

September 12, 2007

In a major blow to automakers, a Vermont judge rejected car companies' efforts to block 11 states from adopting California's stricter vehicle emissions requirements.

It's the latest in a string of legal setbacks automakers face as they try to prevent what they call crippling emissions regulations from taking effect.

At issue is Vermont's decision, along with nine other states, to adopt California's 2004 tailpipe emission rules. Beginning in 2009, the regulations require automakers to increase the fuel economy of vehicles by about 25 percent to reduce carbon dioxide emissions, which have been linked to global warming.

General Motors Corp., DaimlerChrysler AG and the Alliance of Automobile Manufacturers, a Washington trade association that represents automakers, along with several dealerships, filed federal lawsuits to bar the new rules from taking effect in California, Rhode Island and Vermont.

The decision rejected the automakers arguments -- in a case U.S. District Judge William K. Sessions III said largely hinged on whether the regulations were too draconian for automakers to comply with.

"The court does not find convincing the claims that consumers will be deprived of their choice of vehicles, or that manufacturers will be forced to restrict or abandon their product lines," Sessions wrote. "The court remains unconvinced automakers cannot meet the challenge of Vermont and California's (greenhouse gas) regulations."

He repeatedly referred to statements Detroit automakers made in the 1970s warning of the peril they faced if they were forced to install catalytic converters.

The auto companies said the decision would dramatically reduce sales, force them to shrink the size of vehicles and power of engines and add gasoline-hybrid engines. GM, for example, would need to add hybrids to 60 percent of their fleet, an expert testified. The expert, Thomas Austin, also suggested it would add a minimum of \$3,500 per vehicle industry wide. Ford, GM and DaimlerChrysler "would ultimately be unable to sustain themselves in the full market in states enforcing the regulation" and arguing they would "become primarily truck manufacturers in those states."

Alan Weverstad, executive director of GM's environment and energy, testified at the trial that it could cost GM \$25 billion in an attempt to comply -- and that the car company would still be 7 miles per gallon short of the requirements in 2016 -- and would be forced to leave the states by then.

An expert for the state of Vermont said the regulation would add about \$1,500 per vehicle -- far less than the automakers estimate of as much as \$6,000 per vehicle. "The great disparity between these two scenarios is the key factual dispute of the trial," Sessions wrote.

But Sessions rejected the arguments, saying the automakers and their experts "fail to demonstrate that the regulation is not feasible, given the flawed assumptions and overly conservative selection of technologies documented," he wrote, largely emphasizing the role diesel may play in future products. "Compliance is possible in the time period provided at a relatively reasonable cost."

He also rejected an argument that automakers could be forced to eliminate 65,000 auto jobs in the United States

if the regulations took effect.

The trial this spring was the first court test of whether states can mandate emissions levels. It came a week after the U.S. Supreme Court ruled that carbon dioxide emissions can be regulated as an air pollutant.

Environmentalists hailed the 240-page decision. "The judge said baloney to all of Detroit's arguments," said David Bookbinder, a lawyer for Sierra Club who argued the case. "This was another example of Detroit crying wolf."

Automakers said they were considering an appeal of the Vermont decision.

"Federal law is designed to ensure a consistent fuel economy program across the country," said Dave McCurdy, president and CEO of the Alliance of Automobile Manufacturers, a trade group representing the Detroit Three, Toyota and five other car companies. "It makes sense that only the federal government can regulate fuel economy. Automakers support improving fuel economy standards nationally, rather than piecemeal and will continue to work with the Congress, NHTSA and EPA to reduce our oil dependence while increasing fuel economy.

Chrysler LLC spokesman Max Gates said the company is disappointed in the ruling.

"We thought we made some good arguments for being supportive of some rational and reasonable increases in fuel economy increases," Gates said, saying the company believes the federal government should set a national standard, rather than a patchwork of state regulations.

EPA is still deciding whether to grant California a waiver to implement its regulations under the Clean Air Act. Since 1970, the EPA has granted California more than 50 waivers and never turned one down.

