

# WA Supreme Court: Pollution Tax Constitutional

RACHEL LA CORTE, Associated Press

OLYMPIA, Wash. (AP) — The state Supreme Court unanimously ruled Thursday that the state's hazardous substances tax is constitutional.

The high court upheld a King County Superior Court ruling that found the state is not precluded from using the current tax of 0.7 percent imposed on oil products, pesticides and other chemicals for environmental cleanup projects.

The state has said the tax, approved by voters in 1988, brings in about \$125 million a year for those projects.

The Automotive United Trades Organization and California-based Tower Energy Group had argued that that the levy is a gas tax that should be used only for highways and roads under the state Constitution's 18th amendment, which dedicates motor fuel tax collections to highway purposes.

The high court ruling, written by Justice Jim Johnson, said "nothing in that constitutional provision indicates that any new tax similar to a gas tax would require the Legislature to use the funds for highway purposes."

The hazardous substances tax "statute was enacted to tax toxic substances, including motor vehicle fuel, for the purpose of cleaning up spills of hazardous substances," the court wrote. "As a result, funds from the HST levied against motor vehicle fuel do not have to be used for highway purposes because they were never restricted to be used only for highway purposes."

State Department of Ecology Director Ted Sturdevant was happy with the ruling.

"For more than 20 years, this tax has been doing exactly what the voters of our state intended," he said in a written statement, noting it has led to the cleanup of old toxic messes and "prevented many new ones in our air and water and land."

Phil Talmadge, the attorney for Automotive United Trades Organization, said the ruling created a huge loophole in terms of the motor vehicle fund.

"What this decision means is that the Legislature can get there in January and say 'we have a big budget hole,' and they can increase the gas tax and take those revenues and use them for education or to support social services," he said. "It's open season on the tax on gasoline."

Laura Watson, an assistant attorney general who argued the case, said the decision does not open the door for using the gas tax for other purposes.

"What it says is that the hazardous substance tax isn't limited to highway purposes,

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Published on Chem.Info (<http://www.chem.info>)

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which is how we've been interpreting the tax for over 20 years now," she said.

Watson said that while it's true that the official state gas tax — which was established in the 1920s — can't be used for anything other than road projects, the Legislature has always been able to pass statutes that could add a separate tax on motor fuel that could be directed to other projects, and that nothing under this ruling changes that.

"The Legislature has very broad taxing authority," she said.

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