

Judge's ruling sends Riverside Motorsports Park back to starting line Racetrack must add to its environmental report, get approval

By Corinne Reilly

Merced Sun-Star, Wednesday, Feb. 27, 2008

A judge has thrown out Merced County's year-old approval of the Riverside Motorsports Park project.

The ruling comes in response to a lawsuit filed last year against RMP and the county by the Merced County Farm Bureau and three environmental groups.

The suit alleged that the county violated the California Environmental Quality Act when the Board of Supervisors approved plans for RMP in December 2006. The groups claimed the county failed to adequately study how the project would affect the environment.

A ruling filed in Merced Superior Court on Monday upheld that claim.

At the very least, the judge's decision will mean a delay for the massive motorsports complex, planned to replace 1,200 acres of farmland near Atwater.

At worst, it could spell the project's end. The court's decision cancels RMP's approvals -- approvals that followed months of heated public debate on the project's merits and an all-night, marathon meeting that packed the Board of Supervisors' chambers past 2 a.m.

For the complex to be built, RMP must now complete additional studies on how its project will affect the environment, and the Board of Supervisors must re-approve both the environmental studies and the project as a whole.

It's possible that the board could now decide to reject RMP's proposal.

In a written statement released Tuesday, RMP officials insisted the project will move forward as planned.

They say the quarter-billion-dollar racing complex -- which they've billed as the world's largest motorsports venue -- will break ground this year.

However, officials with the groups that filed the suit called the ruling a victory for the citizens of Merced County. "The most important thing is that RMP has been stopped," Louie Bandoni, president of the county Farm Bureau, said. "If the judge thought everything was done right, she wouldn't have chosen to take away the approvals."

The suit was decided by a San Joaquin County judge, Elizabeth Humphreys, because all local qualified judges were rejected by the parties involved.

Though Humphreys ruled in favor of the county and RMP on most of the issues raised by the Farm Bureau and the environmental groups, the county and RMP lost in other key areas.

Specifically, Humphreys said the county's environmental analysis of the project wasn't complete because it didn't include reviews of the project's development agreement and community benefits agreement -- two documents that outline permitted uses for the RMP property, the height and size of proposed buildings and public improvements RMP will be required to make, among other specifics.

At the time the county approved environmental studies for the RMP project, no development agreement or community benefits agreement existed.

"The absence of this analysis renders the (environmental review) defective as an informational document upon which the public and its officials can rely in making informed judgments," Humphreys wrote. She continued that the county must "set aside and void its approvals of the Riverside Motorsports Park and refrain from further approvals unless and until it undertakes further environmental review to correct the deficiencies."

Humphreys' ruling says the county must pay attorney fees to the groups that filed the suit. RMP agreed in 2006 that it would pay any costs to the county resulting from the Board of Supervisors' decision to approve its project.

Though the ruling is considered a loss for RMP and the county, Humphreys rejected most of the complaints raised by the Farm Bureau and the environmental groups. The county adequately studied how RMP's project would affect traffic, farmland, growth, water quality and local wildlife, the ruling says.

County spokesman Mark Hendrickson said it's important to note that all the environmental studies the county did complete met legal standards. "The judge basically said that the work we've done to date was adequate," he said. "We simply need to include and study these additional documents."

That's something the county planned to do all along, just at a later stage, Hendrickson explained. "It's a matter of timing, really. ... We respect the judge's decision and the thoughtfulness of her ruling."

RMP officials did not return phone calls Tuesday, but the company issued a written statement. Despite the judge's ruling of deficiency in the environmental document, RMP termed the court decision "an overwhelming verification" that it had met legal standards with its project review.

Though RMP has been stripped of its approvals, the company said the court's decision won't delay the project. "Rather, we view (the court's decision) as an overwhelming verification that no environmental issues were overlooked or under-studied, and that the Riverside Motorsports Park environmental impact report is a solid and defensible document," the statement added.

It said that its development agreement and community benefits agreement have now been created, and the two documents weren't included in the project's environmental studies because the county advised RMP they'd be included in a later phase.

RMP hasn't submitted either document for the Board of Supervisors' approval, Hendrickson said.

County officials declined to estimate how much of a delay the court's ruling could mean. "That's much too hard to say right now," the county's lead attorney, James Fincher, said.

The three environmental groups that filed the suit along with the Farm Bureau are the San Joaquin Raptor Rescue Center, Protect Our Water and Citizens for the Protection of Merced County Resources. "This is an important victory for the citizens of Merced County," Greg Maxim, an attorney representing the Raptor Rescue Center, said. "It's clear that the public wasn't given the opportunity to consider all the potential environmental impacts of this project."

Kathleen Crookham, chairwoman of the Board of Supervisors, said she's uncertain what the ruling will ultimately mean for RMP. "We're just going to abide by the court's decision," she said. "I see it as a chance for us to look at all the issues again."

