



Air Resources Board



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PUBLIC DOCUMENT – July 21, 2017

PENDING LITIGATION – With Air Resources Board as a Party

The Air Resources Board (ARB) is a party in the cases listed below as a defendant, a plaintiff, or an intervenor. These cases are organized into subject areas: greenhouse gas-related cases, diesel and other pollutants-related cases, enforcement cases, and other miscellaneous cases. The expectation is that this list will be periodically updated. Since the case name, court name, and case number are listed, details about each case can be obtained from the filed pleadings at each court.

Greenhouse Gas-Related Cases

Industry's challenge to Connecticut's Renewable Portfolio Standard was dismissed; on appeal, ARB joined other states in filing an amicus brief in support of Connecticut. *Allco Finance Limited v. Klee et al.*, (United States Court of Appeals, Second Circuit, Case Nos. 16-2946, 16-2949); appeal from *Allco Finance Limited v. Klee et al.* (D. Conn., Aug. 18, 2016, Civ. A. Nos. 3:15-cv-608, 3:16-cv-508) 2016 WL 4414774).

Challenge to the regulations related to the ARB-run allowance auction and reserve sale in the cap-and-trade program as either unauthorized by AB 32 or, alternatively, as an illegal tax. *California Chamber of Commerce, et al. v. California Air Resources Board, et al.* (Sacramento Superior Court, Case No. 34-2012-80001313; petitioners' appeal, California Court of Appeal, Third District, Case No. C075930); and *Morning Star Packing Company, et al. v. California Air Resources Board, et al.* (Sacramento Superior Court, Case No. 34-2013-800001464; petitioners' appeal, California Court of Appeal, Third District, Case No. C075954). These two cases were consolidated for hearing by the court.

Challenge to Oregon's Clean Fuel Program and ARB intervened for Oregon. *American Fuel & Petrochemical Manufacturers, et al. v. Jane O'Keeffe, et al.* (United States District Court, District of Oregon (Portland), Case No. 3:15-cv-00467-AA; plaintiffs' appeal [Oregon prevailed]. United States Court of Appeals, Ninth Circuit, Case No. 15-35834).

Challenge in 2009 to the Low Carbon Fuel Standard in state court – claims under the California Environmental Quality Act and the Administrative Procedures Act. *POET, LLC, et al. v. Corey, et al.* (Fresno County Superior Court, Case No. 09-CE-CG-04659); petitioners' appeal, California Court of Appeal, Fifth District, Case No. F064045; ARB petition California Supreme Court, Case No. S213394; remanded to superior court

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which dismissed the writ; POET appealed, California Court of Appeal, Fifth District, Case No. F073340.

Challenge in 2015 to the readopted Low Carbon Fuel Standard and Alternative Diesel Fuel Regulation in state court – claims under the California Environmental Quality Act and the Administrative Procedure Act. *POET, LLC, et al. v. Air Resources Board* (Fresno County Superior Court, Case No. 15CECG03380).

Challenge to the Low Carbon Fuel Standard – federal preemption and other constitutional claims. Consolidated: *Rocky Mountain Farmers Union, et al. v. Corey et al.* (United States District Court, Eastern District of California (Fresno), Case No. 1:10-cv-00163-AWI-GSA) and *American Fuels and Petrochemical Manufacturing Associations, et al. v. Corey, et al.* (United States District Court, Eastern District of California (Fresno) Case No. 1:10-cv-00163-AWI-GSA); ARB interlocutory appeal, United States Court of Appeal, Ninth Circuit, Case Nos. 09-cv-02234 and 10-cv-00163 [ARB prevailed]; petitioners' petition for certiorari in the United States Supreme Court, Case Nos. 13-1148 and 13-1149 denied; remanded to district court).

Challenge under the California Environmental Quality Act, to include the high-speed rail project in ARB's AB 32 Scoping Plan Update, and challenge to the Legislature's appropriation of cap-and-trade proceeds to the high-speed rail project. *Transportation Solutions Defense and Education Fund v. California Air Resources Board* (Fresno County Superior Court, Case No. 14CECG01788; parties stipulated to transfer to Sacramento Superior Court, Case No. 34-2014-8000-1974-CU-WM-GDS).

