## Air district officials seek clean status for Valley

By Mark Grossi

The Fresno Bee, Friday, February 17, and Tri-Valley Herald, Monday, Feb. 20, 2006

Local air authorities on Thursday said the San Joaquin Valley is approaching a historic moment when the air has been cleared of unhealthy dust and soot levels.

The San Joaquin Valley Air Pollution Control District soon will ask for federal officials to designate this area as a clean-air basin for such particle pollution.

But the Valley's first major air milestone in a decade won't happen without a challenge. Environmentalists claim officials are requesting clean-air status while sidestepping possible violations over the last three years.

An Earthjustice Legal Defense Fund lawyer said he is prepared to argue against the district's campaign to be considered in attainment of the particle pollution standard.

"They're claiming attainment while ignoring readings from other monitors around the Valley," said lawyer Paul Cort. "We will challenge them."

Cort commented during a discussion of particle pollution Thursday at the district's governing board meeting.

Board members, meanwhile, applauded the approaching milestone and the improvements the district has made.

New rules, industry cleanup efforts and good weather have resulted in fewer bad-air days over the last three years, district officials say. Although this area remains one of the country's worst air basins for smog, for instance, violations dropped dramatically last summer.

The Valley also is one of the worst places for the tiniest particle pollution, called PM-2.5, or particulate matter 2.5 microns wide and smaller. PM-2.5 is about one-thirtieth the width of a human hair, and it can easily lodge deep in the lungs.

The success story has been the cleanup of PM-10, which generally refers to dust and other particles that are about one-seventh the width of a human hair. Such particles can trigger lung and heart problems.

The Valley has gone three years without a PM-10 violation, officials reported. The district sent its monitoring data to the U.S. Environmental Protection Agency for confirmation.

Within weeks, officials will ask the EPA to declare the Valley clean in regard to PM-10. If the request is granted, the Valley would not face PM-10 cleanup deadlines or penalties, such as the withholding of federal road-building funds. But the area still would have to avoid future violations.

Cort said the district still might not have reached attainment because several air monitors showed violations in November.

District officials said Cort is referring to secondary monitors that are intended to show short-term trends, not measure for federal violations. The district operates nine monitors that make the official measurements, said planning director Scott Nester.

"They're called federal reference method monitors, and they have big filters that are shipped to the state for weighing to determine how much particulate matter there is," he said. "We don't think the other monitors are the same. We don't think EPA will consider them."

The secondary monitors rely on energy pulses to detect pollution continuously. During a dry time in November, particulate matter climbed to violation levels on four different days.

Earthjustice studied further data and found four other violation days in 2003. To be considered clean, the Valley could only have one violation per year over a three-year period.

Said Cort, "EPA does consider this data, and we think they should in this case."

## Mills help reduce ammonia levels

Warren Lutz - Record Staff Writer
Stockton Record, Monday, Feb. 21, 2006

ESCALON - There was a time when dairyman Frank Faria couldn't stand on the edge of his manure lagoon without holding his nose.

That was a year ago, when the surface was caked with at least 6 inches of raw cow sludge, producing a dangerous level of ammonia. Today, there's only a faint smell.

"It's very simple," Faria said, looking out at eight whirring pond mills floating in the lagoon. Each circular, floating device, about 4 feet across, has a paddle that churns the water into a reddish-purple hue. "I wish we had done this years ago."

He's not sure exactly how the mills successfully aerate and change the wastewater's chemistry, but less stink means the mills are cutting ammonia levels.

Manure from 1.5million cows is the San Joaquin Valley's No. 1 source of ammonia. But the problem isn't just the smell. Mixed with vehicle exhaust -- another Valley scourge -- ammonia helps produce tiny pollutant particles that lodge inside human lungs, triggering serious illness and even premature death, according to human health studies.

Yet although nearly every other source of air pollution is regulated in some way, there are no rules that apply to ammonia releases from California's $4.6 billion dairy industry. And there are not likely to be anytime soon.

Although Valley air-quality officials have the authority to regulate ammonia, they don't, because there's just too much of it, said David Mitchell, a planning manager for the San Joaquin Valley Air Pollution Control District.

Instead, officials are focusing their attention on vehicle exhaust created by businesses and developments that put more cars on the road.

"You'd have to reduce a whole lot of ammonia before you get any benefit," Mitchell said.

Some environmentalists accuse the district of avoiding the issue.

Brent Newell, an attorney with the nonprofit Center on Race, Poverty and the Environment, pointed to a 2003 state law that holds farms to the same standards as other polluters.

Under the new law, air districts are allowed to start regulating farms by July. A spokeswoman for the bill's author, state Sen. Dean Florez, D-Shafter, confirmed the law applies to ammonia as well as to other air pollutants.

"The rationale that there's so much of it that we can't do anything about it -- that's insanity," Newell said. "That's like saying there's so much water pollution we shouldn't bother to clean it up."

Meanwhile, the dairy industry is bracing for more regulations.

"It's been clear that there's going to be a change at the air district," said Mike Marsh, chief executive officer of Western United Dairymen, who says dairy farmers are looking forward to cooperating with regulators.

In a 2003 study funded in part by the state Air Resources Board, researchers shot lasers across dairy fields to measure the amount of ammonia in the air. The air board has used the results to craft guidelines for air districts trying to regulate ammonia.

California State University, Fresno, professor Charles Krauter, who led that study, said air officials wanted to know what part of dairy operations created the most ammonia.

"Finding them and identifying them and finding out how much the quantities are -- when there are very, very small quantities -- has turned out to be very difficult," Krauter said.

Marsh said more research needs to be done before rules come out.

"That's something we really need to have some science on so we can figure out where it's coming from and how best to minimize it," he said.

After 40 years in the dairy business, Faria thinks he's got part of the answer. Last year, he paid $33,000 -- half the total cost of the manure-pond mills -- to take part in a study to reduce odors in the ponds. The 2004 study was paid for with money from the U.S. Department of Agriculture.

Faria is preparing for new rules. The public's concern about dairy emissions, he said, will only grow.

"Anybody who doesn't believe that has their head in the sand," he said. "We're going to have to belly up to the bar and spend some money so we can co-exist."

## Chevron Weighs Request For $25 Mil For Local Dairy Center

Valley Voice Newspaper, February 21, 2006

*Tulare* - For several months UC Veterinary Center director Jim Cullor has been quietly meeting with Chevron officials to see if there is interest in helping to launch the California Dairy Technology Center in Tulare.

To be located on about 100 acres north of the UC Veterinary Complex, the center would be home to about 2000 cows and replacement animals and a state-of-the-art research center dealing with nutrition management and renewable energy.

This past week was the third meeting between Chevron and local officials and this time a wider group was involved including Tulare's mayor -- Rich Ortega, a representative of Devin Nunes office -- Ed Galvan, COS's Larry Dutto and High School Superintendent Gerald Benton. Representing the UC system was Dean Benny Osburn and Jim Cullor among others. Two representatives from Chevron's Bakersfield corporate office heard a several hour promotion from the group on the project that has been 7 years in the making.

Cullor says the "meeting went very well" and hopes to hear from the oil company in the next few weeks on how their proposal was received by management based in San Ramon in the Bay Area.

Cullor says while he has requested Chevron funding for the entire project, "we would be happy for them to participate on any level." He says the cost of the property includes about $14 million in construction costs and the remainder in start up equipment, staffing, training and animal costs including feed. The plan is to build a 100 milking cow dairy with a vocational component for training people for the dairy industry, veterinary and renewable energy business -- all important to the central valley. Mr. Dutto says he is particularly excited about the "human capital" component that will allow COS to increase vocational training in the dairy industry and move toward biofuels. "We see jobs in the ethanol industry" needing trained people to work here in the central valley where 5 plants are expected to open in the next few years. Dutto says the technology center will enable the dairy industry "to get the best research" on how to cut air and water pollution and utilize dairy waste to make electricity. A methane digester will be part of the instructional dairy project and is expected to make electricity to run the technology unit and perhaps the entire UC vet center. Dutto says separately he is applying for state funds to kick off increased vocational classes in renewable energy technology.

Chevron, for its part, is being asked to do this project on a philanthropic basis but could benefit from the research in renewable energy that seems to be attracting this oil company more and more.

In recent weeks the company announced a partnership with Fresno-based Pacific Ethanol to test E-85 fuel (85% ethanol and 15% gasoline) on state fleet cars later this summer. Last week Chevron announced the completion of a hybrid alternative power plant in San Francisco using solar and hydrogen fuel that will reduce power costs in the town's huge mail processing center.

Cullor says the company is being asked to help following its core principals including engaging in community need, economic development, education and renewable energy and the environment.

Mayor Rich Ortega, who had a hand in bringing the UC Veterinary Center to Tulare in 1981, says "this was always the idea" for the center being located in the state's top dairy region to carry on research that will help the local dairy industry. He predicted the citing of the dairy technology center will help the city push the idea that the greater farm show area is becoming "an ag Epcot Center" of the west.

The group may be asking Chevron for funds for this project at just the right time with all the talk of the need for renewable energy and considering Chevron's corporate net increased to $14.1 billion in 2005 -- more than $1 billion higher than 2004.

## From frying pan to fuel tank

**Stockton man markets virtues of biodiesel**

MICHELLE MACHADO - Record Staff Writer
Stockton Record, Saturday, Feb. 18, 2006

STOCKTON - Eric Luttge, co-owner of Freedom Fuels Inc., is a man with a mission.

But unlike most evangelizers, Luttge says his message -- hailing the benefits of do-it-yourself biodiesel production -- is not intended for the resistive masses but for the receptive few.

Biodiesel is a vegetable-based alternative fuel that can be used in place of petroleum-based diesel fuel.

For two years, Luttge, 47, has been converting petro-diesel buyers in San Joaquin County and elsewhere to bio-diesel makers through sales of Freedom Fuel's patented FuelMaster production units.

A silent business partner manufactures unit components near Indianapolis. Luttge then trucks the units back home to Stockton - the center for assembly, testing and sales.

"I want to affect a human being, not big business," Luttge said. "Hands-on, I can do something simply."

But few endeavors are simple in the today's highly regulated environment.

Government officials and an industry trade association representative expressed concerns -- ranging from public safety to tax collection to fuel/engine compatibility -- about the back room and backyard fuel-making process Luttge is selling.

Aldo and Della Todeschini of Lathrop knew of none of those issues when they laid out $2,995 last month for a FuelMaster system, one of 80 Luttge said he has sold in the county.

"Our point is we sell a machine that can make bio-diesel. We teach people how to do that. What they do after that is on them," Luttge said.

The Todeschinis simply wanted to cut down on their fuel costs.

"We figured (standard) diesel will keep getting higher, so we invested in the machine," Della Todeschini said.