Despite RMP's assurances about the project's future, questions loom about the company's financial standing. In a sworn deposition in December, the company's CEO, John Condren, said RMP has yet to secure the \$250 million it says it will spend building the complex. He admitted the company hasn't had the cash to pay some of its bills.

A law firm that used to represent RMP filed suit against the company in November to collect on an overdue, \$147,000 legal bill. RMP still hasn't paid.

The Sun-Star reported last year that Condren embellished or falsified much of the information he has publicly revealed about his professional background and his education.

The paper also reported that RMP officials may have secretly altered a lease agreement they made with the county in 2003. County officials say the company unscrupulously altered the document to its own benefit, shifting some potential expenses from RMP to the county. RMP officials deny the charge.

Condren first proposed RMP five years ago. If it's built, the eight-venue complex would replace about 1,200 acres of farmland near Castle Airport. Blueprints call for a shopping mall, restaurants, an arcade and a lake. Besides professional racing events, the park would host amateur racing, drag racing, motocross and go-kart events, concerts, car shows and festivals, according to RMP.

Ruling's repercussions

WHAT HAPPENED?

The Riverside Motorsports Park and Merced County lost a lawsuit filed against the project by the Merced County Farm Bureau and three environmental groups.

WHAT DOES IT MEAN?

The court's decision cancels the Merced County Board of Supervisors' approvals of the RMP project.

WHAT'S NEXT?

For the complex to be built, RMP must now complete additional studies on how its project will affect the environment, and the Board of Supervisors must reapprove both the environmental studies and the project as a whole.

City sees green in garbage proposal

By Terri Hardy and Chris Bowman

Sacramento Bee, Wednesday, Feb. 27, 2008

It sounds too good to be true:

A garbage-to-energy plant that produces clean fuel, reduces global warming gases and leaves nary a toxic trace.

Yet "plasma gasification" is a real, albeit emerging, technology being considered by Sacramento as an alternative to its daily trans-Sierra hauling of waste to a Nevada landfill.

The City Council on Tuesday approved the project in concept on an 8-0 vote and authorized nonbinding negotiations for up to 90 days exclusively with U.S. Science & Technology of Sacramento and its affiliated companies.

The approval was given even though some council members and members of the public expressed concerns about the lack of information about how the technology works and the speed with which the decision was being made.

"I've got a lot of interest in moving forward with something," Mayor Heather Fargo said. She said she would put together a working group that included some council members to inform them and keep them abreast of negotiations.

In a report to the council, city officials tout the high-tech waste treatment as environmentally superior to using landfills.

Others, however, question its energy efficiency and environmental benefits.

"It takes a lot of electricity," Jim Shetler, the Sacramento Municipal Utility District's assistant general manager for energy supply, said in an interview. "Do you use more electricity in the process than you gain from the gas stream that you use to burn and generate electricity?"

SMUD has solicited similar proposals from other companies to expand its portfolio of renewable energy sources.

Plasma gasification is a process that disintegrates solid waste at super-high temperatures using an electrified gas, or plasma.

Organic wastes are vaporized, producing a gas that can be used as clean-burning fuel, project proponents say. Metals and other inorganic materials are reduced to molten bits that can be recycled as filler for asphalt or concrete.

The city report calls the process a "proven" technology.

One environmental group that has investigated gasification and similar waste-reduction technologies said proponents' environmental claims often wither under scrutiny.

"Sacramento should evaluate these proposals very closely because they are incinerators in disguise ... they would emit toxic chemicals in the air," said Bradley Angel, executive director of Greenaction for Health and Environmental Justice, a nonprofit community activist group in San Francisco.

Marty Hanneman, assistant city manager, said city officials have been told that even though the plasma gasification process requires a large amount of power, there would be a "positive net" gain of energy. The deal also would provide revenue opportunities, with the possibility of the sale of the energy or other byproducts, he said.

Hanneman acknowledged in an interview that the process "sounds almost impossible." But, he said, a team of city, county and academic experts looking at gasification believes it is workable and advances Sacramento's quest to become the state's "greenest" city.

"We want to be on the cutting edge," Hanneman said.

As envisioned, the proposed plant would be privately funded.

It probably would cost \$150 million to \$200 million, and would not tap the general fund or result in higher utility rates, Hanneman said.

The city's only obligation, he said, would be to guarantee a steady stream of municipal waste to the operation.

The proposed gasification plant could process up to 95 percent of the average 146,000 tons of Sacramento waste hauled annually over Donner Pass to the landfill, city officials said.

Having dozens of diesel-spewing trash haulers running 282-mile round trips each night "is not environmentally sound," Hanneman said.

