



The Clean Car Standards: Legal History

Background

Although California has a long history of setting precedents with environmental regulations, they have faced several legal challenges to their global warming standards for cars and trucks (also known as the clean car standards). These standards were mandated by the 2002 state law, AB 1493, and require automakers to reduce their fleetwide global warming pollution through 2016 to achieve a 30% reduction in emissions from new passenger vehicles.¹ Section 177 of the Clean Air Act allows other states to adopt California pollution standards, and 14 have already done so with the clean car standards.

The Supreme Court and the U.S. EPA

California's attempts to regulate global warming pollution from passenger vehicles are situated in a complex legal history. The U.S. Environmental Protection Agency under President Bush argued for several years that the EPA retains no authority to regulate greenhouse gases under the Clean Air Act, until this excuse was nullified in 2007 by the Supreme Court. **On April 2 of that year, the Court ruled in *Massachusetts v. EPA* that the EPA does, in fact, have the authority to regulate global warming pollutants under the Clean Air Act and that it must either begin proceedings to do so or explain, based on scientific findings, why greenhouse gases pose no threat to human health.**

Despite this historic ruling, the EPA completed no such action under the Bush administration. On April 2, 2008, Attorney generals from 17 states, along with the City of New York, the City of Baltimore, the District of Columbia, and 13 environmental advocacy groups filed a second lawsuit against the EPA in the U.S. Court of Appeals to order the agency to act on the *Massachusetts v. EPA* ruling. Massachusetts Attorney General Martha Coakley called the Agency's inaction "a shameful dereliction of duty."

Any likelihood of greenhouse gas regulation by the Bush administration was effectively eliminated in July, 2008 when EPA Administrator Stephen Johnson released a statement disavowing obligation, saying that the Clean Air Act was "the wrong tool for addressing greenhouse gases" because it would prove too costly to the economy. His statement prefaced nearly 700 pages of analysis from career EPA staff scientists and legal experts indicating precisely how the Clean Air Act *could* be used to regulate global warming pollution.

As noted below, the Obama administration began its tenure with a break from this policy, indicating a role for the regulation of global warming pollution under the Clean Air Act when President Obama directed the EPA to reconsider California's right to implement such regulations.

The California Waiver

¹ California Air Resources Board, 2008. "Comparison of Greenhouse Gas Reductions for the United States and Canada Under ARB GHG Regulations and Proposed Federal 2011-2015 Model Year Fuel Economy Standards. An Enhanced Technical Assessment, February 25." Available online at http://www.arb.ca.gov/cc/ccms/reports/pavleycafe_reportfeb25_08.pdf



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Section 209 of the Clean Air Act grants California the unique right to set its own vehicle emission standards, as long as they are at least as stringent as the federal rules and they are granted a waiver to do so by the U.S. EPA. Since 1968, California has requested over 50 waivers of this kind, and the EPA has affirmatively granted every one.

In December of 2005, the California Air Resources Board requested a waiver from the Bush administration's EPA to implement its clean car standards. In April of 2006, and again in December of 2006, California Governor Arnold Schwarzenegger sent letters to EPA Administrator Johnson urging swift action on the waiver decision, and met with him personally in April of 2007 to further implore action on the matter. **However, on December 19 of 2007, Administrator Johnson issued a statement denying California's request for the waiver, claiming that the state didn't need stricter standards because it faced "no compelling and extraordinary conditions" from global warming.** He also asserted that there was no need for California to regulate global warming tailpipe emissions because the recently enacted Corporate Average Fuel Economy (CAFE) standards would be more effective at doing so. The California Air Resources Board has recently released detailed analysis refuting this. The study demonstrates that the proposed federal CAFE standards, designed to increase vehicle fuel efficiency, are less effective at reducing global warming pollution from vehicles than the clean car standards.

On January 2, 2008, California (along with fifteen other states and five environmental organizations²) sued the EPA, challenging its decision to deny the waiver. California Governor Arnold Schwarzenegger said, "It is unconscionable that the federal government is keeping California" from adopting the new standards.

On January 26, 2009, newly inaugurated President Obama broke sharply from the Bush administration's policy and instructed the EPA to "immediately review the denial of the California waiver request." He urged the EPA to base its decision upon thorough scientific analysis, and in so doing raised expectations that a resolution of the waiver decision may be forthcoming.

Automakers' State Lawsuits

Automakers have made several attempts to block states from implementing the clean car standards, challenging state authority to regulate global warming pollution under the Clean Air Act. Federal judges have consistently come down clearly on the side of the states- they have ruled against the auto industry in Vermont, California, and Rhode Island.

Resolved Federal Cases California

In June of 2004, the California Air Resources Board released a draft rule of the standard required by AB 1493, and automakers were quick to attack them. On December 7, 2004, automakers filed

²Arizona, Delaware, Illinois, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York Oregon, Rhode Island, Vermont, and Washington were later joined by Iowa, Florida and Minnesota as petitioners in this suit. The environmental groups included Environmental Defense, Natural Resources Defense Council, the Sierra Club, the Conservation Law Foundation, and US Public Interest Research Group.



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lawsuits in federal and state court in Fresno, California, challenging the state's right to implement this groundbreaking standard. The plaintiffs included the Alliance of Automobile Manufacturers, which represents General Motors, Ford, DaimlerChrysler, Toyota, and others, as well as 13 Californian auto dealerships. The trial, which was originally scheduled for January of 2007, was postponed pending the outcome of the U.S. Supreme Court decision in *Massachusetts v. EPA*. **On December 11, 2007 U.S. District Judge Anthony Ishii rejected the claims of the automakers and dismissed the lawsuit. On June 24, 2008, he denied a second request for an injunction from the automakers.** The plaintiffs then filed an appeal on October 30, 2008, with the 9th Circuit Court of Appeals to overturn Judge Ishii's decision.

Vermont

On September 12, 2007, U.S. District Court Judge William Sessions, III, in Burlington, Vermont issued a clear victory for states and environmental groups supporting the clean car standards. Rejecting automakers' contention that Vermont lacks the authority under the Clean Air Act to regulate vehicle greenhouse gas emissions and that the industry cannot develop the technology to limit them, he said "History suggests that the ingenuity of the industry, once put in gear, responds admirably to most technological challenges. In light of the public statements of industry representatives, their history of compliance with previous technological challenges, and the state of the record, the court remains unconvinced automakers cannot meet the challenges of Vermont and California's greenhouse gas regulations."

Rhode Island

As in Vermont, the Alliance of Automobile Manufacturers joined its sister organization, the Alliance of International Automobile Manufacturers in a suit filed on February 13, 2006 against Rhode Island to prevent it from implementing the clean car standards. Throughout the spring of 2008, parties in the case filed briefs on the redundancy of this suit, asserting that identical cases had already been tried and dismissed in two states, California and Vermont. **On November 25, 2008, Judge Torres dismissed the lawsuit, citing these briefs, and calling the automakers' lawsuit "costly and vexatious" and "a waste of judicial resources," since their arguments had already been rebuffed in California and Vermont.** "It is difficult to see what interest the public has in permitting the plaintiffs another bite of the apple in challenging regulations limiting the emission of greenhouse gases into the atmosphere," wrote Judge Torres.

Ongoing Cases

New Mexico

In April of 2008, a group of auto dealers filed suit in federal court against the State of New Mexico and the City of Albuquerque to stop them from implementing the clean car standards. The standards were also challenged in state court before it was even adopted in New Mexico, when four Democratic state legislators, a group of auto dealers, and a farmer filed suit, questioning the right of the Albuquerque-Bernalillo County Air Quality Control Board to adopt them.

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