The couple typically spends $500 per month to power the diesel vehicles used to operate their boarding stable business.

Making their own diesel will cost them some sweat equity and about 70 cents per gallon, or $125 per month.

Golden Gate Petroleum in Martinez -- the biodiesel fueling station closest to San Joaquin County -- on Friday was charging $2.98 per gallon plus tax for the alternative fuel.

The 60-gallon FuelMaster units produce biodiesel through a process called transesterification -- a reaction of a vegetable oil with methanol and lye to yield methyl esters (biodiesel) and glycerine, which is drained away.

The Todeschinis collect vegetable oil waste from restaurants and order the methanol and lye from a chemical supplier.

Already, the couple has produced 200 gallons of biodiesel, stored in a 500-gallon tank they are working toward filling.

Unregulated storage of chemicals in large amounts concerns county officials.

The California Health and Safety Code stipulates that a business handling, storing or making a chemicals in quantities greater than 55 gallons is required to complete a business plan with the county Office of Emergency Services and is subject to periodic inspections, said Dennis Fields, assistant coordinator of the agency's Hazardous Materials Division.

An individual engaged in an activity involving chemicals in amounts above the threshold quantity are treated as businesses, he said.

Luttge said that many of his customers are farmers, who already store large amounts of chemicals on their properties.

Fire officials also expressed misgivings.

"I'd have huge concerns from a fire perspective," said Stockton Fire Marshal Carl Eck.

But addressing those concerns is more difficult when guidelines have not been established.

"It's not something I would rush out and regulate until there's a standard developed. I don't think the process is regulated by the National Fire Protection Association or our code," said County Fire Marshal Steve Dalton.

Fields, Eck and Dalton all said that they were unaware of the local do-it-yourself fuel-making operations.

Biodiesel producers such as the Todeschinis also come under the watchful eye of the state Board of Equalization as soon as their biodiesel-powered vehicles hit public roads or highways.

Such individuals must register with the board, obtain a Diesel Fuel Supplier's License and pay the state diesel fuel tax of 18 cents per gallon, due when the biodiesel is put into the vehicle's fuel tank.

"Producers of biodiesel are responsible for paying the appropriate taxes to the Board of Equalization. Biodiesel is taxable as is any other fuel used for on-road purposes," said Anita Gore, a spokeswoman for the board.

Commercial biodiesel production tripled in 2005 to 75 million gallons, but there are no statistics on private production, said Karen Edwards, a consultant for the National Biodiesel Board.

Biodiesel has gained ground as an alternative fuel because it is made from renewable rousources, decreases dependence on foreigh oil, and has lower emmissions and higher lubricating capacity compared with petro-diesel, she said.

All engines are designed and manufactured with specific fuel requirements. In the United States, the American Society for Testing and Materials is the body that determines fuel standards.

For biodiesel, the minimum standard -- ASTM D-6751 -- covers pure biodiesel for blending with petro-diesel in levels up to 20 percent by volume.

Most engine companies have said that use of such low-percentage blends will not void parts and workmanship warranties, while some have already specified that the biodiesel must meet the standard in order for the warranties to be honored, said the National Biodiesel Board.

Luttge recommends his customers start with a 50 percent petro-diesel to 50 percent bio-diesel mix.

He said that most of the units Freedom Fuels sells do not feature the washing-system needed to produce biodiesel to the ASTM standard because users often leave water in the fuel, creating engine problems.

Luttge sees the back-and-forth exchange between regulating agencies and individual bio-diesel producers as a necessary part of a movement in its infancy.

"The only way we're going to get clarification is these areas is for this kind of exchange to take place," he said.

At the same time, Luttge is hoping that those seeking freedom from the retail fuel pump will not be overly scrutinized.

"We need structure, but we need choices," he said.

## Ethanol Captures National Attention

**E-85 Availability Nears In California**

Valley Voice Newspaper, Tuesday, Feb. 21, 2006

*Tulare County* - Proponents of using renewable based ethanol for motor fuel in California had been preaching to a small audience in the Golden State for years arguing the economic, political, and environmental benefits of blending the mostly corn-based fuel into our gas tanks. Most people simply didn't pay attention until recent years when an oil based fuel additive, MTBE, used to help gasoline burn more cleanly was banned and ethanol found to be the only available substitute at a 5% blend.

At the same time the price of oil skyrocketed and more attention was given to the fact this country depends on unstable foreign governments for an increasing amount of our motor fuel.

Add to that an increasing awareness that fossil fuels are implicated in the warming of the earth's atmosphere. It just happens ethanol is domestically produced by farmers, boosts octane and when burned produces fewer less greenhouse gases.

But the "big boost for ethanol came last year at the federal level when Congress passed an Energy Bill that calls for use of 7.5 billion gallons of ethanol by 2012," says CEO of Malibu Capital Partners Larry Gross who suggested California is the place to make it.

"There is no bigger gasoline market in the US than California." The investment group took a stake in a start-up ethanol plant near Pixley that by the end of this month should have a signed agreement with a construction firm to begin work on the 50 million gallon a year plant.

The $80 million project should begin construction by May and be open about a year later, says Walt Dwelle, managing partner with Nella Oil a partner in the ethanol project. Dwelle says Calgren and the construction firm "have come to terms." All permits are in place to begin the work on the second major ethanol plant in Tulare County. Also on the drawing board is a second plant in Hanford that Calgren is working to build it in the Hanford Industrial Park.

Ethanol moved to the front pages in all the national newspapers in recent weeks with President Bush's State of the Union address promoting the use of ethanol as a way out using both corn and cellulose based technology that Bush said may be 6 years away from practical use.

This technology to produce ethanol from all types of plant materials like the stock of corn, for example, have helped lower the cost of production of the fuel. Last year several research companies announced they had cut the cost to convert biomass (plant materials that could include wood chips and switch grass) into fermentable sugars for fuel ethanol by 30-fold from over $5 a gallon to as little as 10 cents a gallon. The president announced federal support to research this technology and "replace more than 75% of oil imports form the Middle East by 2025."

Since the president's speech, ethanol appears to be on everyone's lips and investors have bid up ethanol companies like upstart Pacific Ethanol based in Fresno stock by about double in the past few weeks.

The company is building a new plant in Madera expected to be operational later this fall as well as committed to build 4 more on the west coast including one across from the Visalia airport on the west side of 99, south of 198. The news that boosted the fortunes of the company big time was when it got Bill Gates to invest $85 million a few months ago.

Of course the first major ethanol plant to begin production last year is in Goshen, now producing about 22 million gallons a year production level. "We are looking to increase to 28 million gallons," says partner in the project Kevin Kruse who owns Western Milling next to the ethanol plant. This was the same plant that was to be purchased by Pacific Ethanol last year - a deal that later fell through. Now there is a rumor that Malibu Capital Partners may take a stake in the Goshen facility - a report that both Kruse and Gross say they can't comment on.

Kruse is working on plans for another ethanol plant "down the line" in Famoso in north Kern County where he is busy putting in a new mill.

Kruse says for now “the price of ethanol is good” - in fact more than $1 a gallon higher than it was at this time last year. Right now it is selling for about $2.50 a gallon that costs about $1.15 to make by some reports. There is also a tax credit for 51 cents per gallon. Ethanol has followed gasoline prices up as a substitute fuel and with so many states demanding ethanol be blended in their jurisdiction - demand for ethanol is high.

The demand and availability of corn as a feed stock has caused most ethanol plants in the US to be built in the Midwest where there are nearly 90 today.

Some feel the US should follow the model laid down by Brazil to promote energy independence. There they distill ethanol from sugar cane and sugar beets that today has supplanted 40% of the gasoline used in Brazil.

If the US and Brazil have discovered the benefits of biofuel, so has the biggest new player in the world economy - China that announced this week it plans to curb oil use and develop alternate sources.

Some believe the next big step in California will be the coming availability of E-85 motor fuel at retail pumps late this year. E-85 is 15% gasoline and 85% ethanol. Walt Dwelle says his oil company - Nella Oil that supplies fuel to over 100 of the state’s retail outlets including 60 of its own - says he expects after an Air Resource Board ruling coming in the next few weeks, that he will be able to sell E-85 fuel at several of his stations. “We will be taking it slow” since the fleet of automobiles and trucks so-called flex fuel vehicles - is just about 250,000 in California, a number likely to grow. Both GM and Ford have vowed to build more flex fuel vehicles in a coalition with the oil producers and even some oil companies. Here in California in January, Pacific Ethanol, Chevron and GM announced a study to take place this year to fuel state CalTrans fleets with E-85.

Dwelle says he expects to be selling E-85 in a matter of months at stations in Sacramento, the Bay Area, and perhaps here too, where they have stations. Converting one of the pumps at the average gas station from say mid grade to an E-85 pump might be the most cost effective way suggests Dwelle. Utilizing the existing gas station pumps could mean the roll out of E-85 may be fast, particularly if demand grows.

The state already uses about a million gallons a year of ethanol, almost all shipped in from the Midwest. Within a few years central valley ethanol plants could displace perhaps 20% of that. COS is working on plans for vocational education for prospective plant workers expecting this new economy to take hold.

E-85 pumps are likely to be approved on a regulatory level in front of the state’s Air Resource Board in coming weeks. There has been some concern about lower blends of ethanol with gasoline but not E-85 that show that permeation of older car hoses by ethanol carrying pollutants from gasoline can mean blends of higher than 6% can worsen smog. ARB is expected to approve 10% blends in California anyway. But Pacific Ethanol’s Tom Koehler disputes this finding and says new studies will clear this up and in any case newer cars don’t have this problem. “One drop of ethanol is better than none and two drops is better yet all this way to E-85"

The biofuel that promotes cleaner air, rural economies and energy independence.” It seems a formula that makes sense to more people.

## Explosions tear through plant

DAVID BURGER and MISTY WILLIAMS, Californian staff writers
Bakersfield Californian, Saturday, Feb. 18, 2006

Explosions ripped through the February rain for close to two hours Friday after an accident at a biodiesel storage facility ignited hundreds of gallons of dangerous ingredients and caused at least $2 million in damage. Smoke from a biodiesel facility, which lies on Hondo Chemical Plant property in the 20800 block of Stockdale Highway near Highway 43, could be seen from miles around.

The fire itself closed large portions of Stockdale as the Kern County Fire Department, augmented by the Bakersfield Fire Department, attacked the fire.

There were no injuries, and the smoke on Friday was nontoxic, firefighters said.

Joseph LaStella, a director of American Biofuels, apologized to the Bakersfield area for the explosion.

"We really want to apologize to the people of this town," he said. "This is a really freak-type fire. We don't know exactly what happened. It could have been static electricity. We're very careful even with that."