Last year, two companies approached city staff and elected officials with unsolicited garbage-to-energy proposals. The city decided to take a closer look and issued a "request for qualifications."

The response from U.S. Science and Technology was the only one using plasma gasification, a version developed by Westinghouse Plasma Corp.

Intrigued, Hanneman said the panel of experts visited the Westinghouse demonstration facility in Pittsburg and agreed it looked to be the "greenest" option.

Instead of seeking competitive bid for companies using the same technology, Hanneman said the city decided to enter directly into negotiations with U.S. Science and Technology, if the council approved.

Hanneman said he believed the company was the only one to do the process. He said it has not been used elsewhere in the United States, but has operated successfully in Japan and Europe.

Negotiations for the new waste-to-energy process would also include talks with the city's current trash hauler, BLT Enterprises and SMUD.

While the city is locked on gasification, SMUD is keeping its options open to a variety of waste-reduction methods and contractors.

Papers show EPA chief ignored warnings before California ruling Boxer releases documents saying agency official, staff members could not justify rejection of new emissions rules

By Frank Davies, MediaNews Sacramento Bureau

In the Contra Costa Times, Wed., Feb. 27, 2008

WASHINGTON -- A Environmental Protection Agency official warned her boss, EPA chief Stephen Johnson, that if he denied California's bid to enforce its own tailpipe emissions rules, the agency's credibility "will be irreparably damaged" and Johnson would have to think about resigning.

Margot Oge, the head of EPA's office of transportation and air quality, also told Johnson in an Oct. 17 memo that "there is no legal or technical justification for denying this," despite "alternative interpretations that have been suggested by the automakers."

These internal warnings were included in EPA documents released Tuesday by Sen. Barbara Boxer, the California Democrat who leads the Environment Committee and had requested the records.

Johnson turned down California's request for a waiver from the Clean Air Act on Dec. 19, after months of review. He overruled the recommendations of senior staff members, according to several media reports, and the documents released Tuesday provide some examples.

Boxer said the documents showed "an agency in crisis," and called on the EPA to release additional documents about meetings with White House officials.

"The documents show the dedicated, professional staff working hard to protect our health and our environment," she said. "We see more and more evidence of administrator Johnson ignoring the science and the facts, and discarding the advice of his staff."

Boxer plans to question Johnson today when he appears before the committee to defend the EPA's proposed budget.

Johnson has defended his decision, announced the day a new energy bill was signed into law. He said the higher fuel economy standards contained in that bill precluded the need for state initiatives to tackle greenhouse-gas emissions.

Oge's office and other legal and technical staff members sent e-mails and memos citing California's long history of receiving EPA waivers -- only two of the state's 95 requests had been even partially denied -- and the case California had made for its own greenhouse-gas emissions standards. At least 16 other states are prepared to adopt the California standards if they are approved.

"I think Johnson now appreciates that there are additional conditions in California that make them vulnerable to climate change," a staff member wrote others in the EPA climate change division on Oct. 31.

Oge's "talking points" for Johnson, prepared by deputy director Christopher Grundler, recognized the historic nature of the decision and the pressures Johnson faced. The auto industry and the Bush administration's Department of Transportation lobbied against the California regulations, which in the absence of federal regulations were the most ambitious effort to tackle emissions causing global warming.

"Clearly the stakes are huge, especially with respect to future climate work," Oge's Oct. 17 memo to Johnson said. "You have to find a way to get this done. If you cannot, you will face a pretty big personal decision about whether you are able to stay in the job under those circumstances."

William Reilly, a former EPA administrator in former President Bush's administration, also worked with Oge and other top staff members in an unsuccessful effort to persuade Johnson to grant the waiver, according to members of Boxer's staff.

On May 1, when Johnson prepared to attend a White House meeting on the issue, his staff prepared a PowerPoint presentation noting the history of California waivers, and that "Congress wanted California to be afforded the broadest possible discretion" with such regulations.

The EPA did not turn over documents about that May 1 meeting.

Gov. Arnold Schwarzenegger quickly sued the EPA in early January to reverse its decision. Because of the litigation, EPA officials said they do not want to disclose additional documents that could be used against them in court. They had asked that the documents turned over to the committee be kept confidential, but Boxer decided to release them.

Boxer said she expected the next president would overturn the EPA decision because Democratic Sens. Barack Obama and Hillary Rodham Clinton and Republican Sen. John McCain support California's waiver request.

"But why on earth should we wait that long?" Boxer said. "We're only wasting time and money."

E.P.A. Staff Lobbied Boss on Decision on Emissions

By MATTHEW L. WALD, staff writer
N.Y. Times, Wed., Feb. 27, 2008

WASHINGTON — Senior nonpolitical staff members at the Environmental Protection Agency wrote an impassioned plea for a former agency chief to deliver to the current E.P.A. administrator about an important decision on greenhouse gas emissions from cars, according to documents released Tuesday by a Senate committee.

