

Testimony of Douglas Haaland
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State of California
Senate Committee on Environment and Public Works
Oversight Hearing of USEPA's Decision to Deny the California Waiver
January 24, 2008

I'd like to begin by thanking you Chairman Boxer and members of the Committee for the opportunity to comment on the Environmental Protection Agency's decision to deny California's request for a waiver to regulate greenhouse gas pollution from motor vehicles.

Inasmuch as members may be wondering how the "Director of Member Services for the Assembly Republican Caucus" has any connection to the issue currently before the Committee, I would like to take a moment to expand on my professional background before I offer my comments on the denial of California's request for a waiver.

In conjunction with the responsibilities associated with my present position, I serve as a Special Advisor to the Assembly Republican Leader on Water, Environmental, and Natural Resources Issues.

Additionally, I have previously served as the Chief Consultant to the California State Senate Select Committee on the CalFED Program working with water and environmental issues related to that program, as well as a principal consultant for the Assembly Republican Office of Policy assigned to the Assembly Natural Resources Committee and the Assembly Environmental Safety and Toxic Materials Committee.

Returning to the matter before this Committee, as a Californian I am proud of the work that has been done in the preceding decades to clean our air. As a child I too remember taking trips to visit relatives with my Mom and Dad, cresting the Tejon Pass and descending into the Los Angeles area through a brown fog. Dad would say it was so thick you could "Cut it with a knife."

That pride is now tempered as an adult as California's waiver request represents a radical change in direction. I would like to take this opportunity to thank US EPA Administrator Stephen Johnson for his denial of

California's request. I believe his decision is a reasoned response to a process that has been allowed to spin out of control in California.

The reasons for this statement are two-fold in nature, one is based on policy issues and the second is rooted in the legislative and regulatory process.

On a policy basis, the regulations developed by the California Air Resources Board (CARB) represent an extraordinary expansion of regulatory authority that no state has previously undertaken. Following the overly broad statutory mandate contained in AB 1493 (Pavley) from 2002, to "*...achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles,*" CARB has proceeded to develop and impose an unreasonable mandate requiring the regulated community subject to these regulations to account for "*...upstream emissions associated with the production of fuel used by the vehicle.*"

The policy embodied in the regulatory scheme proposed by CARB would seem to be an attempt to codify the need to account for what are termed in the environmental community as "life-cycle" costs of products. The policy implications of the unfairness of such a scheme are clear, especially in light of the regulatory network soon to be produced as a result of AB 32 (Nunez) which will impose another set of regulations and costs across all business sectors of the State.

This unjust intensification of regulatory authority is unprecedented and has not been attempted in any of California's previous waiver requests which received so much attention in the testimony of Attorney General Jerry Brown, CARB Chairwoman Mary Nichols and others during the field briefing held this past January 10th in Los Angeles.

The best example of this is contained in the Attorney General's press release from November of last year regarding a lawsuit he filed against the EPA where he extols the accomplishments of previous waiver requests such as catalytic converters, exhaust emission standards and leaded gasoline standards. The most significant difference between these examples and the current waiver request is the fact that all prior requests have been targeted at a single industry standard, be it automotive or petroleum, but none have required one industry to bear the burden of another's manufacturing practices.

Lastly, the Clean Air Act prohibits the granting of a waiver if the State does not need it to meet "...compelling and extraordinary conditions..." with the regulatory standard. The argument that California must set a standard for 14 states to follow in an attempt to impact climate change emissions does not rise to the level of a compelling and extraordinary condition. Climate change is a global problem that will require coordinated global solutions. 15 states in the U.S. imposing technologically questionable regulations will, in my mind, have a statistically insignificant impact on this global problem. You must consider this statistical impact in the face of the more than 500 coal-fired electrical generating plants planned for development in China during the period of time covered by the regulations which are the subject of the waiver request.

The second reason for my belief that the EPA Administrator issued the proper decision revolves around the issue of process.

The United States became a signatory nation to the 1997 Kyoto Protocols in 1998, but there has been no action to ratify the treaty since that time. This fact has been the source of considerable angst among environmental organizations across the Nation. In light of this state of affairs these groups have taken their message to states and municipalities urging "local" action since Washington has not committed us to the requirements of the Protocols.

As a result, California has become the "bank-shot" around Washington's perceived inability to take action. The state has an environmentally friendly majority in the Legislature where their agenda only requires a majority vote and both the current and previous Governors have been willing to align themselves with what are variously called groundbreaking "Green Initiatives."

The waiver request which is the subject of this hearing is one of the best examples of these "bank-shot" attempts and one of the reasons I stated earlier that it is a process that has spun out of control.

The California Constitution requires bills introduced in the Legislature to be in print for 30 days before any action can be taken on the measure. This requirement was put in place to ensure the public had a chance to become aware of the proposed law and register a position on the policy issue addressed.

In the case of AB 1493 which became the statutory authorization for the regulations subject to the request, the language was amended into the bill in the California Senate on June 28, 2002, voted upon in the Senate on June 29th and dispensed with by the Assembly on July 1, 2002. Governor Davis signed the measure into law on July 22, 2002... voted out of both houses in 3 days and the whole process taking place within a mere 24 days.

While this example is an egregious abuse of the legislative process there are several others which epitomize my belief and assertion that California has become the home to the proverbial back-door implementation of environmental policies not tackled by Washington.

Were this process to go unchecked it could badly divide the regulatory approach that has served our Nation well for decades and could certainly lead to standards that would force manufacturers, both small and large, to reduce consumer choice, unnecessarily increase the cost of goods produced, and place significant impediments to continued economic growth.

In light of the current \$14 Billion budget deficit California faces, I don't believe that we have the luxury of continuing to create regulatory schemes that ignore the economic realities of diminished inventories, reduced product sales, or the elimination of markets for the products produced within the state.

Again, Madame Chair and members I wish to thank you for this opportunity and I look forward to answering any questions you may have at this time.