Challenge to the California Cap-and-Trade Program's benchmark for greenhouse gas emissions efficiency in the production of tissue products. *Kimberly Clark Worldwide, Inc. v. California Air Resources Board, et al.* (Sacramento County Superior Court Case No. 34-2015-80002246).

Claim that Cap-and-Trade auction platform infringes on a patent. *Sowinski v. California Air Resources Board, et al.* (United States District Court for the Central District of California No. 8:15-cv-02123).

Challenge to the federal Clean Power Plan. The Air Resources Board, the Governor, and the Attorney General have intervened to defend the rule. *State of West Virginia et al. v. United States Environmental Protection Agency* (United States Court of Appeals, District of Columbia Circuit, Case No. 15-1363).

Challenge to federal oil & gas methane rule – ARB intervened to support United States Environmental Protection Agency's efforts to control methane emissions from new and modified sources in the oil and gas sector. *State of North Dakota, et al. v. United States*

Environmental Protection Agency, et al. (United States Court of Appeals, District of Columbia Circuit, Case No. 16-1242).

Challenge to United States Environmental Protection Agency standards of performance for greenhouse gas emissions from new, modified, and reconstructed electricity generating units – ARB intervened on behalf of U.S. EPA to defend the rule. *State of North Dakota v. United States Environmental Protection Agency* (United States Court of Appeals, District of Columbia Circuit, Case No. 15-1381).

Challenge to the federal Bureau of Land Management's new rule to control methane leaks wasting federal resources on lands under its control – ARB intervened to defend the rule. *State of Wyoming, et al. v. United States Department of the Interior, et al.* (United States District Court, District of Wyoming, Case No. 16-CV-285-SWS).

Challenge to the United States Environmental Protection Agency and the National Highway Traffic Safety Administration final regulations regulating greenhouse gas emissions standards and fuel economy standards from medium-and heavy-duty engines and vehicles. ARB intervened to support the federal standards. *Truck Trailer Manufacturers Association, Inc. v. United States Environmental Protection Agency, et al.* (United States Court of Appeals, District of Columbia Circuit, Case No. 16-1430).

Diesel and Other Pollutants-Related Cases

Challenge to ARB's truck and bus regulation in state court based on alleged violations of the California Administrative Procedure Act. *Alliance for California Business v. California Air Resources Board, et al.*, (Glenn County Superior Court, Case No. 13CV01232).

Challenge to safety of diesel particulate filters, same claim rejected in above Glenn County case now on appeal; seeks safety exemption for four individuals. *Alliance for California Business v. California State Transportation Agency, et al.*, (Sacramento County Superior Court, Case No. 34-2016-80002491).

Challenge to amendments to ARB's truck and bus regulation under the California Environmental Quality Act and the Administrative Procedures Act. *John R. Lawson Rock & Oil, Inc. et al. v. California Air Resources Board, et al.* (Fresno County Superior Court, Case No. 14CECG01494; ARB's appeal, Court of Appeal, Fifth District, Case No. F074003).

Challenge to the United States Environmental Protection Agency final rule establishing the 2015 8-hour national ambient air quality standard for ozone. ARB intervened to support the standard. *Murray Energy Corporation v. United States Environmental*

Protection Agency (U.S. Court of Appeals, District of Columbia Circuit, Case No. 15-1385; consolidated with Nos. 15-1392, 15-1490, 15-1491, and 15-1494).

Challenge to ARB's truck and bus regulation in federal district court alleging violations under Commerce Clause. *Owner-Operator Independent Drivers Association, Inc., et al., v. Corey, et al.*, (United States District Court, Eastern District of California (Fresno), Case No. 1:13-CV-01998-LJO-SAB); transferred by court to Eastern District of California (Sacramento), Case No. 2:14-CV-00186-MCE-AC; district court dismissed three claims and transferred one claim to United States Court of Appeals, Ninth Circuit, Case No. 15-72101; petitioners appealed dismissal of three claims in separate case, United States Court of Appeals, Ninth Circuit, Case No. 15-16429).

Challenge to ARB's truck and bus regulation, filed in state court based on a citation, under the Commerce Clause. *Jack Cody dba Cody Transport v. California Air Resources Board, et al.* (Sacramento County Superior Court, Case No. 34-2015-80002116; Plaintiff appealed, Court of Appeal, Third District, Case No. C083083).