The “talking points” for use by William K. Reilly, the administrator from 1989 to 1993, in a conversation with the current E.P.A. leader, Stephen L. Johnson, ask of Mr. Johnson: “You have to find a way to get this done. If you cannot, you will face a pretty big personal decision about whether you are able to stay in the job under those circumstances.”

The decision facing Mr. Johnson involved California’s request to set rules for the emissions, which were to be adopted by 16 other states as well. He rejected the request in December, saying that federal authority pre-empted state action. His decision on the standards, which were vigorously opposed by the auto industry, created a furor among state officials and environmental groups.

The document by the senior E.P.A. staff members is unusual in its tone and in its very nature. Civil servants, who expect to have careers that stretch across several presidents and agency heads, work for the “politicals,” those appointed by the president and confirmed by the Senate, but they seldom work with ones whose terms are over.

“This is a choice only you can make, but I ask you to think about the history and the future of the agency in making it,” the document said, adding that if Mr. Johnson denied the request, “I fear the credibility of the agency that we both love will be irreparably damaged.”

The document was released Tuesday by Senator **Barbara Boxer**, Democrat of California, who wants the denial reversed. She said the draft, as well as internal agency e-mail messages she released, demonstrated that the E.P.A. was “in crisis.” Mr. Johnson’s decisions, she said, “went against the professional scientists and the professional legal experts.”

The talking points were drafted by Christopher Grundler, deputy director of the Office of Transportation and Air Quality at the agency, for his boss, Margo T. Oge. She declined to comment on the draft on Tuesday.

Mr. Reilly said in a telephone interview that he had requested the talking points before a telephone conversation with Mr. Johnson but did not recall using most of them. Instead, he said, he emphasized that when he was the administrator, he approved nine requests from California, even one that he thought would not work, electric cars, but that he thought federal law required him to let the state try.

Mr. Reilly now lives in San Francisco, where he runs a private equity firm that invests in companies involved in water and renewable energy; he also serves on the boards of ConocoPhillips and DuPont. He said he was not representing anyone but himself when he spoke to Mr. Johnson.

Internal transcripts reveal tug-of-war over EPA waiver

By Erica Werner, The Associated Press

In the Contra Costa Times, L.A. Daily News and other papers, Wed., Feb. 27, 2008

WASHINGTON - Some high-ranking career staffers concerned about the reputation of the Environmental Protection Agency believed that Administrator Stephen Johnson would have to consider resigning if he turned down California's request to reduce vehicle greenhouse-gas emissions, newly released documents show.

Johnson denied the waiver request in December, blocking California and at least 16 other states from implementing the reductions.

The internal discussions were a part of transcripts released Tuesday by Sen. Barbara Boxer, D-Calif., who is investigating that decision.

Among them is a staff memo prepared in October for the head of the EPA's Office of Transportation and Air Quality, Margo Oge, at the request of William K. Reilly, who served as EPA administrator under President George H.W. Bush.

Reilly, who later publicly questioned Johnson's decision to deny the waiver, wanted the memo for a discussion with the administrator, he said. The memo urged Johnson to grant the waiver or find a compromise.

"You have to find a way to get this done. If you cannot, you will face a pretty big personal decision about whether you are able to stay in the job under those circumstances," said the memo, written by a deputy to Oge, who is a career agency employee.

"This is a choice only you can make, but I ask you to think about the history and the future of the agency in making it. If you are asked to deny this waiver, I fear the credibility of the agency that we both love will be irreparably damaged," said the memo. "The eyes of the world are on you," it said.

"It is obvious to me that there is no legal or technical justification for denying this," the memo added.

After Boxer aides released the memo Tuesday, initially saying it had been written for Oge to deliver, Reilly came forward to explain his role in requesting it. He said he didn't use much of the memo's contents when he spoke with Johnson to urge him to grant the California waiver.

"I certainly did not suggest the administrator should resign," Reilly told The Associated Press.

Reilly, who co-chairs a bipartisan group called the National Commission on Energy Policy, said he "absolutely" would have granted the waiver had he been administrator.

He said he made his position clear to Johnson and in an earlier conversation with White House Chief of Staff Joshua Bolten. "My views were well-known," Reilly said.

EPA spokesman Jonathan Shradar said the documents reinforced that Johnson was exposed to a wide range of views before making his decision.

"All these documents, all that we've produced in accordance with the committee's oversight responsibilities, all they show is a continuance of what we've talked about - the administrator was fully informed, he had great career and political staff giving him options, and he followed what he saw was the law," Shradar said.

Johnson has said repeatedly that he alone made the decision to deny the waiver, but Boxer, who chairs the Environment and Public Works Committee, questioned that.