The fire started around 3:30 p.m. at the 10,000-square-foot facility, Kern County Fire Capt. Benny Wofford said.

Two workers were moving a 250-gallon container of methanol -- which is used to react with vegetable oil to create biodiesel -- when it spilled, he said. The combustible substance spread quickly.

For their safety, firefighters and their trucks were evacuated several hundred yards away from the fire as nightfall arrived, several hours after the fire was reported.

Kern County Fire Battalion Chief Brian Marshall, the incident commander, said that while the fire departments would continue to use water to extinguish the fire, it would probably take at least a day, and maybe two, for the fire to burn itself out.

The fire terrified witnesses Chris McAllister and Hector Castaneda, Reagent Chemical workers who were loading up rail cars with hydrochloric acid about 100 yards away from the facility.

"There were two guys working in there," Castaneda said. "They got out, and then it started popping, blowing up."

Jeff Tkac, president of Water-Ways Irrigation several hundred yards away from the facility, said he could hear the "terrible ... loud popping."

As he went outside, he was horrified to see flames erupting from the roof of the aluminum-sided facility, close to the tanks of acid and stacks of sulfur-containing gypsum.

The workers and nearby workers in the largely isolated area evacuated the 30-acre tract of dormant silos, facilities and storage containers as methanol, aluminum siding, oil and biodiesel exploded into the air.

Firefighters attacked the fire with eight or nine fire trucks shuttling back and forth, bringing water to the isolated location.

It was fortuitous that the fire happened next to a company specializing in delivering water. The firefighters used the expertise of Tkac's workers.

Tkac offered the firefighters the use of his company headquarters, and his workers helped the firefighters with whatever needs they had, including securing fittings for nearby water sources.

Eventually, Marshall pulled everyone except for a few from the danger zone, retreating to the corner of Superior Drive and Stockdale Highway. A few firefighters remained, directing several streams of water at rates up to 500 gallons per minute.

"It's extremely toxic and extremely dangerous," Marshall said.

He said he expected it to be a "long-term incident," lasting up to 48 hours.

The explosions appeared to end by 5:30 p.m., when the audible hissing disappeared as apparently all the methanol burned off, Tkac said.

The Hondo Chemical plant, which manufactures organic fertilizers, is zoned for heavy industrial use, said Kern County planner Jim Ellis. The surrounding land is zoned for agriculture, Ellis said.

In 2002, Adelanto-based American Biofuels LLC signed a joint venture agreement with Hondo to build a biodiesel plant at the site.

Biodiesel is a cleaner burning diesel replacement fuel that is made from renewable sources like vegetable oils and animal fats, according to the Department of Energy.

The company has produced roughly 500,000 to 600,000 gallons of biodiesel since moving its operations to Bakersfield in 2003, said Joseph LaStella, with Biofuels.

LaStella estimated Friday night that the blaze had already destroyed nearly $2 million-worth of equipment, not including the 10,000-square-foot building that housed it all.

LaStella said the fire started outside the building when a container full of methanol fell from a forklift. The tank didn't break but methanol splashed out, he said.

One of the plant's employees tried at first to put the flames out with a fire extinguisher before moving to safety, LaStella said.

"They're trained," he said. "They know to shut down the plant immediately, which they did."

The black smoke many westside Bakersfield residents saw was likely produced from glycerin, a nontoxic biodiesel byproduct, he said.

Around 100,000 gallons of corn oil and another 30,000 gallons of biodiesel at the site were untouched, he said.

LaStella said it's too soon to know what's next for American Biofuels, which started up in 1999. The company serves businesses throughout California, he said, and did close to $1 million in sales in 2004.

It had just recently finished a three-month, $500,000-expansion program, which doubled the site's production capacity from 5 million to 10 million gallons a year, he said. And two other plants are currently in planning stages.

"I really hope this incident doesn't affect those plans," LaStella said.

## Commission OKs Padre condos

JAMES BURGER, Californian staff writer
Bakersfield Californian, Friday, Feb. 17, 2006

Bakersfield Planning Commissioners didn't even blink. The seven members approved a plan for condos in the landmark Padre Hotel without a single comment.

Eight other maps and projects were approved with the same vote.

But the decision was far from routine for Padre owner Pacifica Enterprises.

Thursday was a do-or-die night for the Padre, said company spokesman Paul Holling.

"If we didn't get this tonight?" Holling said. "It was this or plywood -- plywood on the windows all the way up."

Bakersfield Planning Director Jim Movius said the commission decision is the last big hurdle for Pacifica. The only thing left after Thursday is getting building permits approved.

Holling said the company, which has struggled to renovate the 1928 downtown hotel since 2002, would have had to give up on the Padre if commissioners had killed its condo plan.

Now, he said, the Padre renovation can move forward.

City of Bakersfield Economic Development Director Donna Kunz was all smiles Thursday as she left city hall with Holling.

She said the Padre is a landmark project that supports her efforts to bring more housing to downtown Bakersfield.

More homes mean more customers for downtown businesses and better chances for the redevelopment of downtown to continue.

Former Padre owner Milton "Spartacus" Miller, who spent decades accusing the city of abandoning downtown businesses to decay and failure before he died in 1999, might just have agreed with Kunz.

Holling said Thursday that Pacifica is ready to move.

The company will hire a marketing firm, get their construction schedule in line, put together model units and then open up a sales office in the Padre, he said.

Hopefully, Holling said, a couple of new retailers will open their doors on the same day the sales office opens. He's close to announcing their names, he said.

Holling gave no specific time for when condos will be ready for sale and said Pacifica has not yet established what prices will be.

Planning Commission Chairperson Barbara Lomas said the deal approved Thursday included a 20-year lease that will allow Padre residents to park in the city parking garage across H Street from the Padre.

Holling said Pacifica is committed to moving the project forward and is going to be especially sure to abide by regulations when removing any asbestos found in the Padre.

Work stopped at the Padre when the San Joaquin Valley Air Pollution Control District and the county of Kern sued Pacifica for illegally removing asbestos from the Padre.

The lawsuit was settled and Holling said Pacifica will make the air pollution district a part of the Padre project team.

## Butting in on habit

SARAH RUBY, Californian staff writer
Bakersfield Californian, Sunday, Feb. 19, 2006

Cigarettes seem to be going the way of ivory tusks, mink coats and gas-guzzling automobiles. Sure, some people still smoke with a flourish. But the stealth smoker is increasingly common, shamed into alleyways or behind hedges lest a boss or co-worker see him indulge a cringing nicotine habit.

Ben Alderete, 64, won't be cowed. He makes sure to smoke at least 20 feet from the downtown courthouse, where he works, but he doesn't appreciate the loud mocking coughs of passers-by, who disapprove of his habit.

"It's harassment," he said.

Glamour smoking was dealt another blow last month, when the state Air Resources Board likened cigarette smoke to air pollution, declaring secondhand smoke a "toxic air contaminant."

It's these kinds of rulings, and ensuing media attention, that give smokers a bad name, said Mary Rine, another courthouse employee.

"They start to think smokers are air contaminators," she said.

Alderete and Rine agree that smoking is a bad idea, but they don't think secondhand smoke should be compared to automobile exhaust and industrial pollution.

The smoking taboo is entrenched, however.

Local Wal-Mart stores are building ventilated smoking lounges to avoid the smokers' huddle outside employee entrances. Smoking hotel rooms are increasingly rare in California, and local employers are offering programs to help staff quit.

Local anti-smoking campaigns have been under way for decades, and attitudes began to change about 10 years ago, said Sharon Borradori, program director for the American Lung Association of California, Kern County branch. It's a change she attributes to education, laws that make smoking inconvenient and the rising cost of cigarette packs, she said.

And don't forget the peer pressure.

"People that do smoke, they're almost ostracized," Borradori said. "It's like you're less of a person because you're smoking, or less intelligent. That's unfortunate, even though I'd like to see everybody quit."

What she'd really like is for them to not need her emphysema support group, which regularly draws about 70 people, she said.

Constant bad press has chipped away at cigarettes' cachet, said Dr. Neal Benowitz, a professor at University of California, San Francisco.

"Smokers, like all people who are addicted, they tend to rationalize ... or deny the risk," he said.

That's hard to do when you "hear one health problem after another, after another," he said.

Children get on their parents' cases to quit smoking. Parents are more explicit with their children about the dangers. Employers are joining the fray, discouraging smoking and banning it from company property.

It's peer pressure, and it can have a big impact, said Nsele Nsuangani, director of the county health department's tobacco program.

"If you're doing something that's no longer acceptable to society, what do you do? You change," he said.

Bakersfield resident and smoker Green Warsama, 30, agrees. He'd like smoking to become illegal -- it would help him quit, or at least force him to cut back to one or two illicit smokes each day.

"I hate the friggin' things," he said. "I tried to quit many times, but it's very difficult. I wish they would ban it."

## Firm proposes mega-landfill

SARAH RUBY, Californian staff writer
Bakersfield Californian, Friday, Feb. 17, 2006

An out-of-town company wants to build a landfill big enough to bury 600 million tons of Southern California trash in eastern Kern County. And it's asking Kern voters to bless it.

Land-use decisions are typically made by elected officials, but Missouri-based Herzog Environmental Inc. is taking its proposal straight to voters Nov. 7. If it reaches the ballot and passes, the initiative will allow the company to build a landfill and energy park on 3,100 acres north of California City. The energy park would include sun, wind, biomass and energy facilities.

Officials said this is the first attempt in recent memory to cut local government out of a land-use decision.

"We just haven't seen this before," said Dave Price, director of the county's resource management agency, on Thursday. Price has worked in Kern for 18 years.

The landfill would dwarf any existing facility in Kern County, and would rank among the largest in the country.

News of the project comes at a good time for the city of Los Angeles, that, according to the Los Angeles Times, is sending 940,000 tons of trash to Sunshine Canyon Landfill each year. The City Council might decide to abandon the facility, which is unpopular with its Granada Hills neighbors, and send Los Angeles garbage to waste dumps farther afield, according to the Times.

If approved, the eastern Kern landfill would be ready to take household and commercial trash in about seven to 10 years, said Brandon Martin, a local attorney involved in the project.

"I think it's an opportunity for the people of Kern County to benefit from L.A.'s trash," said Martin, an attorney at Borton, Petrini & Conron in Bakersfield.

The benefit is energy production. The project, known as the High Desert Green Energy Park, will use sun, wind, biomass and trash to make enough energy to fuel 250,000 homes, according to a draft of the ballot initiative.

Decomposing trash produces methane gas, which can be burned as fuel.

At full capacity, the landfill would be big enough to hold 226 million large Chevy trucks.It's unclear what proportion of the park's energy product would come from trash.

Hazardous waste and sewage sludge would not be accepted at the landfill. It would take household and commercial waste 24 hours a day, seven days a week, according to a draft of the ballot measure.

