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## Should state haul big oil and auto giants to court?

**By Stuart Leavenworth -**

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Ten years ago, when Arnold Schwarzenegger was enhancing his movie career with "Jingle All the Way," his future environmental adviser Terry Tamminen was working as a pool-cleaning expert, water cop and would-be Bard of the Bay.

As Santa Monica Baykeeper, Tamminen spent his days tooling around in his boat harassing litterbugs. He also was promoting copies of his book, "The Ultimate Pool Maintenance Manual," while playing the role of Shakespeare in a children's play he wrote.

His life has since taken several dramatic turns. Tamminen became director of a leading environmental foundation, and he and Schwarzenegger bonded during the actor's successful run for governor during the 2003 recall election. The two then produced an environmental platform that surprised skeptics.

Over the objections of some Republican advisers, Schwarzenegger appointed Tamminen as secretary of the California Environmental Protection Agency. Then he became the governor's cabinet secretary, and later, a special adviser, before he left the state payroll in August.

Now Tamminen is about to launch a new crusade, one that few would expect from a close adviser to a Hummer-driving governor. In a few weeks, bookstores will begin stocking copies of "Lives Per Gallon," a book by Tamminen that examines America's petroleum addiction and launches a blistering attack on the practices of the world's oil and automobile industries.

In the 250-page book, Tamminen argues these companies are perpetrating frauds similar to the tobacco industry by employing hired-gun experts and front groups to fight regulation and sidestep the health and environmental costs they impose on society. These two industries, he argues, are deserving of the same forceful litigation and taxation that has successfully reduced smoking rates in the past decade.

The timing of "Lives Per Gallon" could give the book a wide readership and make it an issue in the governor's campaign. Don't be surprised if Schwarzenegger's opponent, Treasurer Phil Angelides, starts waving "Lives Per Gallon" in the governor's face and pressuring him to endorse Proposition 87, a proposed severance tax on California oil production that Tamminen supports.

"Lives Per Gallon" also will give cover to California Attorney General Bill Lockyer, who last month filed a lawsuit against major automobile manufacturers. Lockyer alleges that auto industry products are contributing to air pollution and global warming, and therefore they

constitute a public nuisance.

Some quickly dismissed the suit as a publicity stunt with no legal foundation. The Los Angeles Times editorial page called it a "silly legal battle" that tries to hold "law-abiding companies liable for the government's past failures" to regulate emissions.

Tamminen strongly disagrees. In his book, he notes that the lead paint industry and other companies have been successfully sued for nuisance even though they were obeying the law. In nuisance cases, a plaintiff does not need to prove that an activity is illegal, only that the harm it poses to the public outweighs any benefits.

Tamminen also takes issue with claims the automobile and oil industries have obeyed state and federal laws, especially in the realm of air pollution, one focus of Lockyer's suit.

"My books lays out that, for the last 60 or 70 years, these industries have not been law-abiding," Tamminen said in a recent interview. "They have used every tool in the book to deceive regulators and deceive the public." n n n

In writing an environmental exposé, Tamminen probably couldn't have picked a bigger target than the oil and automobile industries. In 2005, the top 10 companies in these two industries reported revenues of nearly \$2 trillion and profits of almost \$100 billion.

Granted, their combined clout wasn't sufficient to block Schwarzenegger from signing Assembly Bill 32, which requires California to cut its global warming emissions by 25 percent. But AB 32, despite its historic significance, doesn't pose much of an immediate threat to Big Oil and Big Auto. A former Cal-EPA secretary laying out a road map for litigation could be a different story.

Tamminen, 54, says his environmental passions were stirred in his early 20s, when he returned to Southern California after college and went scuba diving in waters he explored as a teenager.

His favorite underwater spots, which once glistened with towering kelp beds and abalone, had become a wasteland of barren rock and Styrofoam cups. His activism intensified when his father, Art Arndt, died of emphysema at age 70. Tamminen blames his father's death on smoking and living in Milwaukee, which he says was "covered much of the time in green-gray smoke" from industries and automobiles.

After a number of odd jobs, including working on a sheep ranch in the Midwest, Tamminen moved back to Southern California in the 1980s and purchased a pool business in Malibu. He cleaned pools for the rich and famous, including Madonna and Johnny Carson, which is how he met Frank Wells, the late president of Walt Disney Co. and an ardent conservationist.

With the help of Wells and his family, Tamminen became the first Santa Monica Baykeeper, part of a national network of water cops led by Robert F. Kennedy Jr., a cousin of Maria Shriver. In 1999 Tamminen became director of Environment Now, a Wells foundation that supports green causes across the state.

Tamminen quickly saw a connection between all the issues the foundation was tackling, including smog, urban sprawl and groundwater contamination.

"So many things that the foundation was working on came back to petroleum," he said. "The more I looked at our addiction to oil, the more I became angry and felt compelled to write

the book."

Tamminen was halfway into the project when the recall election turned his life upside down. Schwarzenegger was looking for an environmental guru, and Kennedy urged him to meet with Tamminen. The two dined at the actor's Santa Monica restaurant, Schatzi on Main, and they quickly hit it off.

