

**Statement of Edmund G. Brown Jr.
California Attorney General**

**Before the Senate Environment and Public Works Committee
Subcommittee on Clean Air and Nuclear Safety
U.S. Senate**

May 22, 2007

Testimony

Madam Chairperson and Members of the Committee, I appreciate the opportunity to testify before you today. I'm here to talk about California's waiver petition now pending before the U.S. Environmental Protection Agency. That petition seeks a waiver of federal preemption of regulations approved by California's Air Resources Board to reduce greenhouse gas emissions from motor vehicles.

The Air Resources Board approved these regulations more than 2 1/2 years ago. California was ready to go, ready to tackle one of the most significant sources of greenhouse gas emission in my State and in the nation. California takes NASA's Jim Hansen at his word when he says that we have at most ten years to drastically change our emissions levels or risk passing a "tipping point" where we won't have any control over the resulting environmental catastrophe.

As the Committee is undoubtedly aware, California's regulations have been stymied. As soon as the regulations were adopted, the auto industry, instead of taking responsibility for its substantial share of the problem, immediately sued the Air Resources Board. And U.S. EPA, the agency that would most logically take the lead at the federal level to address global warming, instead decided that greenhouse gases weren't pollutants under the Clean Air Act. EPA's interpretation was, not surprisingly, enthusiastically endorsed by the auto industry.

EPA's reading of the Clean Air Act was ridiculous, ignoring the plain text of the statute. But it's typical of the "head-in-the-sand" approach that this Administration has taken on issues related to climate change. This Administration has too long hidden behind a "wait and see approach" as an excuse to do nothing. California isn't willing to "wait and see" if the sea level will rise by one foot or ten, or if the Sierra snow pack will shrink by 10% or 50% or more.

California will take action today, even as this Administration shirks its responsibility.

The Supreme Court has now flatly rejected U.S. EPA's creative interpretation of the Clean Air Act designed to tie the agency's hands. This is the right result. But it's unfortunate that the EPA's irresponsible reading has cost California and this country precious time in the fight against global warming.

California must now ask this same agency for a waiver of federal preemption. I remain optimistic that EPA will heed the clear message sent by the Supreme Court in *Massachusetts v. EPA* and promptly grant California's waiver petition. The Supreme Court has given EPA a mandate to respond to the climate change crisis immediately – not tomorrow, not next week or next year. Since EPA and this Administration are not going to lead, they must step out of the way to allow California to continue its pioneering effort in the area of vehicle emissions controls.

If EPA follows the law, there's no question that it must grant California's waiver. The courts and EPA have liberally construed the waiver provision to permit California to proceed with its own regulatory program in accordance with the intent of the Clean Air Act. There's no basis for EPA to deviate from its consistent findings in proceeding after proceeding that "compelling and extraordinary conditions" exist that justify California's continued need for its own mobile source program.

Let me tell the Committee why this matters. I don't think I need to convince anyone on this Committee that global warming is real. There is simply no question about it. The most recent publications by the Intergovernmental Panel on Climate Change make it absolutely clear. Global warming is the most important environmental and public health issue we face today. It's of particular concern to California. In California, human-induced global warming has, among other things, reduced California's snow pack, caused an earlier melting of the snow pack, raised sea levels along California's coastline, increased ozone pollution in urban areas, increased the threat of wildfires, and cost the state millions of dollars in assessing and preparing for those impacts.

Regulating vehicle greenhouse gas emissions is an essential part of the solution. The United States transportation sector emits an enormous quantity of carbon dioxide into the atmosphere – as the Supreme Court noted in the *Massachusetts* case, more than 1.7 billion metric tons in 1999 alone. In California, automobiles contribute 41% of all greenhouse gas emissions in the State. Passenger vehicles are the largest single source of heat trapping gas emissions in California. And what we do in California on the regulatory front will undoubtedly affect the entire nation – California has a long-standing history under the Clean Air Act of leadership, and the technology-forcing of its regulations is well recognized.

The auto industry will tell this Committee that it can't be done. This is nothing new. Over the past 40 years, the domestic automobile industry has opposed just about every public health and welfare regulation – seat belts, turn signals, collapsible steering columns, catalytic converters, air bags, and fuel economy standards. They say the requirements will cost too much, can't be met, and won't work. Then, as now, they claim the sky is falling – the requirements will cost thousands of jobs and give unfair advantages to their foreign competitors. History shows that in every case they were wrong. And they're wrong now.

California stands ready to work with the auto industry to do the right thing. But to this point, they've not been willing to step up and take responsibility. It's unfortunate that this industry must be dragged kicking and screaming into the 21st century, but if that's what needs to happen, then California is prepared to do the pulling.

I thank you for the opportunity to testify before this Committee and am happy to answer your questions.