The draft measure doesn't exclude Kern County garbage, but we're far from our local landfill capacity, said Daphne Harley, director of the county waste management department.

"They're not solving a Kern County problem," she said. "I think the measure clearly states they are doing this to bring waste in from outside Kern County."

**Community reaction**

In a poll, 85 percent of voters countywide supported the project, Martin said. Ten percent opposed it and 5 percent were undecided, he said.

The poll was conducted by Lake Research Partners, a national polling and political strategy firm in Washington, D.C., whose clients include the Democratic National Committee and the Sierra Club.

When voters hear more about the project, they might not be so smitten, said Supervisor Don Maben, who represents the California City area.

"I think the voters are very savvy when it comes to things coming from L.A.," he said.

Locals are skeptical of Los Angeles waste. Ed Waldheim, who is active in the area's land use and energy decisions and president of several off-road vehicle organizations, said he's wary.

"Right now I'd say forget it, but that's just on principle," he said. "There's a whole bunch of landfills in L.A. they can use."

Supervisor Ray Watson is in favor of the energy park and landfill.

"The question is, can we solve (Los Angeles') problems and create a benefit at the same time," he said. "I know there's a big sensitivity to that but I look at it this way -- I'm driving a car that took a coal mine and a steel mill to build. Somebody paid for that ecologically somewhere."

Supervisor Barbara Patrick is meeting with proponents of the project today. She has some questions for them, she said.

"What are they going to do that makes it palatable to the people of Kern County, especially if they are going to bypass the normal environmental process?" she said.

**Oversight of an operation**

If the voters approve the measure, which is still in draft form, they'll be creating the Eastern Kern County Renewable Energy District on 3,100 acres of land that would someday house the energy park and landfill. Most of that land, if not all, is currently zoned for agriculture.

This kind of change could likely take years to wind through the planning department, Kern's Planning Commission and the Board of Supervisors. Herzog Environmental envisions a quicker process, Martin said.

That doesn't mean it won't conduct in-depth environmental studies, he said. It will do whatever's required under the California Environmental Quality Act, he said.

It will also deal with the county environmental health department, which hands out landfill permits for the state. Landfill hopefuls must meet environmental standards and devise a plan for how to clean up if they close, said Steve McCalley, director of the environmental health department. They must also get **air** and water permits from state and regional agencies, he said.

Herzog Environmental is based in St. Joseph, Mo. It's one of several Herzog companies, which operate landfills and build railroads, highways and airports, among other enterprises.

**A carrot for Kern residents**

To appeal to locals, the energy park operator will give millions to a new charitable organization, the Citizen's Renewable Energy Benefits Foundation, according to a draft of the measure.

If the landfill operates for 44 years, the foundation will raise some $210 million in today's dollars.

According to the draft initiative, the money will pay for medical services in the California City/Mojave area, firefighting equipment, desert tortoise habitat, parkland, job training, drug and alcohol prevention and treatment, renewable energy research and solar panel installation at public buildings.

**The campaign**

Energy park and landfill proponents are tinkering with a draft of the measure, which they plan to submit to the county registrar today or next week. Once they do, they'll have to collect some 10,000 to 15,000 signatures to put it on the ballot in November, Martin said.

## Officials air plea for asthma relief

By Kerry Cavanaugh, Staff Writer
LA Daily News, 2/18/2006 12:00 AM

Hoping to understand why an increasing number of children are suffering from asthma, air quality regulators gathered political leaders, health experts and scientists Friday for a one-day conference to develop ways to cut air pollution and asthma in Southern California.

Asthma is the most common chronic disease in children, and public health officials have seen the prevalence increase by 160 percent in the past 20 years.

Researchers are finding stronger links between asthma and air pollution, and recent Southern California studies have found higher rates of asthma among children who exercise more in smoggy air and among children who live near freeways.

"We're here to affirm the obvious fact that asthma has reached epidemic proportions in the United States," said Mayor Antonio Villaraigosa. "We need to recognize the links between the environment, education and asthma.

"It is too simple for me to state the obvious -- air pollution triggers asthma -- but when a study of fourth-graders shows an 83 percent increase in respiratory-related absences when ozone levels are high, I can't state it enough."

Leaders with the South Coast Air Quality Management District, which organized the conference, said they hoped the event would generate policy solutions to lessen air pollution and reduce impact on children with asthma.

That could mean using cleaner fuels in trucks and cars and better planning of goods movement through the Port of Los Angeles - which generates 25 percent of pollution in the region - explained William Burke, chairman of the AQMD's governing board.

"The answers are still out there and that's what we're looking for this morning."

## South Valley News Briefs

Fresno Bee, Friday, February 17, 2006

**Correction**
An Air Pollution Violations item in the Feb. 10 South Valley Bee incorrectly stated that Robert or Laurie Pugh was cited Dec. 14 for burning in a fireplace on a burn-curtailment day. The Pughs no longer own the property in question, according to the San Joaquin Valley Air Pollution Control District, which provided the incorrect information.

## Angelides' clean dream

**Democratic gubernatorial hopeful unveils plan to cut state's oil use by 25 percent**
By Laura Mecoy -- Bee Los Angeles Bureau
Sacramento Bee, Friday, Feb. 17, 2006

SANTA MONICA - Vowing to be "pro-business and pro-environment," Democratic gubernatorial hopeful Phil Angelides unveiled a "Clean California" plan Thursday that seeks to cut the state's oil consumption by 25 percent over 10 years.

His ambitious proposal would change the type of cars Californians drive, the way their communities grow and the energy choices they can make.

"This is a plan about choices," the state treasurer said at a news conference at a production company that works on environmental projects.

"It's about pushing the marketplace to give Californians more choices that they don't have today."

Joined by actor and environmentalist Ed Begley Jr., Angelides said that if he is elected governor, he will introduce legislation to mandate all new vehicles sold in the state be flexible fuel cars, capable of running on any mix of gasoline and bio-fuels, such as ethanol.

He said he would also require major oil companies to supply bio-fuels at filling stations to match the number of flexible fuel vehicles on the road.

In addition, Angelides said he would require state and local governments to purchase vehicles that use alternative fuels, or to buy efficient vehicles, such as hybrids, when replacing or expanding their fleets.

"We are a nation with 3 percent of the world's oil reserves, and we are on a path to consume 25 percent of the world's oil production," he said.

He said California has 26 million vehicles consuming 15 billion gallons of gasoline a year, and that will rise to 36 million vehicles burning nearly 18 billion gallons of gasoline in 20 years if the state's residents don't change.

Angelides also said he would:

- Seek to shorten commutes and pollution through smart-growth plans that place housing near work and transit. He said he would use state grants, loans and bonds to rebuild and improve neighborhoods in hopes of avoiding more sprawl. And he would urge the adoption of laws requiring regional and local general plans that limit sprawl.
- Propose changing sales tax collections to discourage the practice of approving large shopping malls and other tax-producing developments to help cities and towns pay their bills. Angelides said he would seek to collect and share sales taxes regionally to eliminate competition between adjoining cities for development and tax revenues.
- Increase partnerships and investments to encourage the creation of clean fuels and technology. He said he would provide incentives to encourage fuel-efficient choices by business and consumers.

He said he would also seek an additional $1.5 billion investment from state and local pension plans in clean technology, alternative energy and energy efficiency.

State public employees' and teachers' retirement funds, he said, have agreed to make $1.5 billion in these types of investments.

Angelides provided no estimate of the cost of his plan but predicted it would save money by lowering energy costs, creating new jobs and making the state more competitive.

"Some believe pollution is the inevitable price of prosperity," he said. "I believe we can seize this moment through investments in technology to clean up our environment and create good jobs at the same time."

A spokesman for opponent Steve Westly, the state's Democratic controller, dismissed Angelides' plan, saying the treasurer is "no friend to the environment."

Nick Velasquez said the Sacramento developments Angelides built before his election to statewide office increased sprawl in the region and damaged wetlands.

Angelides disputed that claim, saying he'd been among the first to build communities linked to transit and other amenities intended to lessen commuting.

The treasurer also faced criticism from some environmentalists in the audience at his news conference, including local television talk show host Peter Kreitler. He told Angelides the plan was "way too narrow" because it only addressed energy.

Angelides said he'd be addressing a wider range of environmental issues, if elected governor.

"This will be a real plan and not just rhetoric," Angelides said. "(It is) not just a plan that sets targets but has real implementation behind it."

## Angelides Offers Plan to Require Fuel-Efficient Cars

**The Democratic candidate for governor aims to spur sales of cleaner energy sources and curb urban sprawl to cut gas consumption**

By Michael Finnegan, Times Staff Writer
Los Angeles Times, Friday, Feb. 17, 2006

Laying out an environmental agenda he hopes to pursue as governor, state Treasurer Phil Angelides on Thursday proposed cutting California's oil consumption by 25% over 10 years with a plan that would require all new vehicles sold in the state to be able to run on a mix of gasoline and alternative fuels.

To accommodate the new vehicles, the Democrat would require oil companies to convert filling-station pumps to sell blends of gasoline and bio-fuels, such as corn-based ethanol. The state and every local government in California would serve as a model for consumers: all vehicles bought by public agencies for their fleets would have to be highly fuel-efficient, such as hybrids, or run on an alternative energy source. To further cut gasoline use, the state would try to curb suburban sprawl by spurring developers to build housing around mass-transit stops in city centers.

At a Santa Monica news conference with actor and environmental advocate Ed Begley Jr., Angelides said his plan would put California "in the front ranks of clean fuels, clean vehicles, renewable energy, cleaning our air, curbing sprawl and making us a model of sustainability for the world."

"This will be a real plan -- not just rhetoric," said Angelides, whose political rivals immediately questioned that claim.

The proposal forms a key plank of Angelides' campaign against state Controller Steve Westly in the June primary for the Democratic nomination to challenge Gov. Arnold Schwarzenegger in November.

All three candidates cast themselves as champions of the environment. Westly's recent campaign stops in Northern California have included visits to a solar-powered sewage treatment plant and a Humboldt County marsh where a campaign ad crew filmed his visit with environmental advocates. Like Angelides, Westly has supported steps by the state's giant pension funds to invest in alternative energy sources and combat global warming.

In the general-election contest, the Republican governor is likely to tout his environmental record in appealing to the coastal Democrats and independents whose support he needs to win reelection.

Schwarzenegger has set ambitious targets for cutting California's greenhouse gas emissions and proposed building a statewide network of 200 hydrogen filling stations by the end of the decade to help wean the state from gasoline.