In a matter of few days, Schwarzenegger, Shriver and Tamminen hammered out an eight-page environmental action plan. At the top of the list: "Cut air pollution statewide by up to 50 percent and significantly reduce California's dependence on foreign oil before the end of this decade."

Tamminen says he told Schwarzenegger about the book project in 2003 and never heard any flak about it. In fact, he says, the governor once bragged to a group of environmentalists at a party that Tamminen was writing a book about the nation's over-dependence on petroleum. n n n

"Lives Per Gallon" starts out gently enough with President Bush's infamous quote: "America is addicted to oil."

The book then launches into a retrospective of the petroleum and automobile industries, with chapter titles borrowed from Shakespeare and Pliny. In one chapter, "Wealth Seems Rather to Possess Them," Tamminen notes how these industries worked to stifle competition, avoid regulation and secure subsidies from the federal government. He rehashes how Detroit maneuvered to eliminate street cars in several cities, kill the electric car mandate in California and block tougher fuel economy standards.

None of this will be startling to students of the petroleum economy. But Tamminen also includes some interesting touches, including a section analyzing how cigarette smoke and petroleum pollution are remarkably similar in their chemical makeup.

"Whether you inhale from a cigarette, breathe in secondhand tobacco smoke, or simply breathe the air in most parts of the industrialized world, you are inhaling benzene, polycyclic aromatic hydrocarbons, carbon monoxide and host of other toxins," he writes.

Tamminen cites studies, including some from the University of California, Davis, reporting that petroleum pollution causes an estimated \$54.7 billion to \$672.3 billion in direct health care costs each year. He cites reports showing that diesel exhaust and other pollution has led to an increase in childhood asthma, cancers, birth defects and other ailments.

The most charged chapter of Tamminen's book focuses on strategies to make these industries pay for their hidden costs. Tamminen analyzes how oil and auto industries could be vulnerable to lawsuits over fraud and manipulation, antitrust, product liability and public nuisance, similar to the tobacco industries.

Some will undoubtedly question if Tamminen is going overboard by comparing these corporations with the tobacco giants. After all, smoking offers no real societal benefits, whereas petroleum gives us transportation, vital chemicals, plastics, life-saving pharmaceuticals and other products.

For a nuisance case to be successful, a plaintiff would have to demonstrate that the harm caused by the petroleum industry's activities was "unreasonable," taking into account any benefits to society from those activities, said Sean Hecht, a UCLA law professor. It would not

be enough, he said, just to establish that petroleum was causing harm.

In addition, Hecht said, Tamminen is treading some new ground by suggesting these industries could be sued under the public trust doctrine, which environmentalists successfully used to save Mono Lake in California. It's possible, he said, that regulators could be sued for failing in their role as trustees over air quality, but such an approach would be novel, he said, and its success uncertain.

Tamminen nonetheless maintains that environmentalists may need to explore various legal avenues if they hope to address air pollution and global warming. He also says it is "totally valid" to compare Big Oil and Big Auto with Big Tobacco.

People who die from secondhand cigarette fumes, he said, are similar to millions of Americans who try to lead an environmentally healthy life but still end up paying for the consequences of air pollution and climate change.

"Even if you don't drive a car or don't use petroleum power in any way, you are still forced to breathe that secondhand smoke," he said. "That it is a direct result of those conspiracies and lobbying and shenanigans that I outline in the book." n n n

Ever since Tamminen announced his resignation in August, environmentalists have fretted that Schwarzenegger will become a much less-green governor if he wins a second term. Some have speculated that Tamminen was forced to leave because of the strident environmentalism apparent in his book.

Not true, he says. Although he acknowledges several frustrating battles in Schwarzenegger's inner circle, Tamminen insists he was not pressured to go and plans to keep advising the governor and help with his campaign. Assisted by foundation money, he is also collaborating with officials in Arizona, New York and other states to create a consortium with California to fight global warming.

Tamminen, however, acknowledged that the release of "Lives Per Gallon" factored into his decision to leave Schwarzenegger's administration. The book could end up being controversial for his friend and former boss, he said, and he didn't want to stay on the state payroll in such a situation.

"I am sure it has caused a little heartburn for him (Schwarzenegger), because his campaign has freaked out a little bit," Tamminen said. "They don't want to piss off their base ... They don't want controversy during the campaign and I can understand it."

Already, the book is getting some national buzz. The Washington Post listed it as one of their most anticipated books of the season, and Island Press is planning a promotional tour.

The real test of Tamminen's book, of course, will be if it prompts changes in either industry behavior or the tactics of the environmental movement. Tim Carmichael, director of the Los Angeles-based Clean Air Coalition, said the premise of Tamminen's book is strong, but lawsuits could be costly and time consuming, which is one reason that environmentalists haven't talked extensively about them.

Lockyer's lawsuit against the auto companies will be pivotal, said Hecht, who previously worked in the attorney general's office. Although the state's case faces some hurdles, he said, "lawyers for these companies should not be so quick to dismiss the risks."

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