

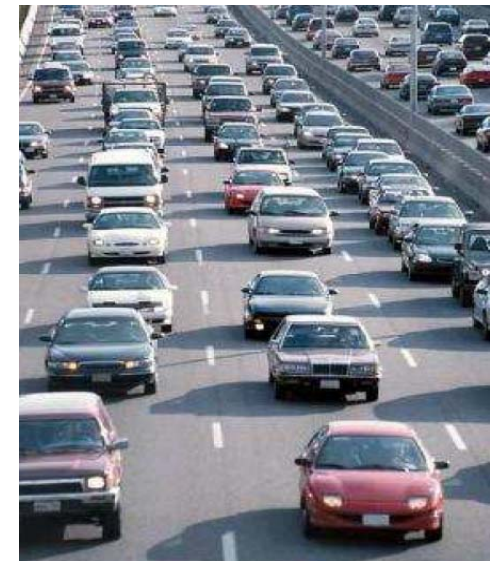
In the absence of national leadership, states take the lead on responses to climate change...

In 1999, twelve states *petitioned* the Environmental Protection Agency (EPA) to regulate automobile emissions of CO₂ and other greenhouse gases under the Clean Air Act (CAA).

Section 202(a)(1).2 of the CAA: The EPA Administrator (will) prescribe by regulation standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles ... which, in his/her judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.

Normal process in these 'petitions' is for the petition to make its rounds in the government agency, followed by extensive public comment, followed by a response. ***In this case, the EPA sat on the petition for four years.***

Between the time the petition was filed and a decision was made, the 2000 election had occurred.



July 22, 2002

Meanwhile, the states are restless...

It sure would be nice to have a decision on that EPA petition!

Deciding not to wait longer, the California legislature passed **Assembly Bill 1493** (the Pavley Bill).

Mandates the California EPA to set new emissions standards for greenhouse gas emissions for new model vehicles sold in California. New model cars sold in California must emit 22% less greenhouse gas by 2012, and 30% less by 2016, compared to the average tailpipe emissions from cars produced in 2009 (these standards refer to grams of total greenhouse gas emitted per mile). So, taking 2009 as the baseline, car manufacturers must reduce emissions from that point forward.

Eighteen US states stated their intent to adopt the California standards.



Assemblywoman Fran Pavley

Why is California permitted to pass this type of law? Isn't the federal government the only entity under the Clean Air Act allowed to regulate tailpipe emissions?

Under the federal Clean Air Act states are permitted to pass *clean air standards* that are tougher than federal standards as long as they get a waiver from the US EPA. (*Did I already say it would be nice to have that petition decided?*)

There are two ways to approach the EPA's responsibilities under the Clean Air Act: (1) petition the EPA to carry out its duties as you see them; (2) request a waiver from the EPA to set your own standards, even if they differ from the EPA's standards.

Seeing the inertia in the California Clean Car Laws, the fact that several states were beginning to adopt the same positions, and needing to deal with the petition from 12 states for the EPA to regulate CO₂, the Bush Administration decided it needed to step in and set something straight – **CO₂ does not threaten clean air!**

The Bush Doctrine on CO₂ Settles the EPA Petition

In 2003, Bush announced that CO₂ is not a pollutant, so the EPA has no authority to approve a request by states to regulate it under the Clean Air Act. ***The petition from the 12 states was denied.***

EPA General Counsel Robert Fabricant:
"Because the [Clean Air Act] does not authorize regulation to address climate change," he wrote, "it follows that CO₂ and other [greenhouse gases] are not air pollutants."

"Why would you regulate a pollutant that is an inert gas that is vital to plant photosynthesis and that people exhale when they breathe?" said Eron Shosteck, a spokesman for the Alliance of Automobile Manufacturers, a Washington-based industry lobby. ***"That's not a pollutant."***



The Automobile Manufacturers Decided to Open Another Line of Attack on the Clean Car Laws

December 2004 – Car manufacturers sued California, Vermont and Rhode Island stating: while states have the right to set their own **clean air standards**, they don't have the right to **regulate tailpipe emissions** because fuel economy standards (e.g. Corporate Average Fuel Economy, or CAFÉ, standard) are only set by the federal government.

The legal argument was over the extent to which “clean air standards” can be translated into “tailpipe standards” and therefore whether a state can get a waiver from the EPA..

The automakers asked Federal District Courts in these states to step in and stop the EPA from granting a waiver.



Appeal of the EPA's Decision to Deny the Petition

In April 2005, responding to the Bush CO₂ Doctrine and the EPA's refusal of the petition to control CO₂, Massachusetts (with supporting role of several other states) appealed the EPA decision to the US Court of Appeals in Washington D.C.

In July 2005, The Court of Appeals upheld the EPA decision.

California decided to push the issue even further. In December 2005, California made formal request to the EPA for a ***waiver*** (different from a ***petition***) in order to override the federal clean air standards and pass their own clean air standards under the Pavley Bill that was passed in 2002. (***A waiver doesn't ask the EPA to regulate anything, but rather allow the state to regulate CO₂.***)

The EPA sat on the waiver request, presumably waiting to see the outcome of the lawsuit brought by the automakers against Vermont, California and Rhode Island to overturn their greenhouse gas emissions laws.