The Angelides plan drew a scathing reaction from Westly's top campaign strategist, Garry South. He dismissed the proposal as an attempt by Angelides to inoculate himself from the political damage he stands to suffer in the months ahead as voters learn of what South portrayed as Angelides' dismal environmental record as a Sacramento developer in the 1980s and 1990s. Namely, South said, Angelides and his partners persuaded politicians to weaken government flood protections, then paved over wetlands to build thousands of houses.

"He wants to eliminate suburban sprawl now that he's made his millions on suburban sprawl," South said. "Now he's trying to be Mr. Green."

In Santa Monica, Angelides said he was "always at the front edge of environmental innovation" as a developer. He cited his projects on the outskirts of Sacramento with energy-efficient homes, narrow tree-lined streets, mixed housing types, express bus service and, in one case, a light-rail train station.

"I'm very proud of what I did in the private sector," he said.

The Angelides plan also drew a chilly response from Schwarzenegger's political team.

"Mr. Angelides' newfound interest in environmental issues stands in strong contrast to the governor's long record of achievement and his reputation nationally and internationally as a leader in this area," said Katie

Levinson, communications director of the governor's reelection campaign. "It will take more than empty rhetoric from Mr. Angelides to protect our natural resources."

Those battling over environmental rules had, predictably, different reactions.

Rico Mastrodonato, Northern California director of the California League of Conservation Voters, welcomed the concept of cutting the state's reliance on gasoline to cut pollution. While declining to address the plan's specifics, he said both Angelides and Westly "have excellent environmental credentials," whereas Schwarzenegger has been "long on rhetoric and short on substance."

Eron Shosteck, a spokesman for the Alliance of Automobile Manufacturers, said there were roughly 5 million clean-fuel vehicles on U.S. roads, and automakers expected to produce 1 million more this year. Responding to Angelides' plan, he said: "Mandates are not necessary because the market is moving in that direction without a push from government."

Frank Maisano, a lobbyist for energy companies in Washington, D.C., said the Angelides mandate of new filling-station pumps for alternative fuels would lead to higher gas prices at a time when fuel costs already are soaring.

"Any time you start restricting the type of cars people can choose from, and mandating the kind of fuel that manufacturers have to make to put into those cars, you're talking about adding costs," Maisano said. "And that is never good for the consumer."

An Angelides spokesman said his plan would give Californians more choices in cars and fuel, leading ultimately to lower prices.

## Climate experts: Valley in trouble

**Valley could witness damaging effects if warming not abated**

By Jed Chernabaeff, Staff writer
Visalia Times-Delta, Saturday, Feb. 18, 2006

Union of Research Scientists spokeswoman Erin Rogers told a packed room at College of the Sequoias on Friday that the Valley could be in danger if nothing changes with the current rate of greenhouse emissions

Tulare County residents voiced frustration after the latest scientific findings on global warming were presented in Rogers' presentation.

Rogers said if greenhouse emissions are not cut, global warming is expected to raise temperatures between 8 and 10 degrees in California and diminish the snowpack by 90 percent in the next century, which could harm the state economically by threatening agricultural production — the base of the Valley's economy — increasing the risk of forest fires and increasing utility costs for cooling.

"We are already seeing some of the hottest years on record," Rogers told the crowd. "It will only get worse if emissions aren't cut."

After Rogers' presentation, people in the crowd had questions concerning public transportation, air quality and Gov. Arnold Schwarzenegger's proposed budget, which some said doesn't address global warming.

Alfonso Hernandez of Three Rivers wanted to know why a mass public transportation system is not being addressed by lawmakers.

"There hasn't been a solution to mass public transportation," Hernandez said. "We all drove our cars here without even thinking about it, and that is a huge part of the [problem]."

Hernandez thought the presentation was good but said it lacked solutions to global warming.

"To me there is always a blind spot in every presentation about global warming," Hernandez said. "There is no solution for the problem, and [I] believe they should look into a massive program with public transportation."

One person asked Rogers why the governor's "mega bond" supports more free waste.

Rogers didn't give a clear answer but said the bond was "schizophrenic" because the governor devised a plan to cut the state's greenhouse gas emissions to 2000 levels by 2010, to 1990 levels by 2020 and to 80 percent below that by 2050.

Representatives of groups that co-sponsored the event — Sierra Club Mineral King Group, Tulare County Audubon Society, Unitarian Universalist Fellowship of Visalia, Visalia Democratic Club and the South Valley Peace Center — say the "Global Warming and the Central Valley" presentation should have people concerned about the future of California.

Graciela Martinez, a program coordinator for the American Friends Service Committee, said the forum was a good way to keep the Central Valley focused on global warming issues.

"Many of us are going through life [without] knowing about global warming and the impact that it will have on the Central Valley," Martinez said. "We want to raise awareness, get together and find out how to help with this problem."

Kim Loeb, president of the South Valley Peace Center, said global warming is an issue that Tulare County should pay close attention to because the Valley is a leading producer of greenhouse emissions.

"Since this is an agricultural area, changes in weather can adversely affect the Central Valley," Loeb said. "Predictions of less rain and snow in the Sierra Nevada can alter our water for irrigation. There has been a lack of leadership on the national level, and it's important for people to understand what can be done and communicate that to their legislators."

Rogers said this was the first presentation of the report and the questions from audience members were "thoughtful."

"This was a wonderful start before a packed crowd," Rogers said. "It shows that the people in the Valley take global warming very seriously."

## Governor to push global warming fight

**Bold policy gambits expected in bid to lower greenhouse gases**

Mark Martin, Chronicle Sacramento bureau
S.F. Chronicle, Friday, February 17, 2006

Sacramento -- Gov. Arnold Schwarzenegger's administration is expected this month to release a plan to combat global warming that recommends raising petroleum prices and requiring industries to report, for the first time, their greenhouse gas emissions.

The increase in gas prices would fund research into alternative fuels.

Nine months ago, Schwarzenegger garnered international headlines by calling for California to mount an aggressive effort to address global warming. Now he faces the difficult part: shepherding new policies into place that could affect every car owner, farmer and big industry in the state.

The proposal, drafted by the governor's senior environmental advisers, has both business groups and clean-air advocates girding for a fight in Sacramento that could have profound national environmental and political implications. With President Bush reluctant to steer federal policy toward lowering greenhouse gas emissions, states and cities have taken the lead on what most environmentalists agree is the most critical issue facing the planet.

"What you're considering in California is much broader than anything being discussed in other states -- it's very significant," said Ned Helme, president of the Washington, D.C.-based Center for Clean Air Policy, a nonprofit environmental think tank.

For Schwarzenegger, global warming could be a tricky political issue this year.

Sources at the state Environmental Protection Agency -- which is charged with writing the recommendations to achieve Schwarzenegger's goals -- say the proposal will call for a new charge on petroleum equal to less than a penny per gallon of gasoline. Conservative activists have begun to complain about the idea, branding it a gas tax.

The proposal could be released just before the state Republican Convention, which begins Feb. 24, where GOP activists already are preparing to debate resolutions condemning other Schwarzenegger proposals they disagree with.

And environmentalists, who have had a rocky relationship with the governor, will watch closely this year to see if Schwarzenegger is willing to champion changes likely to be opposed by some of the governor's big-business allies. Many in the environmental movement complain that Schwarzenegger has done far more talking about clean-air policies than enacting them.

"So far, it's been policy by press release," said V. John White, executive director of the Center for Energy Efficiency and Renewable Technologies. "The key is whether the governor will stand by these proposals and actually do them."

In a speech before a U.N. environmental conference in San Francisco in June, Schwarzenegger said there is no denying the threat of global warming and set short- and long-term targets to reduce emissions of gases like carbon dioxide, which is produced by everything from cars to power plants. The governor's targets are to reduce greenhouse gas emissions to year 2000 levels by 2010; lower emissions to 1990 levels by 2020; and reduce emissions 80 percent below 1990 levels by 2050.

Most scientists believe gases like carbon dioxide, methane and nitrous oxide are altering the Earth's atmosphere and are leading to higher temperatures and changes to things like sea level and precipitation.

Schwarzenegger instructed a team of administration officials, led by state EPA head Alan Lloyd, to compile a report detailing how emissions could be cut. A draft of the report was published in December; the final version is expected to be released by the end of this month.

The draft report listed dozens of options -- many already under way -- to lower emissions, ranging from requiring farmers to change the way they handle animal manure to ramping up the state's use of the wind and sun to generate electricity.

The report will be delivered to the governor's office and the Legislature. Many of the proposals would have to be enacted through legislation.

The report noted that the state faces numerous problems, from less water to increased strength and frequency of storms, if it does not act to reduce greenhouse gas emissions. It also argued that stimulating innovative technologies to reduce pollution can create jobs and save consumers money.

Among the report's recommendations are two that are likely to become hot-button issues in Sacramento: adding a so-called public goods charge on gasoline and requiring industries like cement makers, electricity generators and oil refineries to report their greenhouse gas emissions.

Industries are regulated with respect to many emissions, such as sulfur dioxide, but don't face the same controls on greenhouse gases.

The added charge on gasoline would pay for research into alternative fuels and other ways to make cars more fuel-efficient.

Advocates for the idea and the report's authors note that a similar public goods charge is included in every Californians' energy bill and that money has gone to funding renewable energy and energy efficiency programs that have lessened pollution and saved consumers money.

"It's very appropriate to have a small charge on petroleum to mitigate its impacts," said Bill Magavern, a Sierra Club lobbyist.

Business groups say further driving up the price of fuel will hurt the economy.

"I think if you look at most polling, Californians want their taxes on gas to go toward improving the transportation system, not toward something that might marginally improve carbon emissions," said Allan Zaremberg, president of the California Chamber of Commerce, which is spearheading a new coalition called Sustainable Environment and Economy for California, or SEECalifornia, that intends to represent business interests as the global warming initiative progresses.

Zaremberg said the new business coalition will argue that many of the ideas in the draft report would do little to address global warming.

He noted that restricting cement makers, for example, could lead manufacturers to leave the state.

"You're not going to reduce the demand for cement, you'll just move the production to China or Arizona or anywhere else with fewer restrictions," he said. "Then you have a situation that is actually worse for global warming, with lesser environmental standards than California already has, and you add in the truck traffic needed to get the cement back to California."

In addition to opposing the new charge on gas, the group opposes requiring companies to report their greenhouse gas emissions, arguing that it should be voluntary.

But supporters of the idea say it is a crucial way to develop a benchmark for emissions.

Requiring companies to report how much greenhouse gases they produce is seen as a first step toward a growing trend in combating global warming, called a cap-and-trade system in which emission levels are capped and industries can buy and sell credits with each other to reach mandated reductions.

The report describes a cap-and-trade system but does not make it a primary recommendation.

There already is some movement toward capping emissions in the energy sector, however. The state Public Utilities Commission voted 4-0 Thursday to begin capping emissions on power plants used by the state's three investor-owned utilities.

