including tire-derived fuel. "We thought we had the purview to include these," Wayland said.

Cement kilns are the biggest users of tire-derived fuel, burning as many as 60 million tires a year, said Michel Benoit, executive director for the Cement Kiln Recycling Coalition in the District.

The last thing his members want, Benoit said, "is another rule and charting into some unknown territory" that would make replacing coal with tires uneconomical.

"Nobody has been ruled in or out at this point," said the EPA's Wayland, adding it will take at least two years to propose and complete a new rule that defines fuel and waste.

Jockeying over the new proposal has already begun. The Rubber Manufacturers Association told the EPA on June 25 that it should modify any new rules to exempt tires from its definition of solid waste.

The growth of markets for tire-derived fuel was nurtured by the EPA in the past 20 years to solve another environmental problem -- the billion-tire stockpile was a fire and disease risk.

Environmentalists were unsympathetic to the plight of tire recyclers and their customers.

"If they burn tires, they have to meet emission standards," said James Pew, staff attorney with Earthjustice, a District environmental law firm that argued the case with the Natural Resources Defense Council, a nonprofit group. "It's not our goal to crack down on them, just to get a better environmental result."

The biggest users of tire-derived fuel said they will have to calculate the energy savings against the higher costs of being reclassified as an incinerator.

"If it's 10 percent of the fuel they use and it's millions of dollars for more controls, mills will say it's just easier to switch fuels," said Timothy Hunt, senior director for air-quality programs at the District-based American Forest and Paper Association, which represents pulp, paper and wood mills that use biomass and tires as fuel. "Every paper mill will face that decision."

He said that though states may step in with interim controls, facilities don't have a rule to comply with until the EPA comes up with a new standard.

Whatever the outcome, at least one company thinks the decision will encourage a different form of recycling tires: freezing and then pulverizing them into powder that can be used in paint, tile, decking, automotive parts -- and new tires.

Lehigh Technologies, a private company in Naples, Fla., uses about 7 million tires annually. One official there says the growth potential for its process is immense and doesn't have environmental consequences.

"We're interested in converting the rubber into more beneficial uses," said Patrick George, Lehigh's chief financial officer. "We're just trying to figure out how this affects our business."

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Rx for clean air: clean energy

Clean air is an easily understood concept. Most people will find the term "clean energy" a little more difficult to grasp. It helps to understand that the two terms are closely related.

This region ought to embrace the concept of clean energy as willingly as it strives to clean its air, because the two objectives must occur together. Conversely, if we don't learn to adopt practices and policies that embrace clean energy, we probably don't have much hope of ever having cleaner air.

Thankfully, there is a new initiative to direct the region's strategies in energy use that is being directed by the California Partnership for the San Joaquin Valley. The coalition has formed the San Joaquin Valley Clean Energy Organization to help the Valley address the challenges of growth by continued reliance on clean energy.

What is clean energy? It refers to conservation, renewable energy sources and more efficient use of energy, especially through improved technologies.

Renewable energy refers to energy sources such as solar, wind and biomass, and to an extent, hydro power, which can be used over and over, as opposed to energy sources such as fossil fuels that are burned once and then gone. Efficient energy strategies refer to new devices and designs that reduce the amount of power used to accomplish the same thing, such as passive lighting systems.

Visalia is in a particularly good position to become a leader in this effort thanks to a partnership with the San Joaquin Valley Clean Energy Organization. The SJVCEO will provide advice and

support, including access to grant funding, as the city embarks on increasing its use and reliance on clean energy.

Few Visalians are probably aware of the extent to which the city of Visalia already practices strategies that use clean energy. The city is increasing its use of compressed natural gas in its vehicles and is buying a couple more transit buses that run on gas. Besides being cheaper than gasoline, CNG burns more cleanly, reducing air pollution.

When the city built its two new police substations, it emphasized making them "green" buildings, that is, built with the latest in energy-saving design and technology. It used straw bales for construction because they are excellent insulators. It used solar lighting, high ceilings and fans, and low-voltage electronic devices. Even the way the building was laid out and designed was done to maximize energy efficiency in heating and lighting.

The city is undergoing energy audits of their other buildings to identify ways it can make further energy savings. The federal government has grants available to cities that adopt clean energy strategies.

Why should this matter to Visalians? The best of reasons - it will save public money, especially over the long term, allowing the city to apply funding resources to more worthy things than simply paying the light bill.

The city can also serve as a role model for individuals who are trying to do the right thing in their own homes. With the price of crude oil at an all-time high, and electricity rates spiking, who does not want to find a way to cut down on energy use? Motorists might not be able to convert to a CNG vehicle. Homeowners might find it difficult to convert their home to a green building. But they can adopt some of the simple things that will bring the Valley closer to greater reliance on green energy.

SJVCEO officials hope to achieve a proportion of clean energy use that is known as "25 by 25," or 25 percent use of clean energy by the year 2025. How much is being used now? That's one of the things the organization hopes to establish, and one of the problems in the San Joaquin Valley: The Valley has a number of haphazard uses of more efficient energy, but it is not coordinated, there is no clear notion of the gaps nor of the potential, and there is likely duplication in some programs.

One area of huge potential is agriculture, which is a huge energy consumer but also has potential for conservation and energy renewal, especially in use of biomass.

The Valley has long faced obstacles in management of natural resources such as air and water because of the fractious nature of its many interests - urban, rural, agriculture, environmental, business and many types of enterprises. The San Joaquin Valley Clean Energy Organization believes it has an advantage in addressing energy because it has a diverse range of participants. Its board of directors contain residents from academia, technology, environment, large and small business, public and private sectors, agriculture and, most of all, utility companies. The willingness of utilities to promote and reward energy conservation and efficiency is vital to progress.

Why should we all care? If lower energy bills and more efficient use of energy weren't enough incentive, consider this: If the Valley can make significant progress on use of clean energy and continue to reduce its reliance on fossil fuels, we'll breathe easier, too. And there will come a day when the Sierra Nevada is visible to residents every day of the year, and not just on those select few when the wind blows the right way. That is something we should all look forward to.