EPA and the National Highway Traffic Safety Administration plan to unveil a proposed regulation to limit vehicle tailpipe emissions by the end of the year -- a move that could be accompanied by a rejection of California's request.

In its defense, Vermont said the state's environment is at stake -- even the health of its storied maple syrup industry -- if automakers don't reduce greenhouse gas emissions.

Vermont also noted that since 1953, the average snowfall has declined by 15 percent and the period of snowfall on the ground yearly has declined by a week per year, harming the skiing industry. It also said tourism connected to fall color tours could also be at risk.

Meeting the regulations in the states that adopted California's rules could cost the auto industry tens of billions of dollars, based on a comparison to a less stringent fuel economy proposal outlined by President Bush that has an estimated cost of \$114 billion.

Automakers say they may have to close dealerships in states that adopt the California rules, or stop selling some of their least fuel-efficient but most profitable models, such as big trucks and sport utility vehicles, as well as make hybrid versions of more models.

California officials estimate new vehicle sales in the state will drop 4.7 percent -- 90,000 vehicles -- by 2020 under the rules.

Environmentalists say tough tailpipe emissions restrictions are necessary to reduce the growing amount of carbon dioxide in the atmosphere. They note that U.S. automobiles account for about 6 percent of worldwide man-made

carbon dioxide emissions.

The legal challenge in Vermont follows California's order that automakers meet tailpipe emissions limits beginning in 2009 that increase annually to cut emissions up to 40 percent by 2016.

Under the rules, passenger cars would likely have to average 43 miles per gallon by 2016 -- far above any proposal in Congress to raise the standard from today's 27.5 mpg standard, which has been unchanged in two decades.

President Bush's proposal would raise fuel economy standards an average 4 percent yearly beginning in September 2009 for passenger cars -- though the final number would be set through the regulatory process, which is underway.

The Senate voted in June to hike fuel economy to a combined 35 miles per gallon for light trucks and passenger cars by 2020 -- a 40 percent increase.

Also Wednesday, California Gov. Arnold Schwarzenegger and 12 governors sent a letter to the CEOs of the Detroit Three, Toyota, Honda and Nissan, asking them to stop fighting stricter emissions standards.

"In light of this decision, we do not believe it is production for your industry to continue to fight state implementation of the clean tailpipe standards," said the governors of the Golden State, Arizona, Connecticut, New York, Maine, Massachusetts, Maryland, Oregon, New Mexico, Pennsylvania, Utah, Rhode Island and Washington.

"We would prefer to follow a path that encourages innovation not litigation ... It is time for us to work together," they wrote.

<http://www.latimes.com/business/la-fi-greenhouse13sep13,1,111672.story?coll=la-headlines-business>

*From the Los Angeles Times*

## **Judge says states can set auto emissions rules**

The verdict in Vermont could help California win its case. Automakers have argued that only the federal government can regulate fuel-efficiency and pollutants.

By Marc Lifsher and Janet Wilson  
Los Angeles Times Staff Writers

September 13, 2007

A federal judge ruled today that states can combat global warming with tough restrictions on tailpipe emissions. The decision puts more pressure on automakers to produce more-efficient cars and boosts California's case for requiring vehicles to emit 30% fewer pollutants by 2016.

The judge, ruling in a lawsuit filed by automakers against the state of Vermont, said Vermont's emissions standards - which are based on a 2002 California law -- weren't "sufficiently draconian" to usurp the federal government's right to set fuel economy standards.

U.S. District Judge William K. Sessions III said he was confident that manufacturers had the expertise to build cleaner cars. "History suggests that the ingenuity of the industry once put in gear responds admirably to most technological challenges," he said.

A similar suit by carmakers against California is awaiting trial in federal court in Fresno. State officials and their environmental allies say they feel confident of winning now that the judge has handed down a 240-page decision that is studded with sophisticated scientific and engineering arguments.