And combatting global warming appears likely to be an election issue this year. State Treasurer Phil Angelides, who hopes to be Schwarzenegger's Democratic opponent in November, unveiled a plan Thursday that he said would reduce California's use of gasoline and diesel fuel by 25 percent in the next 10 years.

What Schwarzenegger will do with the final report remains to be seen. Many clean-air advocates were disappointed that the governor didn't mention the issue in his State of the State speech last month.

Katherine McLane, a spokeswoman, declined to comment on whether the governor supported a new charge on gas or forcing new mandates on business, but said the report, and meeting Schwarzenegger's targeted goals, are a top priority.

Democrats are preparing legislation related to global warming, some of which goes further than the report's suggestions. Senate President Pro Tem Don Perata, D-Oakland, is authoring legislation, called for in the draft report, that would better coordinate funding for research into energy efficiency programs.

And Assemblywoman Fran Pavley, D-Agoura Hills (Los Angeles County), is pushing legislation that would actually cap greenhouse emission from several large industries. Pavley wrote the landmark law requiring automakers to provide more fuel efficient cars in California beginning in 2009 and said the idea of reducing the same emissions from factories and other stationary sources is the logical next step.

Reducing emissions
An early draft of a report by the governor's senior environmental advisers recommends:

- Requiring some industries to report greenhouse gas emissions
- Adding a charge on petroleum that would pay for research into alternative fuels and automotive fuel efficiency
- Better coordinating state programs that invest in energy efficiency and other emission-reduction technologies
- Developing ways to reward companies that reduce emissions before reductions are mandated.

Climate changers
Sources of California’s climate change emissions, 2002
Transportation: 41.2%
Electric power: 19.6%
Industrial: 22.8%
Others: 8.4%
Agriculture and forestry: 22.8% Note: Expressed in terms of CO2 equivalence (adapted from CEC, 2005)

# Paying to pollute

**System would limit emission, allow trading of credits**

David R. Baker, staff writer
S.F. Chronicle, Sunday, February 19, 2006

It costs nothing to pump greenhouse gases into the air.

No money, at least. For as long as human beings have used fire -- whether to make steel or cook mastodon meat -- they have poured carbon dioxide into the atmosphere without paying any financial price.

That is starting to change.

Driven by fears of global warming, countries and states are trying to place a price tag on emissions of carbon dioxide, the gas considered most responsible for rising temperatures.

They are turning to a system called "cap and trade," which limits the overall amount of carbon dioxide an area or industry can emit and then lets individual companies buy and sell credits to release specific amounts of the gas.

The cap-and-trade concept is considered an alternative to strict government mandates. It tries to use market dynamics to cut pollution, allowing flexibility on emission levels -- for a price. Emissions that were free in the past, regardless of their environmental cost, now would cost an amount set by the market.

In theory at least, it allows businesses that emit carbon dioxide to choose the most cost-effective way to cut their emissions. And it gives them leeway in the speed of their cuts.

"They seem to like the cap-and-trade concept because it's got some flexibility," said Diane Wittenberg, president of the California Climate Action Registry, which helps businesses calculate and track their emissions. "It makes companies more innovative."

Europe has a carbon dioxide market up and running, with release of a ton of gas now trading at 27 euros, about $32. New York and six other Eastern states plan to open one in 2009. California energy regulators last week took the first step toward such a system, adopting a policy to limit the amount of greenhouse gases produced by several of the state's electrical utilities. A voluntary market was started two years ago in Chicago, with carbon credits now selling for $2 per ton, a level some consider artificially low.

The basic idea has been used before to control the pollutants behind acid rain. Debate rages over whether it will work with carbon dioxide or other greenhouse gases.

But many state officials have decided the idea warrants a try, considering the severity of the threat. Despite resistance from the federal government, they want the rest of the nation to follow their lead.

"We hope that the parallel efforts on both coasts to reduce greenhouse gas emissions will help move the ball forward on initiatives to reduce emissions and mitigate global climate change in the United States and around the world," said Michael Peevey, president of the California Public Utilities Commission. The panel voted last week to limit carbon dioxide emissions at some point in the future, with the exact level still to be set.

The idea has enough momentum that some energy companies consider it unavoidable.

"We absolutely think this is inevitable," said Wendy Pulling, director of environmental policy at Pacific Gas and Electric Co. "Not only do we think it's inevitable, we're actually advocating for market-based federal legislation. And we're actively planning for it."

The concept, however, has many critics, from free-marketeers to environmentalists.

The latter say cap-and-trade systems can die in the details. If the limits are set too high and the reduction targets too low, companies won't have an incentive to cut their emissions.

"We think that it is very easy to craft a carbon-trading system that doesn't work and is full of holes," said David Hamilton, director of the Sierra Club's global warming and energy program. "It's very difficult to craft one that works."

Free-market advocates, meanwhile, say the idea is heavy-handed government regulation in a disguised form. It will raise electricity bills and lead to government rationing of the right to emit carbon dioxide, they argue.

"It's a sneaky way of putting a tax on things, essentially," said Myron Ebell, director of the energy program at the Competitive Enterprise Institute, which opposes regulating carbon dioxide emissions in general.

Not all cap-and-trade systems follow the same rules. A typical system, however, would look like this:

- First, government regulators would set a limit on carbon dioxide emissions. They also would set reduction targets.
- Companies or facilities that emit the gas would be assigned their own limits and targets, probably based on their emissions in the past. They would be able to choose how to meet those targets.
- Those who cut their emissions below their targets would be able to sell credits to those who haven't. Exceeding the limits would require buying credits.
- Companies might also be able to offset some of their emissions by buying credits from other businesses that, in one way or another, reduce the amount of carbon dioxide flowing into the air. That could include companies that plant trees -- which remove the gas from the atmosphere -- or build windmills, cutting the need for electricity from power plants burning coal or natural gas.

The general idea has been tried before. The United States uses a similar system to control emissions of sulfur dioxide, one of the key causes of acid rain. Southern California has a smaller system for controlling both sulfur and nitrogen oxide.

Many analysts consider the federal program a success. But they caution against using it to draw conclusions about carbon dioxide.

Sulfur, they say, is relatively easy to control, because most of it flows from power plant smokestacks. Carbon dioxide comes from electrical plants, cars, planes, fires and human breath, among other things.

California emitted about 493 million metric tons of greenhouse gases in 2002, the most recent year for which data are available. Eighty-four percent was carbon dioxide. Cars and other forms of transportation accounted for 41 percent of the gases emitted, according to the California Energy Commission. Utilities and power plants produced an additional 20 percent.

That makes crafting a cap-and-trade system difficult. The policy approved last week by the PUC, for example, will try to limit greenhouse gases from the state's three investor-owned utilities: PG&E, San Diego Gas & Electric Co. and Southern California Edison Co. But it will not cover municipal utilities -- including those in Los Angeles and Sacramento -- because the commission has no legal authority over them.

That worries PG&E, even though the San Francisco company backs cap-and-trade systems in principle. If the municipal utilities aren't included, the cap would cover just 15 percent of the state's greenhouse gas emissions. And customers of the investor-owned utilities would face costs that other Californians wouldn't.

"We wouldn't want to see a result where PG&E's customers are subsidizing the cleanup of greenhouse gases from municipal utilities in California," Pulling said.

There are also questions about how to set the limit. The commission may use 1990 emissions as a baseline, but that is far from certain. Penalties for companies that exceed their limits also have not been determined. The process will probably take years.

But Lainie Motamedi, a utilities commission analyst working on the effort, said the details will determine whether the cap-and-trade system works or becomes just another ineffectual theory.

"People get kind of dreamy-eyed when they talk about the trading," she said. "But we want to make sure we have a real cap and that we can tie this into real emissions reductions."

## Ontario Objects To EPA Plan on Coal Emissions

Bloomberg News
Published in the Washington Post, Saturday, February 18, 2006

Ontario, Canada's most populous province, is challenging a U.S. Environmental Protection Agency proposal that it says would allow higher emissions from nearby coal-burning power plants.

The proposed change to the EPA's New Source Review program would probably cause more smog to drift into Ontario because it would ease pollution controls for plants in neighboring U.S. states such as Michigan, Minnesota and Wisconsin, Ontario's Ministry of the Environment said in a news release.

Environment Minister Laurel Broten filed comments with the EPA yesterday detailing the province's concerns. Ontario claims that more than half of its air pollution stems from the United States, particularly from electric utilities. The province says poor air quality has hurt the economy and health of its citizens.

"Smog doesn't respect international borders, neither do the ill effects," Greg Flynn, head of the Ontario Medical Association, said in a statement.

Under New Source Review, which is part of the 1977 Clean Air Act, U.S. plant owners must install pollution-reduction equipment when they make improvements that increase emissions. The EPA is seeking to alter the rule in a way that would make it less likely that such emission upgrades would be triggered. The agency says the changes are aimed at making pollution regulations more efficient, while environmentalists argue that it is a gift to energy companies.

New York, Illinois and nine other states also filed comments with the EPA objecting to the revisions. They contend that the rule changes amount to an illegal interpretation of the Clean Air Act and would increase overall air pollution.

## Industries Get Quiet Protection From Lawsuits

**Federal agencies are using arcane regulations and legal opinions to shield automakers and others from challenges by consumers and states.**

By Myron Levin and Alan C. Miller, Times Staff Writers
Los Angeles Times, February 19, 2006

WASHINGTON - Near sunrise on a summer morning in 2001, Patrick Parker of Childress, Texas, swerved to avoid a deer and rolled his pickup truck.

The roof of the Ford F-250 crumpled, and Parker didn't stand a chance. His neck broke and, at 37, he was paralyzed from the chest down. He sued, and Ford Motor Co. settled for an undisclosed amount.

"You can imagine what happens when you're belted in and the roof comes down even with the door," Parker said. "Your options are death or quadriplegia."

Parker's case and hundreds like it are behind a beefed-up roof safety standard proposed in August by the National Highway Traffic Safety Administration. But safety regulators tucked into the proposed rule something vehicle makers have long desired: protection from future roof-crush lawsuits like the one Parker filed.

The surprise move seeking legal protection for automakers is one in a series of recent steps by federal agencies to shield leading industries from state regulation and civil lawsuits on the grounds that they conflict with federal authority.

Some of these efforts are already facing court challenges. However, through arcane regulatory actions and legal opinions, the Bush administration is providing industries with an unprecedented degree of protection at the expense of an individual's right to sue and a state's right to regulate.