'We Can Appeal Even Further the EPA's Decision to Deny the Petition'

On a separate front, Massachusetts and eleven other states appealed the decision of the D.C. Court of Appeals to the U.S. Supreme Court. The case was argued in November 2006.

April, 2007, the court ruled on 5-4 vote: CO₂ is a pollutant and that the EPA has the ***"right"*** to regulate CO₂ emissions from new cars.

Justice Stevens for the majority, Justice Roberts for the minority.

This doesn't require the EPA to regulate CO₂, but it supports the case of the states that the EPA cannot 'dodge' the issue on the basis that CO₂ is not a pollutant. The Clean Air Act is relevant to CO₂ emissions.



A few months later, the District Courts weighed in on the automaker's cases

September 12, 2007 – Vermont's decision came in first



"There is no question that the greenhouse gas regulations present great challenges to automakers. However, history suggests that the ingenuity of the industry, once put in gear, responds admirably to most technological challenges...the court remains unconvinced automakers cannot meet the challenges of Vermont and California's GHG regulations."

December 12, 2007 – Then, the California Court weighed in

"Given the level of impairment of human health and welfare that current climate science indicates may occur if human-generated greenhouse gas emissions continue unabated, it would be the very definition of folly if the EPA were precluded from action."

These decisions paved the way for the states to pass Clean Car Laws and force automakers to uphold those laws

December 19, 2007 – Exactly one week after the California court ruling against the automakers, the EPA sent letter of intent to deny California’s request for a waiver. This was followed with formal denial in March 2008.

The first waiver ever denied under the Clean Air Act. California alone had received 50 waivers on previous requests when pollution-control efforts were involved.

EPA Administrator Stephen Johnson stated: the energy bill signed into law by President Bush today is "a national solution" that is better than a "confusing patchwork of state rules - to reduce America's climate footprint from vehicles." That bill, the **Energy Independence and Security Act**, contained a measure to increase the fuel economy standard to 35 mpg by the year 2020 – at least 10 years later than California’s law.



The Stone Wall Remains Intact

Following the Supreme Court decision, the EPA created a position paper that was consistent with the Court's ruling and showed how the Clean Air Act could be a benefit in regulating CO₂. Certain people in the EPA wanted to be 'team players'. The analysis concluded that "tough regulation of motor vehicle emissions could produce \$500 billion to \$2 trillion in **economic benefits** over the next 32 years" (from reduced health costs, reduced damage to the environment, etc.)

The draft of this position paper was sent to the White House as an e-mail attachment. White House advisers refused to open the e-mail message, thus preventing it from having 'official status'.

Nonetheless they knew what the message contained, and they requested that the EPA prepare a new report without the sections supporting greater regulation under the Clean Air Act.

In July 2008, the EPA issued an Advanced Notice of Proposed Rulemaking, calling for public comment on the issue of whether the EPA should regulate CO₂. (**Remember, a similar process took four years when the 1999 petition was made to the EPA by Massachusetts and others.**)

Here we go again...

July 31, 2008 The state of California issued formal notice of intention to “sue the U.S. EPA for continuing to “wantonly ignore its duty” to regulate greenhouse gas pollution from ships, aircraft, and construction and agricultural equipment.”

Stay tuned...



“I will be back!”

One week after inauguration...



MEMORANDUM FOR THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: State of California Request for Waiver Under 42 U.S.C. 7543(b), the Clean Air Act

Under the Clean Air Act (42 U.S.C. 7401–7671q), the Environmental Protection Agency (EPA) sets emissions standards for new motor vehicles. California may also adopt standards for new motor vehicles if the Administrator of the EPA, based on criteria set out in the statute, waives the general statutory prohibition on State adoption or enforcement of emissions standards. Other States may adopt emissions standards for new motor vehicles if they are identical to the California standards for which a waiver has been granted and comply with other statutory criteria.

For decades, the EPA has granted the State of California such waivers. The EPA's final decision to deny California's application for a waiver permitting the State to adopt limitations on greenhouse gas emissions from motor vehicles was published in the *Federal Register* on March 6, 2008.

In order to ensure that the EPA carries out its responsibilities for improving air quality, you are hereby requested to assess whether the EPA's decision to deny a waiver based on California's application was appropriate in light of the Clean Air Act. I further request that, based on that assessment, the EPA initiate any appropriate action.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA
THE WHITE HOUSE, January 26, 2009

The Governor Prevails...

32744

Federal Register / Vol. 74, No. 129 / Wednesday, July 8, 2009 / Notice

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL-8927-2]

**California State Motor Vehicle
Pollution Control Standards; Notice of
Decision Granting a Waiver of Clean
Air Act Preemption for California's
2009 and Subsequent Model Year
Greenhouse Gas Emission Standards
for New Motor Vehicles**

September 15, 2009

White House Rolls Out Details of Auto Fuel Economy, Emissions Standard



New CAFÉ standard is 35.5 mpg by 2016 (up from 27.5 mpg) and it incorporates California's proposed standard, such that automakers only have one standard to deal with. All major automakers are supportive of new standard.