The standards proposed by California, Vermont and a dozen other states specifically deal with reducing a prime source of carbon dioxide and other so-called greenhouse gases that contribute to climate change. But their implementation would also boost the average fuel economy of gasoline-powered light trucks and cars to an estimated 43.5 miles per gallon in 2016 from 27.5 mpg currently, based on auto industry data, said James Tripp, an attorney with Environmental Defense, one of the parties in the Vermont and California lawsuits.

"Today's ruling by the U.S. District Court is more proof that auto industry arguments opposing meaningful fuel-efficiency increases are no longer credible," said Phyllis Cuttino, director of the Pew Campaign for Fuel Efficiency, a Washington advocacy group.

Domestic and foreign-based auto companies said they were "weighing their options, including an appeal" of the ruling. Kim Custer, the communications director for the Assn. of International Automobile Manufacturers, which includes Toyota, Nissan and Honda, said his group was disappointed with the Vermont decision and was worried that the country could "end up with a patchwork of different regulations as more and more states opt for the California regulations."

California Gov. Arnold Schwarzenegger applauded the ruling in Vermont as an "important victory in the fight against global warming." The governor and Atty. Gen. Jerry Brown have vowed to sue the Environmental Protection Agency if it doesn't give California the waiver needed to set its stringent emissions rules in motion.

"The EPA is in an unconscionable stall," Brown said. "It's crystal clear that they must act favorably on California's petition."

EPA Administrator Steve Johnson will make a final determination on the California waiver request by the end of this year, spokeswoman Jennifer Wood said.

In the meantime, the auto industry should "stop wasting millions on legal fees and start paying their engineers to make cars cleaner," said David Bookbinder, the head of the Sierra Club's climate change program and a lawyer in the Vermont case. Bookbinder predicted that the judge in the California case would decide that another full trial is "ridiculous."

Those sentiments were echoed in a letter from Schwarzenegger and the governors of New York, Massachusetts, Pennsylvania and nine other states to auto company chief executives asking them to "withdraw your legal challenges to clean vehicle standards and begin working with us to meet our joint obligations to begin reversing the threat of global warming."

Automakers argued unsuccessfully in the Vermont suit and continue to argue in the California suit that only the federal government can set fuel-efficiency standards and, by extension, carbon emission standards for cars and light trucks.

Congress has deemed that California, a state that historically has been in the forefront in the fight against air pollution, is the only state that can devise emissions rules that differ from federal standards. Vermont and other states have the right to follow the tighter California standards if the EPA approves.

The EPA until recently claimed that it had no authority under the U.S. Clean Air Act to regulate greenhouse gas pollution. But the U.S. Supreme Court knocked down that contention in an April 2 decision involving a suit filed by Massachusetts and other states against federal regulators.

# States looking to regulate greenhouse gases win big in court

[Bob Egelko, Chronicle Staff Writer](#)

Wednesday, September 12, 2007

(09-12) 15:31 PDT MONTPELIER, VT. - States can limit vehicle emissions of gases that contribute to global warming despite the Bush administration's refusal to do so, a federal judge ruled today, rejecting the auto industry's challenge to a Vermont statute and spurring optimism among supporters of a pioneering law in California.

In a 240-page decision, U.S. District Judge William Sessions in Montpelier, Vt., emphatically rejected automakers' central argument against the laws in both states - that the only way to reduce greenhouse gas emissions is to increase fuel economy, an area regulated exclusively by the federal government.

"Nothing in (federal law) indicates that Congress intended to displace emission regulation by California that would have an effect on fuel economy," Sessions said, noting that Vermont's law is identical to California's 2002 statute. He also denied the industry's claims that state regulation would make cars unaffordable and unsafe.

The ruling raises the stakes in the current review of California's law by the Environmental Protection Agency. Sessions noted that the laws in California, Vermont and 10 other states that have followed the California model will become unenforceable if the EPA denies California a waiver allowing the state to impose stricter controls on air pollutants than the federal government does.