She released a portion of Johnson's schedule showing a meeting at the White House apparently to discuss the California waiver. An attached briefing memo seems to support California's position.

Study: Contaminants in national parks

By Matthew Brown, Associated Press Writer

In the Contra Costa Times and other papers, Wed., Feb. 27, 2008

BILLINGS, Mont.—Pesticides, heavy metals and other airborne contaminants are raining down on national parks across the West and Alaska, turning up at sometimes dangerously high levels in lakes, plants and fish.

A sweeping, six-year federal study released Tuesday found evidence of 70 contaminants in 20 national parks and monuments—from Denali in Alaska and Glacier in Montana, to Big Bend in Texas and Yosemite in California.

The findings revealed that some of the Earth's most pristine wilderness is still within reach of the toxic byproducts of the industrial age.

"Contaminants are everywhere. You can't get more remote than these northern parts of Alaska and the high Rockies," said Michael Kent, a fish researcher with Oregon State University who co-authored the study.

The substances detected ranged from mercury produced by power plants and industrial chemicals such as PCBs to the banned insecticides dieldrin and DDT. Those can cause health problems in humans including nervous system damage, dampened immune system responses and lowered reproductive success.

Contaminants that accumulated in fish exceeded human consumption thresholds at the eight parks that researchers focussed on most: Sequoia and Kings Canyon, Mount Rainier, Olympic, Glacier, Rocky Mountain, Gates of the Arctic and Denali national parks and Alaska's Noatak National Preserve.

Also, mercury levels at the eight parks and DDT levels at Glacier and Sequoia and Kings Canyon exceeded health thresholds for fish-eating wildlife. Kent said he found airborne contaminants are causing male fish to develop female organs in some parks.

Much of the contamination is thought to have come from overseas—traveling global air currents from Europe and Asia.

But researchers said they were surprised to find substantial contamination from the local use of legal pesticides, particularly in agricultural areas around Glacier, Rocky Mountain and Sequoia and Kings Canyon parks.

University of Washington atmospheric researcher Daniel Jaffe said scientists previously thought banning substances like DDT and dieldrin would lessen the persistence of chemicals in the environment.

"We replaced them with pesticides with much shorter lifetimes in the environment," Jaffe said. "But in places like the Central Valley of California, we are applying many, many tons of these every year. ... We now know they can move substantial distances."

A parks advocacy group called the federal report "a wake-up call" that should mobilize Congress to take a tougher stance on air pollution.

"We can take steps to reduce mercury emissions from power plants, steps to reduce carbon dioxide emissions that cause global warming," said Will Hammerquist with the National Parks Conservation Association.

The \$6 million study is known as the Western Airborne Contaminants Assessment Project. It is the most comprehensive to date on the distribution and concentration of contaminants outside

developed areas, according to the project's scientific director, Dixon Landers with the Environmental Protection Agency.

Contrary to the conventional wisdom that remoteness means less pollution, Landers said many of the parks—particularly those at higher elevations and in colder climates—actually are at higher risk.

Mercury from power plants in China, for example, is borne across the Pacific in clouds that rise up when they hit West Coast mountains. That causes the mercury to drop out of the clouds attached to rain droplets or snowflakes, he said.

Release of the study, which was coordinated by the National Park Service, came after a delay of several months. A Park Service spokeswoman, Colleen Flanagan, said the delay was caused by the time needed to analyze the vast volumes of data collected, from 2002 to 2007.

The study also included researchers from the U.S. Geological Survey and the U.S. Forest Service.

Ethanol stations remain few and far between

By Chris Woodyard, USA TODAY
Wed., Feb. 27, 2008

LOS ANGELES — The ethanol industry has a problem, but you wouldn't have known it Tuesday from the line of big, thirsty vehicles snaking down the street from a single service station.

Most states still have few places that sell the industry's highly touted E85 fuel (85% ethanol, 15% gasoline) even though there are an estimated 6.8 million cars and trucks on the road capable of burning the mixture.

Here in the motoring mecca of Los Angeles, there's exactly one E85 station to serve consumers. It is one of just three open to the public in all of California.

Thanks to a promotion subsidized by General Motors (GM), drivers lined up their SUVs, pickups and minivans for a blessed two hours of E85 priced at 85.9 cents a gallon — a far cry from the \$2.999 a gallon that Conserv Fuel in the tiny Brentwood section of the city usually charges.

"I've been waiting to get a station out here," said Keira Lowery, 28, of Los Angeles as she filled up her Dodge Caravan minivan. Some waited more than half an hour.

Promotions like this one have been staged around the country to raise awareness of E85, plugged as a home-grown, environmentally sound fuel. But even officials of GM, which makes the most flex-fuel vehicles that can burn E85, say they are frustrated by the slow rollout of pumps around the country.

