

California's Kicks b**t on CO2 Dr Paul Nieuwenhuis

The State of California is suing the six leading auto makers selling vehicles in its market (General Motors, Ford, Toyota, Honda, Chrysler and Nissan) for causing damage to California through the contribution their products make to global climate change. The state is seeking damages, so far unquantified, for current and future damage to California's water supplies, coastline, forests, wildlife and public health. California Attorney General Bill Lockyer said to the Los Angeles Times (21/9/06) that *"Basically, what we are saying is it's old-fashioned economics. You should pay for the damage you cause"*; the polluter pays principle, in other words. He also noted that *"the automobile industry manufactures products that are the largest growing source of carbon emissions in the state and country"*.

The lawsuit is filed under nuisance law, rather than environmental law. This will require the state to convince a judge that the burdens placed on California society are sufficiently serious to warrant some form of compensation. Presumably the industry will base its defence on a cost-benefit analysis arguing that the benefits their products bring to Californians outweigh the impact on the California climate and environment. Blatant climate change denial is now becoming unfashionable even in the US. Even so, California and eleven other states are suing the federal EPA (i.e. the federal Bush administration) for its lack of action on climate change (the case of Massachusetts vs. EPA, 05-1120). These same states may also follow California's moves on carbon dioxide.

The legal action follows what the San Francisco Chronicle (August 31) described as the *"State's historic deal on warming"*. The deal was historic in more than one sense. Not only did the most populous state of the Union defy the federal government, internal politics took a new departure. In essence, the new bill, which will now become California law, requires the following measures:

- A 25% reduction in greenhouse gas emissions by 2020
- The Air Resources Board (CARB) to be the leader in developing the necessary caps and regulations.
- CARB to set up rules for a cap and a trading system
- The governor can delay implementation for up to a year in the event of natural disaster or other extraordinary events such as a major recession.

Under the provisions of this bill, carbon dioxide released by refineries, power plants and other heavy industries would be capped. Vehicle emissions of CO2 were already covered under the 2002 law initiated by former CARB chairman, Welsh-born Alan Lloyd. That law is still the subject of a lawsuit from automakers, aided by the Federal Government, despite the fact that the industry has accepted similar measures in Canada with little opposition.

California's new global warming law was not adopted without opposition. In fact the bill got through on an unprecedented coalition of a Republican governor and his Democrat opposition. No Republican lawmakers supported the bill, citing it would drive businesses and jobs out of California. However, the hope on the part of supporters of the bill is that an entirely new clean energy and clean transport sector would be created which could lead the world in sustainable technologies.

Before dismissing the latest move from California's Attorney General – as car makers have done in their initial response – as mere political manoeuvring in preparation for the November elections, they should perhaps recall the first moves against the tobacco industry. Small scale lawsuits were launched with the help of some states and local authorities. The tobacco companies tried to laugh them out of court but after many years of costly legal action ended up paying large amounts of money in settlements. The carmakers may do well to take this initiative a bit more seriously and build a serious response. The Japanese car makers can at least show some track record in responding to climate change as well as having some money in the bank. The no longer so Big 3 may have to try harder at a time when such a move is both costly for loss-making GM and Ford, but also very necessary in recovering market share and credibility among customers and the financial community in the US. Perhaps they can even become part of that California dream of creating a new sector of sustainable transport providers – or is that just too much 'California dreamin' for Detroit?