The EPA has been considering California's request for nearly two years. Gov. Arnold Schwarzenegger has threatened to sue the federal agency unless it acts by Oct. 25.

"Today we won in court, and yet the victory will be a hollow one if EPA succeeds in stalling and ultimately denying our request," said state Attorney General Jerry Brown, who argued California's case to the federal agency earlier this summer.

In light of the ruling, "the EPA is going to be hard-pressed to say that the (state) regulations aren't feasible or are too costly," said David Doniger, a lawyer with the Natural Resources Defense Council who helped to argue the Vermont case and is taking part in a similar lawsuit in California. A federal judge in Fresno has scheduled a hearing Oct. 22 on a suit by car manufacturers, who make the same arguments that they raised in Vermont.

Although Sessions' ruling is not binding on U.S. District Judge Anthony Ishii, who is presiding over the California case, it should be persuasive, Doniger said.

Schwarzenegger said in a statement that the ruling "marks another important victory in the fight against global warming. California and other states will no longer be blocked by those who stand in our way."

The Alliance of Automobile Manufacturers said it was considering an appeal. The organization's president, Dave McCurdy, renewed the argument that the state laws are the equivalent of miles-per-gallon standards and thus should be trumped by federal standards.

"Automakers support improving fuel economy standards nationally, rather than piecemeal," McCurdy said in a statement. Regarding the California waiver request, he said his organization was "committed to working with policymakers to make certain that the EPA's judgment is based on credible, sound scientific data."

There was no immediate comment from the EPA.

The Vermont law, like California's 2002 statute, requires makers of cars and light trucks to begin reducing emissions of carbon dioxide and other greenhouse gases - considered by the mainstream scientific community to be a cause of global warming - with the 2009 models, and to achieve 30 percent reductions by 2016.

The lawsuit by auto manufacturers and dealers argued that the state law conflicted with federal laws on air pollution and fuel economy and, by injecting states into an international issue, interfered with the president's authority over foreign policy.

Sessions held a 16-day, nonjury trial this spring and then put the case on hold while the U.S. Supreme Court considered the Bush administration's claim that the EPA lacked authority over greenhouse gas emissions from cars. The high court rejected that view in April, ruling 5-4 that the emissions were air pollutants and that the EPA must regulate them unless it comes up with scientific justifications for continued inaction.

Sessions cited the Supreme Court ruling in today's decision, noting that the court found no conflict between regulation of greenhouse gas emissions and fuel economy standards. He also said automakers have other ways to reduce the emissions besides increasing gas mileage - for example, using alternative fuels and other technological innovations.

The judge likewise dismissed industry arguments that the state controls would conflict with federal consumer and auto safety regulation by making cars more dangerous and less affordable.

The industry's expert witness testified that the state laws would increase car prices by \$5,000 and force General Motors, DaimlerChrysler and Ford to stop selling cars in the affected states, but those assertions were unsupported by the evidence, Sessions said.

"It is improbable that an industry that prides itself on its modernity, flexibility and innovativeness will be able to meet the requirements of the regulation," the judge said.

He also cited testimony that increased fuel efficiency prompted by emissions regulation would save the average car customer \$5,000 over the vehicle's lifetime, at current gasoline prices.

# U.S. Court Backs States' Measures to Cut Emissions

By [FELICITY BARRINGER](#)

A federal judge in [Vermont](#) gave the first legal endorsement yesterday to rules in California, being copied in 13 other states, that intend to reduce greenhouse gases emitted by automobiles and light trucks.

Ruling in a lawsuit against Vermont's standards on those heat-trapping gases, the judge, William K. Sessions III, rejected a variety of challenges from auto manufacturers, including their contention that the states were usurping federal authority.

The ruling follows a decision by the [United States Supreme Court](#) in April that the [Environmental Protection Agency](#) has the authority to regulate heat-trapping gases like carbon dioxide as air pollutants. The ruling in Vermont explicitly endorses the idea that California has the right to set its own regulations on the gases, and that other states, like Vermont, have the right to follow its lead.