"We're trying to bring attention to the fact we need more stations," said Clay Okabayashi, a GM executive who was on hand at the event.

The Corn Belt has most of the E85 pumps. Of the 1,490 U.S. stations with E85, 89 are in Iowa, 169 in Illinois and 342 in Minnesota, according to the tally kept by the National Ethanol Vehicle Coalition. But there are just four stations in Utah and one each in Montana, Massachusetts and Delaware.

The slow growth of the E85 stations contrasts with this season's huge corn plantings and the continued opening of ethanol plants, many near the corn.

While more pumps are located near ethanol plants, red tape is also a problem. In California, the coalition blames California air-quality officials for holding up installation of E85 pumps in a dispute about permits for their vapor recovery systems.

"The problem is distribution and overcoming some laws and regulatory hurdles," says Phil Lampert, the coalition's executive director.

Vapor-recovery issues have been ironed out with the federal Environmental Protection Agency. Local air-pollution districts will soon be cleared to allow more E85 stations, says Dimitri Stanich of the California Air Resources Board.

That could make customers happy.

Jesse Lopez, 37, a freight manager in Los Angeles, says he'll consider filling up his pickup more often on E85. He says he's spending \$80 a week on gasoline now. As for E85, "It depends on the price and how it burns" in the truck, he says.

And Daniel Ochoa, 30, a store clerk from Los Angeles, says he bought his truck in hopes that he could fill it with E85, but he never before had the chance to try it. He says he knew the day would come.

Memo warned: EPA chief's credibility at risk

Zachary Coile, Chronicle Washington Bureau
S.F. Chronicle, Wed., Feb. 27, 2008

Washington -- A senior Environmental Protection Agency staffer's newly released memo warned that EPA chief Stephen Johnson would lose his credibility and might have to resign if he rejected California's rules limiting greenhouse gases from cars and trucks.

The document, prepared by a top deputy in the EPA's Office of Transportation and Air Quality, is further evidence of the fierce internal struggle that Johnson faced before he ruled against California in December.

Documents released earlier revealed that he overruled the unanimous opinion of his agency's legal and technical staff, who urged him to approve the state's rules.

California Democratic Sen. Barbara Boxer, who released the memo Tuesday, said it was another sign that the EPA is an agency in crisis.

EPA spokesman Jonathan Shradar said the staffer wrote the memo as talking points, but the advice was never actually given to Johnson.

"No one ever came in and said, 'You're going to have to resign,' " Shradar said.

The story behind the memo is almost as interesting as the memo itself. After the document was revealed Tuesday, former EPA administrator William Reilly, who served under President Bush's father, called Boxer's office to alert it that the talking points were written for him.

In an interview with The Chronicle late Tuesday, he said he called Margo Oge, director of the EPA's Office of Transportation and Air Quality, last year. A supporter of California's new rules, he wanted to know

"how the issue was being framed at EPA" and how many waivers he had approved for California when he ran the agency.

Oge, as a courtesy to the former administrator, asked Christopher Grundler, deputy director of the Office of Transportation and Air Quality, to respond to the request. Reilly wanted the information to use when he called Johnson last fall to make his case for California. But the e-mail, written by Grundler, highlighted the internal opposition within EPA to what Johnson was preparing to do.

The Oct. 17, 2007, e-mail contained talking points - written as if they would be delivered by Reilly - including this one: "The eyes of the world are on you and the marvelous institution you and I have had the privilege of leading; clearly the stakes are huge, especially with respect to future climate work."

Grundler wrote that the decision was "likely to be among the two biggest decisions you get to make in the job" and acknowledged that Johnson was "under extraordinary pressure." He also urged Reilly to tell Johnson that the legal and scientific evidence supported California's case.

"From what I have read and the people I have talked to, it is obvious to me that there is no legal or technical justification for denying this," the memo said. "The law is very specific about what you are allowed to consider, and even if you adopt the alternative interpretations that have been suggested by the automakers, you still wind up in the same place."

In the memo, Grundler also urged Reilly to warn Johnson of the consequences of making the wrong decision.

"You have to find a way to get this done," he wrote. "If you cannot, you will face a pretty big personal decision about whether you are able to stay in the job under those circumstances."

"This is a choice only you can make, but I ask you to think about the history and the future of the agency in making it. If you are asked to deny this waiver, I fear the credibility of the agency that we both love will be irreparably damaged."

Grundler could not be reached for comment.

Reilly, who now works in San Francisco on water issues and is a member of Gov. Arnold Schwarzenegger's blue ribbon commission on the Delta, said he didn't use much of the talking points, including the line about resigning. He said he did use some of the background - including the fact that he had approved nine waiver requests for California.

Reilly said he told Johnson in a phone call last fall that California "has had a history of leading on air pollution matters" and that Schwarzenegger should be given a chance to implement the rules.