In other moves by the administration:

- The highway safety agency, a branch of the Department of Transportation, is backing auto industry efforts to stop California and other states from regulating tailpipe emissions they link to global warming. The agency said last summer that any such rule would be a backdoor attempt by states to encroach on federal authority to set mileage standards, and should be preempted.
- The Justice Department helped industry groups overturn a pollution-control rule in Southern California that would have required cleaner-running buses, garbage trucks and other fleet vehicles.
- The U.S. Office of the Comptroller of the Currency has repeatedly sided with national banks to fend off enforcement of consumer protection laws passed by California, New York and other

states. The agency argued that it had sole authority to regulate national banks, preempting state restrictions.

- The Food and Drug Administration issued a legal opinion last month asserting that FDA-approved labels should give pharmaceutical firms broad immunity from most types of lawsuits. The agency previously had filed briefs seeking dismissal of various cases against drug companies and medical-device manufacturers.

In a letter to President Bush on Thursday, Rep. Jan Schakowsky (D-Ill.) said, "It appears that there may have been an administration-wide directive for agencies … to limit corporate liability through the rule-making process and without the consent of Congress."

Administration officials said the initiatives had not been centrally coordinated.

"Under the constitution, federal laws take priority over inconsistent state laws," said Scott Milburn, spokesman for the White House Office of Management and Budget. "Decisions about … whether particular rules should preempt state laws are made agency by agency and rule by rule."

Preemption initiatives by regulatory agencies have drawn less public attention than controversial legislative moves supported by the White House. With administration support, Congress has restricted class-action suits and banned certain claims against gun makers and vaccine producers.

By embedding similar protections for businesses in regulatory changes, the administration has advanced Bush's repeated pledge to rein in what he calls junk lawsuits.

On Thursday, for example, when the Consumer Product Safety Commission adopted a rule to curb mattress fires, it recommended for the first time that courts bar suits against manufacturers that comply with the new standard.

Schakowsky called the move "part of an unfortunate and troublesome pattern … to undermine consumer rights."

In addition to trying to bar suits over vehicle roof failures, the highway safety agency in recent months has sought broad legal protection for manufacturers in two other rules on the grounds that lawsuits could undermine its safety goals. One rule related to rear seat belts and the other to visibility requirements for trucks.

No similar exemption clauses have been attached to any other highway safety agency rule changes for 35 years.

Industry executives, lobbyists and lawyers have shuttled through jobs in the highway safety agency and other departments over the years, but in the Bush administration, auto industry ties have grown more conspicuous.

Before becoming White House chief of staff, Andrew H. Card Jr. served as a General Motors Corp. vice president and as chief executive of the top auto industry trade group.

The acting head of the highway safety agency, Jacqueline Glassman, was a senior attorney for DaimlerChrysler Corp. before she became the agency's chief counsel in 2002.

Jeffrey A. Rosen, who became general counsel at the Transportation Department in 2003, was a senior partner at Kirkland & Ellis, a powerhouse law firm that has defended GM in numerous product-liability suits and represents the Alliance of Automobile Manufacturers.

Rosen denied using his position to benefit automakers.

"We have issued a number of major rules in the two years that I have been here," he said. "Some of them are supported by industry, some are opposed."

Michael S. Greve, a resident scholar at the conservative American Enterprise Institute, has written that preemption is crucial to protect the economy from "trial lawyers, ambitious state attorneys general and parochial state legislatures."

But critics say the preemption push contradicts the conservative ideals of a limited federal government and states' rights - principles espoused by Bush.

"This is the most aggressive federal government in the history of the United States," said California Atty. Gen. Bill Lockyer, a Democrat.

Some say the election calendar is spurring the moves.

"The message has been clear in the last couple of years that if industries are going to get protection, they need to get it now," because no one knows what will happen in the next election, said Jonathan Turley, a George Washington University law professor.

Rollover accidents kill more than 10,000 people in the U.S. each year, and seriously injure an additional 16,000. Consumer groups say better roofs would have saved thousands of victims over time.

Automakers counter with the "roof dive" theory -- that rollover victims fall head-first to the roof as it strikes the ground, injuring themselves whether the roof holds or buckles. Thus, they say, the value of stronger roofs is practically nil.

Brian O'Neill, president of the Insurance Institute for Highway Safety, called this argument "patently nonsense." If it were true, he said, people would be "just as well-off in a rollover in a convertible as a hardtop."

The highway safety agency always has agreed that roof failures can cause death and injury. Its roof-crush proposal estimates that 596 deaths and 807 serious injuries a year are linked to roof collapse.

Its proposed rule would increase the force a roof must withstand in a rollover from its current 1.5 times a vehicle's weight to 2.5 times - at a cost per vehicle of about $12. It would cover large trucks and SUVs of more than 6,000 pounds for the first time. The agency also is considering requiring stability control systems to reduce rollover risk.

The revised roof rule would create "the strongest ever uniform set of minimum … standards" for automakers in the U.S., Transportation Department spokesman Brian Turmail said.

However, the safety agency is projecting relatively modest benefits from the upgrade: 13 to 44 deaths and 500 to 800 injuries prevented a year. One reason: Nearly 70% of existing vehicles already meet the proposed standard.

Critics call this a token improvement. The stiffest criticism, however, has been reserved for the effort to grant immunity from lawsuits.

The safety agency says its push to preempt personal injury litigation is based on a concern that automakers, fearful of lawsuits, might beef up roofs to such an extent that the vehicles become top-heavy and more prone to roll over.

John G. Womack Jr., a former acting chief counsel at the safety agency, said that equating roof strength with weight was a "very debatable proposition." Other options are to use high-strength steel or widen the stance of vehicles to compensate for heavier roofs, he said.

Diverse groups -- including Public Citizen, a consumer watchdog, and the National Conference of State Legislatures - have condemned the provision and questioned the highway safety agency's authority to protect automakers.

Some have complained that if companies could not be held liable for damages, it would remove incentives for automakers to exceed minimum safety standards.

A bipartisan group of 26 state attorneys general said in a December letter to the highway safety agency that the lawsuit ban, if accepted by the courts, would shift significant costs of caring for seriously injured victims from the industry to taxpayer-funded programs such as Medicaid. It would also conflict with consumer rights, they said.

"Such an extreme step is unwarranted in the absence of express congressional intent," they wrote.

Roof-crush suits have resulted in costly settlements and verdicts against automakers at a time of widespread financial trouble for the U.S. industry.

In 2004, Ford paid $41 million in a case in which a California appeals court compared the company's use of a fiberglass and metal roof in the 1978 Bronco to "involuntary manslaughter."

The same year, a San Diego jury awarded damages against Ford of $367 million, later reduced by the judge to $150 million. In 2003, GM was hit with a $19.6-million verdict, described as the largest product liability award in Nebraska history. The San Diego and Nebraska cases are being appealed.

For victims like Parker, the prospect of manufacturer immunity is an especially bitter pill.

The paralyzed Texas man, who had worked as a technician for a local utility, said he at least gained some financial security through litigation by extracting a settlement from Ford. Otherwise, he said, he and his wife "would have been living from hand to mouth."

He criticized the preemption clause, saying it was as if the industry had "this red phone and they just pick it up and it automatically dials NHTSA."

The immunity clause was unexpected, even to some in the industry.

"Whether this was some conspiracy or whether it was a pleasant surprise, I really don't know," said Barry Felrice, director of regulatory affairs with DaimlerChrysler in Washington.

Spokesmen for GM and Ford said that their companies had not lobbied for the lawsuit ban but that they supported it.

Bill Walsh, a former highway safety agency senior executive who worked on the rule before retiring in 2004, said the immunity language "was dropped in from out of the blue."

Preempting lawsuits, he said, was "different from how we normally operated … in issuing regulations."

Rosen, the Transportation Department's general counsel, said this was not the first time the highway safety agency had tried to override state liability laws.

During the 1990s, the agency joined automakers in arguing that they shouldn't be sued for not installing air bags at a time when the agency allowed either air bags or automatic seat belts. In 2000, the Supreme Court agreed that such suits were preempted but said that compliance with a standard ordinarily "does not immunize a manufacturer."

Card, the White House chief of staff, and Glassman, the agency's chief counsel, declined to discuss how the roof-crush lawsuit preemption originated. Rosen said he did not want "to get into the specifics of who said what to whom…. As a legal matter, I'm obliged to protect the deliberative process."

The Rev. Lawrence Harris of Pittsgrove, N.J., sees the issue from the vantage point of his wheelchair. Had his claim been preempted after a devastating accident with his family in North Carolina, he might not be preaching on Sundays.

Harris, then 46, was wearing a seat belt but suffered a fractured spine in 1997 when his Ford Econoline van rolled over. Except for minimal movement in his hands, he was paralyzed from the chest down.

With the damage award he won from Ford, Harris installed a roll-in shower and wheelchair lift in his house, hired a caretaker to help him dress each morning, and modified a van so he could continue as pastor of Olivet United Methodist Church.

Without the lawsuit, he said, "I would not be able to do the things I'm able to do." If automakers are immune, Harris said, "where is the check and balance going to be for them?"

Within days of its roof-crush proposal, the highway safety agency again backed the auto industry in challenging California's efforts to cut emissions.

The Alliance of Automobile Manufacturers had gone to court to stop the state Air Resources Board from regulating tailpipe emissions of carbon dioxide and other greenhouse gases, contending the rule was preempted.

Because carbon dioxide emissions drop when less fuel is burned, the industry attacked the rule as a backdoor attempt to regulate fuel economy -- under federal law, the exclusive domain of the highway safety agency.

The agency agreed. On Aug. 23, it issued new mileage standards for light trucks, saying that its authority over fuel economy meant that "a state law that seeks to reduce motor vehicle carbon dioxide emissions is … preempted."

Industry lawyers filed papers the next day in U.S. District Court in Fresno informing the judge of the agency's position.

California's global warming rule, which would first apply to 2009 models, is not all that's at stake in the Fresno case. Ten states have copied California's emission rule, and all those rules could be wiped out if the industry wins.

Rosen's former law firm, Kirkland & Ellis, represents the Alliance of Automobile Manufacturers in the suit to block California's global warming rule. The suit was filed in late 2004, a year after Rosen left the firm to join the Transportation Department.

Transportation spokesman Turmail said Rosen did not discuss the matter with the law firm. In considering the safety agency's position on the matter, Rosen acted in the government's interest, Turmail said.

Eleven U.S. senators from both parties and 29 House Democrats from California have urged Transportation Secretary Norman Y. Mineta to reverse the agency's opposition to the emissions standard.

"Rather than attempting to thwart such state efforts, the federal government should encourage states to develop innovative solutions to serious public health and environmental problems," the senators wrote to Mineta in December.

Kirkland & Ellis also represented automakers in another case against California regulators. In 2002, the industry -- backed by the Justice Department -- challenged a state rule that required production of a certain number of non-polluting vehicles.