Judge Sessions ruled that the auto manufacturers had not proved their claims that compliance with the rules in Vermont — clones of the groundbreaking standards adopted in California — was not feasible.

“Nor,” he wrote of Vermont's regulatory framework, “have they demonstrated that it will limit consumer choice, create economic hardship for the automobile industry, cause significant job loss or undermine safety.”

The judge also rejected a claim that Vermont's standards would intrude into the sphere of foreign policy, which is the unique province of the federal government.

Though the ruling by Judge Sessions did not deal directly with the California law, it is expected to embolden efforts in California — a state with a three-decade history of subduing polluting industries and serving as a template for other states — to further reduce the emissions that many scientists say contribute to [climate change](#).

In 2002, California adopted the first state law requiring auto manufacturers to begin reducing emissions of carbon dioxide and other heat-trapping gases. In 2004, it set standards for emission reductions.

Vermont adopted the same standards, as did other states, including Connecticut, New Jersey, New York and Pennsylvania.

Automakers sued to block the standards in Vermont and California. The Vermont lawsuit led to a trial in May and Judge Sessions's ruling on Wednesday; the California case is pending.

The federal Clean Air Act gives California the unique authority to set its own emissions standards and allows other states to adopt California's rules instead of the federal rules. But the California standards require a waiver from the Environmental Protection Agency.

A request for a waiver in the case of the emission standards was made in December 2005, and the E.P.A. administrator has said he will make a decision by the end of this year.

None of the state rules will take effect unless a waiver is granted.

David Doniger, a lawyer with the [Natural Resources Defense Council](#), an environmental advocacy group that supports the state standards, predicted that Judge Sessions's ruling would "put a lot more pressure on E.P.A. to grant the waiver."

In a statement posted on the Web site of the Alliance of Automobile Manufacturers, which brought the lawsuit, Dave McCurdy, the group's president, said an appeal was being considered.

Mr. McCurdy also said, "The alliance remains committed to working with policy makers to make certain that the E.P.A.'s judgment is based on credible, sound scientific data as to what policies truly impact California, its citizens and global climate concerns."

Among other things, Wednesday's opinion includes a lengthy analysis of why the federal Transportation Department's authority over fuel-economy standards does not prevent states from adopting California's controls over vehicle emissions.

One central reason, Judge Sessions said, is that the California standards cover more than just fuel economy. They deal with carbon dioxide emissions, which are closely correlated with fuel economy, as well as other heat-trapping gases, including those in automobile air-conditioning units, which are not tied to fuel economy.

"The district court's opinion is a sweeping rejection of the auto industry's claim that California and other states" lack authority to regulate heat-trapping gases, Richard J. Lazarus, a law professor at [Georgetown University](#), said in an e-mail message.

Professor Lazarus added that the ruling by the Supreme Court in April that the Environmental Protection Agency had authority to regulate such emissions "plainly emboldened" Judge Sessions, who "takes the further step of endorsing an actual exercise of such authority by the states."

But Patrick A. Parenteau, a law professor at the [University of Vermont](#), noted that the decision might have jumped the gun, legally speaking, because the Vermont rules, pending the E.P.A. ruling on a waiver, have not yet taken effect.

An appeals court could rule that Judge Sessions was premature in deciding the case — in legal parlance, that it was not ripe.

But, while the question of ripeness could upend the Vermont case, the decision gives psychological momentum to the states aligned with California, which include Arizona, Florida, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island and Washington.

Under the California law, the emissions reductions for cars in the 2016 model year could be 30 percent or more below current levels.

California regulators have required that by 2012 emissions from cars and light trucks be reduced by 25 percent from 2005 levels. For larger trucks and sport utility vehicles, cuts of 18 percent were required.

Experts from the auto industry testified in the Vermont case that, because of the engineering and economic difficulties associated with meeting these goals, few if any of their cars and trucks would be sold in Vermont by 2016.