Challenge to final action by United States Environmental Protection Agency granting California an authorization under federal Clean Air Act section 209(e)(2)(A) to adopt and enforce its in-use off-road diesel regulation. *Dalton Trucking, Inc., et al. v. United States Environmental Protection Agency, et al.*, (United States Court of Appeals, District of Columbia Circuit, Case No. 13-1283); *American Road and Transportation Builders Association v. United States Environmental Protection Agency, et al.*, (United States Court of Appeals, District of Columbia Circuit, Case No. 13-1287); and *Dalton Trucking, Inc., et al. v. United States Environmental Protection Agency, et al.*, United States Court of Appeals, Ninth Circuit, Case No. 13-74019).

Challenge to AB10X fee filed in 2004 for stationary sources by manufacturers of paint and other coatings. *American Coating Association, Inc. v. State of California and California Air Resources Board* (Sacramento County Superior Court, Case No. 04CS01707).

Lawsuit claiming ARB violated various laws and constitutional guarantees during an investigation. *Hamilton v. Air Resources Board, et al.*, U.S. District Court for the Eastern District of California, Case No. 1:15-CV-01942-AWI-SKO [Related to enforcement case *ARB v. West Coast Diesel* below].

Enforcement Cases

Alleges violation of fuel specifications. *People ex rel. California Air Resources Board v. BP West Coast Products LLC* (Contra Costa Superior Court, Case No. C12-00567).

Alleges violation of State Truck and Bus Regulations. *People of the State of California ex rel. California Air Resources Board v. Marten Transport Logistics, LLC* (Los Angeles County Superior Court, Case No. BC645288).

Alleges violation of the Low Carbon Fuel Standard regulation. *People ex rel. Air Resources Board v. Paramount Petroleum, Inc.* (Los Angeles Superior Court, Case No. BC643285).

Injunction and penalties for violations of the verification procedures, warranty, and in-use compliance requirements to control emissions from diesel engines. *California Air Resources Board v. West Coast Diesel, Inc.* (Fresno County Superior Court, Case No. 15 CECG 03337).

Alleges nuisance and other theories in response to Aliso Canyon natural gas leak. *People v. Southern California Gas Company* (Los Angeles Superior Court, Case No. BC602973).

Alleges failure to meet the compliance schedule outlined in the Mobile Cargo Handling Equipment at Ports and Intermodal Rail Yards Regulation. *California Air Resources Board v. SSA Terminals* (Los Angeles Superior Court, Case Nos. BC628573 and BC628722).

California's claims for civil penalties and injunctive relief against Volkswagen entities for violating state air pollution and consumer laws regarding diesel cars. *People ex rel. Air Resources Board and Attorney General Harris v. Volkswagen Aktiengesellschaft; Volkswagen Group of America, Inc.; Volkswagen Group of America Chattanooga Operations LLC; VW Credit, Inc.; Audi Aktiengesellschaft; Dr. Ing. h.c. F. Porsche Aktiengesellschaft; and Porsche Cars North America, Inc.* (U.S District Court for the Northern District of California, San Francisco Division, Case No. 3:16-cv-03620).

Multiple cases: The Heavy-Duty Vehicle Inspection program requires heavy-duty trucks and buses to be inspected for excessive smoke, tampering, and engine certification label compliance. Any heavy-duty vehicle traveling in California, including vehicles registered in other states and in foreign countries may be tested. Tests are performed by ARB inspection teams at border crossings, California Highway Patrol weigh stations, fleet facilities, and randomly selected roadside locations. Owners of trucks and buses violating the requirements may be given a citation starting at \$300 per violation. The Heavy Duty Vehicle Inspection Program was adopted pursuant to Health & Safety Code section 44011.6. If the cited owner does not request administrative review of the citation, under section 44011.6(l), the citation is final, and applications for judgments are filed in Sacramento County Superior Court. (Health & Saf. Code, § 44011.6(m).) The individual citations filed in court are not listed in this summary.

Other Cases

Challenge to the South Coast Air Quality Management District's 2016 Air Quality Management Plan and ARB's State Implementation Plan Strategy. *Eder v. South Coast Air Quality Management District, et al.* (Los Angeles Superior Court, Central District, Case No. BC656235).

Challenge to ARB's response to a Public Records Act Request on the Volkswagen enforcement case. *John Mahan v. California Air Resources Board* (Sacramento County Superior Court, Case No. 34-2016-80002416).