Rosen said he did not participate in that case while he was with the law firm. The case was settled when the state agreed to remove language that the industry said amounted to regulating fuel economy.

The Bush administration also helped two industry groups overturn a regulation requiring the purchase of cleaner-running fleet vehicles such as buses and garbage trucks in Southern California.

The Engine Manufacturers Assn. and Western States Petroleum Assn. claimed the rule by the South Coast Air Quality Management District was preempted by federal law. Their challenge was rejected in federal district court and by a federal appeals court.

When the case went to the U.S. Supreme Court, the Justice Department filed a brief siding with the industry. The high court agreed that the local rules were preempted.

In the past, said California's Atty. Gen. Lockyer, when industries challenged state regulations, "the federal government abstained from those lawsuits."

Now, he said, there's "a policy of rubber-stamping whatever business wants, and that's too bad."

The idea behind another California law was simple: Tell credit cardholders on monthly bills how long it would take to retire their debt if they paid the minimum amount.

But major banks issuing most of the nation's credit cards didn't like it. In a 2002 court challenge, they attacked the state's credit disclosure law with help from a powerful ally.

The U.S. Office of the Comptroller of the Currency joined forces with the American Banking Assn., Citibank and other plaintiffs, arguing in a friend-of-the-court brief that the law interfered with federal authority to regulate national banks, and with powers granted to the banks by their federal charters.

A federal judge blocked the law from going into effect, and the state lost a subsequent appeal.

Intervention by the comptroller's office "definitely tipped the balance," said Gail Hillebrand, a lawyer for Consumers Union, which had backed the state's position.

In recent years, the comptroller's office on many occasions has helped national banks and their subsidiaries fend off investigations or enforcement actions by state officials on preemption grounds.

In 2004, for example, the agency helped to shoot down a California law that would have required customer permission before banks shared their personal information with business affiliates.

Although a U.S. District Court judge upheld the privacy law, an appeals court ruled last year that its major provisions were preempted by federal law.

Last year, the agency went to court on the side of a banking association to block an investigation by New York Atty. Gen. Eliot Spitzer into possible racial bias in the lending practices of several banks.

A federal judge agreed that Spitzer's investigation "impermissibly infringes" on the authority of the comptroller's office. The state is appealing.

Turf battles over banking regulation have occurred in the past, but the Office of the Comptroller of the Currency has become more aggressive in pushing preemption under Bush.

Agency officials say they have zero tolerance for abusive practices and bristle at complaints that they might be chasing off state watchdogs to the detriment of consumers.

The banks "have an enormous body of consumer compliance laws and regulations that we apply to them at the federal level," said Julie L. Williams, the agency's senior deputy comptroller and chief counsel.

But Arthur E. Wilmarth Jr., a George Washington University professor specializing in banking law, said, "The OCC hasn't been, shall we say, a very zealous enforcer on the consumer side…. States have been far more vigorous."

Greve, the American Enterprise Institute scholar who has been a mainstay of the conservative brain trust promoting preemption, said well-connected industry law firms were part of a policy network providing legal and political rationale for the effort.

He called them "a merry band of Washington lawyers … who know how to push the buttons" and get things done.

*Levin reported from Los Angeles and Miller from Washington. Times researcher Janet Lundblad in Los Angeles also contributed to this report.*

(BEGIN TEXT OF INFOBOX)

Official ties to industry

Bush administration officials with previous ties to the auto industry:

Andrew H. Card Jr. was General Motors Corp.'s vice president of government relations. He represented GM on matters of public policy before Congress and the administration. From 1993 to 1998, Card was president and chief executive of the top auto industry trade group. He is now White House chief of staff.

Jacqueline Glassman was a senior regulatory counsel at Daimler-Chrysler Corp. She is now the acting head of the National Highway Traffic Safety Administration.

Jeffrey A. Rosen was a senior partner at Kirkland & Ellis, a law firm that has defended GM in numerous product-liability suits and represents the Alliance of Automobile Manufacturers. He is the general counsel at the U.S. Department of Transportation.

## U.S. to Fund 12 Commuter Buses for the 91 Freeway

**Part of grant aims to help unclog connector between Orange and Riverside counties**

By David Reyes, Times Staff Writer

Los Angeles Times, February 17, 2006

A dozen commuter buses using cleaner fuel will soon be on the 91 Freeway between Orange and Riverside counties to ease traffic congestion, officials announced Thursday.

Money for the buses will come from a $4.3-million federal transportation grant announced by Rep. Ken Calvert, (R-Corona), whose district includes part of Orange County and western Riverside County. The money will also help pay for projects in Fullerton and Anaheim.

The Orange County Transportation Authority had applied for the grant in September to help introduce its first dozen buses powered by compressed natural gas for the Riverside Freeway, the main connector linking Riverside and Orange counties.

"Easing congestion on the 91 Freeway is a significant priority for our agency," said Kristine Murray, OCTA manager of federal relations.

The authority already has 223 buses powered by liquid natural gas, she said. Experts said traffic on the 91 Freeway was expected to grow from 250,000 trips a day to as many as 480,000 by 2030.

"These funds will help improve the transit system, particularly in Orange County and between Riverside and Orange counties," Calvert said.

Regional transportation agencies recently approved a major widening of the freeway and further study of elevated lanes down its median, or alongside it, and a tunnel between Orange and Riverside counties through the Santa Ana Mountains. The authority has requested $7.5 million in federal money to design the freeway widening.

In addition, the grant announced Thursday will pay for a security camera system at the Fullerton Transportation Center, fund "rapid buses" on Harbor Boulevard and buy fare collection equipment for buses in Anaheim.

Fresno Bee editorial, Tuesday, February 21, 2006:

## Taking on tobacco

**State air board officially declares second-hand smoke is pollution**

The California Air Resources Board quietly pulled off another first the other day. The board declared secondhand smoke a toxic air contaminant.

The board's action puts tobacco smoke in the same category as the toxic fumes that spew from car tailpipes or factory chimneys. It's the only such designation in the world.

For years, state air regulators have been required to monitor and reduce exposure to those harmful pollutants. They must now devise means to reduce human exposure to secondhand smoke.

The science behind the tobacco designation is irrefutable. According to the air resources board, smokers release 40 tons of nicotine into the air in California each year, 365 tons of soot and ash and 1,900 tons of carbon dioxide. Beyond the millions of smokers who die or are sickened by their own dangerous addiction, the smoke they spew into the air has been linked to 400 additional lung cancer deaths a year in nonsmokers, 3,600 deadly heart attacks and 31,000 asthma attacks in children.

Still, regulating tobacco use any further will be a tough challenge. Smoking in public indoor settings -- including restaurants bars, offices and other work places -- is already banned in California. Even outdoor smoking is restricted. Most of the state's major outdoor sports arenas either ban smoking or severely limit it.

The next major challenge may be to restrict or ban smoking in more private settings, perhaps in cars when children are present or in apartments. Many nonsmokers who live in apartments that share common ventilation systems with smokers can't escape harmful exposure. Some jurisdictions have created nonsmoking sections in senior apartment complexes, or banned smoking in common areas. Such restrictions are expected to expand in coming years.

Bills to ban smoking in cars when young children are present have failed passage in the Legislature for the past several years. But the air board's action may give the proposal new impetus.

If nothing else, the designation serves to remind the smokers that their unhealthy habit has dangerous consequences to the nonsmokers around them. It's a message that cannot be delivered too often.

Visalia Times-Delta, Editorial, Monday, Feb. 20, 2006:

## Be tough on improving air quality

Thumbs down to to the U.S. Environmental Protection Agency for its proposal to exempt rural areas from requirements to limit dust in the air.

The proposal would essentially provide an exemption to agriculture in the San Joaquin Valley.

The new proposal acknowledges that it would be difficult and impractical to enforce the rules that would require farms to limit the amount of dust they throw into the air.

The rules would apply only to areas where there is more than 100,000 population.

In Tulare County, that would only affect the area around Visalia.

Agriculture has already shown a willingness to adopt practices that limit air pollution and particulate matter in the atmosphere. Why backslide now? Providing exemptions only delays the inevitable and prolongs what is this area's predominant public health problem.

The EPA's decision undercuts the work that is being done by the local San Joaquin Valley Air Pollution Control District. As we have seen before, granting exemptions only provides disincentives for change. Our Valley's air quality needs a change for the better.

It's also discriminatory to those people who live in rural areas.

Why should children in rural areas be exposed to conditions that exacerbate asthma and other respiratory conditions while children in cities are not?

We have consistently said that air pollution cannot be reduced piecemeal. Different activities or industries can't be given exemptions. We're all in this together.

If there are extraordinary obstacles to compliance for agriculture, address those obstacles. Let's not send a message that says: When the solution to the problem is too difficult, let's not bother trying a solution. Our air is never going to improve that way.

Bakersfield Californian, Editorial, Sunday, Feb. 19, 2006:

## Kern voters to be sold Southern California's dump

It will be a nice trick if they can pull it off: Convince Kern County voters to bury themselves in Southern California's garbage. Bypassing the local planning process, investors proposing to build a huge, private landfill (nice word that means dump) in eastern Kern County are going straight to the voters.

Next week they are expected to file papers with Kern County election officials to begin the process of placing their measure on the November ballot.

Next to motherhood and apple pie, what could be more wholesome than letting people decide an important issue affecting their lives? Put it to a vote!

That may sound good in concept. But when the important issue may have dire consequences for the water we drink, the air we breathe and our quality of life, it shouldn't be sold through a glitzy, well-financed political campaign.

It should be decided through a process that includes independent studies, public hearings and opportunities for residents to influence plans.

But that takes time and carries the risk of public pressure and community concerns derailing plans.

Proponents of the High Desert Green Energy Park have wrapped their dump in a green package in hopes of winning over Kern County voters. They promise the park will offer opportunities for alternative energy generation, including recovering gas generated by a landfill.

Through focus groups and polling, proponents say they found overwhelming local support for changing the county's general plan and zoning to accommodate the energy park and its dump, where millions of tons of household trash likely most of it from Southern California will be deposited.

By going straight to the voters, the proponents are putting the cart before the horse. They seek first what they need most land-use designations before studies are done to determine the impacts of operating a dump, hauling in trash and generating power.

Instead of preparing detailed plans and studies, they will offer a few lines on a ballot for voters to judge their project.

Bakersfield Attorney George Martin, who represents investors, contends the vote will not skirt state environmental laws. Studies will be done after the vote.

But that may be too late. Voter-approved projects are difficult to challenge. And that is the investors' motivation: Ram a bullet-proof project through a gullible electorate that is sold a nice idea, rather than a studied plan.

Eastern Kern County may be the perfect location for Southern California's dump. If it's a sound plan, it should go through a sound, planning process and be decided by locally elected representatives, rather than slick political campaign strategists.