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Summary and Key Points

NO MORE DELAY

- For years, President Bush and his Administration claimed the problem of global warming needed “more study.”
- Although the President has finally conceded, as he must, that the days of “more study” are over – he now claims the problem of global warming is -- complicated. So now he says let’s coordinate – let’s plan, so we can take “first steps.”
- This is nothing but more delay.
- The President says regulations “should be developed” – California’s regulations are already completed. He says let’s take “first steps” to get something done – California has already done it.

EPA MUST APPROVE CALIFORNIA’S WAIVER

- The Supreme Court gave EPA a mandate in *Massachusetts v EPA* to respond to the climate change crisis immediately – not tomorrow, not next week or next year.
- The first thing EPA can do to carry out that mandate is grant California this waiver so that California can enforce its own greenhouse gas emission limits. California has moved ahead and is now on the threshold of being able to implement this important program. EPA’s responsibility is not to get in the way.
- Congress limited EPA’s discretion in waiver determinations. EPA’s inquiry must be focused on the statutory waiver requirements in the Clean Air Act, which have long been prescribed by Congress.

CALIFORNIA’S RIGHT TO ADDRESS GLOBAL WARMING

- Global warming has global consequences. It also has severe consequences to California. It is California’s duty and obligation to address that.
- Global warming is real. It affects all of us and it affects California. There is simply no question about it. Global warming is the most important environmental and public health issue we face today.
- Automobiles are significant contributors to global warming. They contribute 41% of all greenhouse gas emissions in California.

LEAD TIME

- The automobile industry is going to complain that they do not have enough “lead time” to comply with the California regulations. This is nothing new. Just like they did in the 1970s, the automobile industry will tell you the regulation does not give them enough lead time. They’ll say they can’t do it. But they can. If anything, their executives’ recent public statements show that they have the technology and the know-how to comply.
- California’s regulations are the product of years of study and opportunities for public participation.
- Back in 2002, ARB invited the automobile industry to partner with it in developing these regulations. They refused to participate meaningfully. Now they complain.
- The regulations’ standards must be met first in 2009. The industry has had years to get ready for this. They knew in 2004, when ARB approved the regulation, that these standards would come into effect and they should have been working since 2004 to comply – instead of spending their time suing California and every single other state that adopted the standards – hoping for a court victory and more delay.
- The fact is that these GHG Regulations will not drive the US automobile industry out of business. They are doing that to themselves already. Compliance with these regulations will help the domestic automobile industry survive into the future – because they will finally have to make efficient vehicles.

THE AUTO INDUSTRY WAS WRONG THEN AND IT’S WRONG NOW

- Over the past 40 years, the domestic automobile industry has opposed just about every public health and welfare regulation – seat belts, turn signals, collapsible steering columns, catalytic converters, air bags, and fuel economy standards.
- Taking a phrase from the Supreme Court, the automobile industry has “waged the regulatory equivalent of war” against these standards.
- The automobile industry says the requirements will cost too much, can’t be met, and won’t work. So it’s no surprise that now – instead of working to comply with the regulation, they are litigating it. Compliance is not their strategy – litigation is. Then, as now, they claim the sky is falling – the requirements will cost thousands of jobs and give unfair advantages to their foreign competitors. In every case they were wrong. They are wrong now.
- When the automobile industry opposed the Clean Air Act of 1970, they said the same things they are saying now. The American Automobile Manufacturers Association said that it would not be possible “to achieve the control levels specified in the bill . . . [M]anufacturers . . . would be forced to shut down.” Of course, the U.S. auto industry did meet the emissions requirements.

- In 1974, E.M. Estes, the president of General Motors stated that if Congress were to pass a law mandating corporate fuel economy, “absent a significant technological breakthrough . . . the largest car the industry will be selling in any volume at all will probably be smaller, lighter, and less powerful than today’s compact Chevy Nova . . .”
- At about the same time, a Chrysler vice president for engineering, Alan Loofburrow, testified before a Senate committee that by 1979 new fuel economy standards would [in effect] “outlaw a number of engine lines and car models including most full-size sedans and station wagons. It would restrict the industry to producing subcompact-size cars – or even small ones – within 5 years . . .”
- They are saying the same thing now. Executives from General Motors and Chrysler have testified in litigation over the California regulation that the California law would force them out of the market, leaving only small subcompact cars available to consumers. Well, they were wrong then and they’re wrong now.
- The US automobile industry has already weakened itself by failing to pay attention to the world around them. While foreign automakers have responded to consumer desires and, importantly, positioned themselves to respond to the changing global climate – the former “Big 3” have resisted all of this, stubbornly continuing to build too many outsized vehicles in their search for outsized profits. Those days have been over for years – only the domestic industry doesn’t seem to get it.

CONCLUSION

- Based on the record before it, EPA must grant California’s waiver. EPA must not come up with excuses to deny it. That will simply lead to more delay. The debate is over. The time for action is now.