Still, the internal memo offers an inside account of how some EPA staffers viewed the debate over the waiver. Grundler's last line - "if you are asked to deny this waiver" - reflected the fears of some staffers that the White House would pressure Johnson to deny the state's request.

Johnson has denied being pressured by the White House. Boxer is now in a tug-of-war with the EPA to get the agency to release any e-mails or other documents showing that the White House, the vice president's office or other executive branch officials weighed in on California's rules.

But documents previously released by Rep. Henry Waxman, D-Los Angeles, chairman of the House Oversight and Government Reform Committee, show that Transportation Secretary Mary Peters joined

Michigan lawmakers to lobby the EPA to reject California's request.

Boxer released other documents Tuesday, including an Oct. 31, 2007, e-mail in which a staffer in the EPA's climate change division wrote about trying to convince Johnson that California has the "compelling and extraordinary conditions" required by the Clean Air Act to set its tougher emissions rules.

"On compelling and extraordinary conditions, I got to chime in again," the unidentified staffer wrote, describing a meeting with Johnson.

"In addition to the argument that climate change may exacerbate CA's tropospheric ozone problem - for which CA has historically demonstrated compelling and extraordinary conditions - I think Johnson now better appreciates that there are additional conditions in CA that make them vulnerable to climate change: water resources (we spent time talking about this); wildfires (the recent news I think is helping to push him); long coast line; largest population; largest economy; largest ag sector..."

Shradar, the EPA spokesman, said the memos only suggest that there was a range of opinions offered to Johnson before he made his decision.

"At the end of the day, the administrator's decision stands," he said.

The memos could spark some fireworks at today's hearing in the Senate Environment and Public Works Committee, which Boxer chairs, where Johnson is expected to testify about the EPA's 2009 budget.

Boxer said the new memos prove her case that Johnson's decision "is about special-interest governing at its worst. ... It is just a nightmare."

At least 18 other states want to join California's efforts. The new rules would require automakers to make vehicles that get 44 miles per gallon by 2020 - more than a new federal law requiring an increase to 35 miles per gallon by 2020. Automakers oppose the state's rules and have praised the EPA's decision, but California and other states have sued to overturn it.

The ruling has even become an issue in the presidential race, with the leading Democrats, Hillary Rodham Clinton and Barack Obama, and the likely GOP nominee John McCain, all saying they back the states' efforts to set tougher rules.

Merced Sun-Star editorial, Wed., Feb. 27, 2008:

Our View: Valley air fees win in court

Charges for new construction will continue to pay for fixes. Builders should accept the ruling and build smarter.

A judge has upheld a unique fee that developers in the Valley air district must pay on new construction to offset its impact on air quality. That's good news, especially since the fee appears to be working.

The California Building Industry Association, which sued shortly after the fees were imposed in 2006, is considering an appeal. A better course would be to accept the ruling and get about the business of building smarter and cleaner new structures.

When the San Joaquin Valley Air Pollution Control District first set up the fees, it also laid out a list of mitigating efforts developers could employ to reduce them. These included all sorts of air-

friendly amenities, such as better insulation, outdoor outlets for electric lawn mowers, more pedestrian and bike lanes and energy-efficient water heaters.

The money that is raised is used for such purposes as replacing older school buses, which are a major source of air pollution. That's a worthy effort, especially since replacing or retrofitting expensive school buses is usually given a very low priority by cash-strapped school districts.

The real payoff from the pollution fees comes from cleaner and greener structures.

Evidence that the fees are doing their job is the fact that the district now feels it will collect less than \$10 million over the next two years. The district's initial estimate was that it would raise more than \$100 million in the first three years. The builders claimed the total would be closer to \$200 million in the first five years.

Some of that reduced intake can be attributed to the housing slowdown, but much of it comes from developers adopting better building practices and thus getting off the hook for the fees. Many developers are also finding that energy-efficient and air-friendly construction can be a useful marketing tool, as public awareness of those issues rises.

Builders complain that the fees are unfair because they hit only the owners of new properties. Existing homes and businesses don't pay the fees.

They have a point, but the air district is bound by a 2003 state law that mandates the fees be imposed only on new construction. And homes and businesses in older city cores typically generate fewer vehicle miles -- the chief culprit in the Valley's bad air -- than newer developments on the city's edges, farther from employment and other destinations.

It was predictable that builders would object to the fees. Raising the price of their product might dissuade some buyers. But the impact of the fees isn't that great -- less than \$800 per house now, rising to nearly \$1,800 over time. That's a tiny fraction of the cost of a median-priced home. And that presumes the developers ignore all the opportunities to mitigate the cost of the fees, in some cases to zero.

New development creates new pollution. It's appropriate to charge for that in the struggle to clean up the Valley's air. All of us have a responsibility in that effort.