The judge noted many of the emerging technologies for reducing gasoline consumption and questioned the automakers' pessimism.



“It is improbable,” he wrote, “that an industry that prides itself on its modernity, flexibility and innovativeness will be unable to meet the requirements of the regulation, especially with the range of technological possibilities and alternatives currently before it.”

He was also skeptical of an industry expert’s claim that 65,000 jobs would be lost nationwide if California and its allies prevailed.

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## Carmakers Defeated On Emissions Rules

States Can Set Standards, Judge Says

By Sholnn Freeman  
Washington Post Staff Writer  
Thursday, September 13, 2007; D01

A federal judge in [Vermont](#) yesterday rejected an attempt by automakers to block individual states from adopting their own standards for limiting greenhouse gas emissions from cars and trucks.

Judge William Sessions III of [U.S. District Court](#) in [Burlington](#) ruled that state action to limit greenhouse gas emissions from new vehicles -- standards that originated in [California](#) in 2002 and have since been adopted by Vermont and at least 10 other states -- was not preempted by federal rules on vehicle fuel economy.

The decision follows a Supreme Court ruling in April that the [Environmental Protection Agency](#) violated the Clean Air Act by declining to regulate greenhouse gas emissions from vehicles. It also comes as automakers are confronted with growing public demand and governmental pressure to build more fuel-efficient vehicles. This fall, Congress is to take up vehicle fuel-efficiency legislation that could bring about the biggest change in fuel-economy laws since the 1970s.

[General Motors](#) of [Detroit](#) and [DaimlerChrysler](#) of [Stuttgart, Germany](#), along with the Alliance of Automobile Manufacturers and a group of Vermont car dealers, had sued Vermont to block rules calling for a 30 percent reduction in greenhouse gas emissions from vehicles by 2016. In his ruling, Sessions wrote that he "remained unconvinced" about automakers' claims that they could not make cars and trucks with cleaner emissions.

Sessions pointed out automakers' "intensive efforts" in innovations including hybrid technology, clean diesel engines and alternative fuels such as ethanol, to increase fuel efficiency and reduce emissions. "History suggests that the ingenuity of the industry, once put in gear, responds admirably to most technological challenges," he wrote.

Greenhouse gases include carbon dioxide, methane, nitrous oxide and hydrofluorocarbons from leaky car air conditioners.

In finding that federal fuel-economy rules did not overrule those adopted by the states, Sessions wrote that Congress, through federal law, had designated California the "proving ground for innovation in emissions control regulations."

The states, environmental groups and the auto industry have clashed in the courts for years over global warming. Last year, California sued six automakers, claiming that car and truck emissions damage the environment and endanger public health. Following yesterday's decision, the governors of 13 states issued a letter calling on car companies to withdraw other legal challenges to the California standards.

Environmentalists are pressing the Bush administration to grant California a waiver from the EPA that it needs before its emissions standards can take effect. If California is granted the waiver, Vermont and other states, including [Maryland](#), [New Jersey](#) and [Connecticut](#), would be allowed under the federal Clean Air Act to adopt standards identical to California's.

If California is denied a waiver, the Vermont rules are invalid, Sessions wrote.

Dave McCurdy, president of the Alliance of Automobile Manufacturers, said automakers support improving fuel economy standards nationally rather than piecemeal. McCurdy, in a statement, said the alliance was considering an appeal.

The alliance has argued that California's emissions rules are so strict that they would require extensive design changes to vehicles, driving up prices and crippling sales. Industry lawyers have said the carmakers have to take into account safety, performance and cargo space in combination with improvements in fuel economy.

David Doniger, senior attorney at the [Natural Resources Defense Council](#), said yesterday that the auto industry should reevaluate its legal strategy of fighting the global-warming rules, given yesterday's setback.

"This should finally be the wake-up call that car companies can't ignore global warming," said Doniger, who helped argue the Vermont case. "Up until now, there's been a lot of green talk at auto shows. But they are fighting tooth and nail in the courts to block any real standards, and today they lost."