Bakersfield Californian editorial, Wed., Feb. 27, 2008:

Clean diesel engines

Kudos to Congressman Jim Costa for keeping the lungs of his Central Valley constituents foremost at heart.

Democrat Costa, who represents portions of Kern County, has written legislation that would encourage additional retrofitting of diesel engines with new, lower emissions technology. HR 3754, co-sponsored by a bipartisan group of California Congressmen, including Republican Devin Nunes of Visalia, recently passed the House Subcommittee on Energy and Air Quality. A U.S. Senate version of the bill is moving forward, as well.

The Environmental Protection Agency has long funded diesel retrofit projects through settlements with polluters. Costa's bill allows the EPA to continue that practice, but also helps maintain a separate source of funding for retrofitting projects. That funding is presently at risk because of the small appropriation the Diesel Emissions Reduction Act received last year.

The EPA estimates these retrofit projects have a 13-to-1 benefit-to-cost ratio. That means the \$60 million invested has already resulted in \$780 million in health benefits, ranging from fewer asthma cases to fewer cardiopulmonary deaths.

Given the damaging properties of diesel emissions, the bill comes not a day too soon. A new study out of Harvard University cites diesel exhaust as a likely contributor to deaths from heart disease among truckers. The researchers say that truckers are 50 percent more likely to die of heart disease than the general population. The Harvard researchers noted that, although trucking industry workers had a lower overall death rate than the general population, they had higher death rates for heart disease. Among truck drivers it was 49 percent, and among dock workers it was 32 percent higher.

Lung cancer could also be an issue. In 2002, the EPA released a controversial study that concluded diesel exhaust probably causes lung cancer. The report noted the long-term health effects of exposure to diesel engine exhaust were uncertain, but "the evidence ... is persuasive."

The rest of us are at risk as well, albeit to a much lesser extent. Costa's bill is an important step toward improving the situation. We encourage its passage.

S.F. Chronicle editorial, Wed., Feb. 27, 2008:

Pollution politics

California's war with Washington over air pollution rules has moved into a new realm of the absurd, weakening what little clout the Bush administration has left on the topic.

In memos unearthed on the eve of Senate hearings due today, the top staff of the U.S. Environmental Protection Agency suggested that chief Stephen Johnson might want to quit if he rejected California's bid for tougher tailpipe emission rules.

When underlings tell the boss it's maybe time to bail, that's a problem. Morale, effectiveness, scientific integrity - they all go out the window in a management meltdown. Politics has clearly trumped judgment and policymaking.

The staff warning comes with ample history, all of it weighted against Johnson and the White House. For some 30 years, California has asked for - and nearly always received - a nod to upgrade emission rules, given the state's dirty air and busy highways.

But for two years, Johnson's agency sat on Sacramento's latest request to put limits on greenhouse gas emissions from cars and trucks. An additional 15 states had joined California in asking permission for the rule change. Finally in December, Johnson said no, though staff memos said his stance would likely lose in court. The latest twist is especially pointed: another memo, which Johnson's team battled to withhold, suggesting that a refusal would so undercut his stature as an environmental overseer that he might have to quit.

None of this is likely to be brushed under the rug. Sen. Barbara Boxer, the California Democrat who heads the Environment and Public Works Committee, is expecting to grill Johnson about his decision and the flurry of embarrassing memos that have shredded his agency's reputation. Maybe she'll get answers that his own staff was unable to find.

Fresno Bee opinion blog, Tuesday, Feb. 26, 2008:

Does ARB think Valley lives are worth less?

The Valley has its fingers crossed as the state air board prepares to meet Thursday to allocate funds from Proposition 1B to clean up pollution caused by the movement of goods along the state's trade corridors. We wrote about the upcoming hearing in a Sunday [editorial](#).

The formula proposed by the Air Resources Board staff would give the lion's share of the funding to Southern California. Why are we not surprised?

Geography and climate make the Valley unique. A ton of pollution does more damage here than elsewhere. The Bay Area, with 6 times more emissions per square mile, has clean air. Air quality in the South

Coast air district is only slightly worse than the Valley's worse, even though it has 10 times more emissions per square mile.

The state has identified four major goods movement corridors. One of them is the San Joaquin Valley. It accounts for 45% of the total traffic in all the corridors combined — yet ARB staff proposes spending only 25% of the Proposition 1B mitigation funds here. Southern California would get 55%.

The Valley and the South Coast air district are statistically similar in terms of number of violations of clean air standards — but ARB staff proposes to give South Coast more than twice as much in funding.

The Valley has been neglected and deprived for decades. Now we have to conclude that, at least according to the ARB staff, the lives of children and adults in the Valley are worth less than the lives of those in Southern California. Is that really part of the ARB calculus?