

Environmental Law

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Low Carbon Fuel Standard Provisions Enforceable Again

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In what is starting to become routine in California, a court has again decided the fate, at least temporarily, of another AB 32 program. Earlier this week, the Ninth Circuit lifted an injunction which prevented the California Air Resources Board (Board or CARB) from enforcing the Low Carbon Fuel Standard (LCFS). The Court temporarily lifted the injunction issued late last year. The LCFS is in its second year of implementation, on its way to a 2020 goal of achieving a 10% reduction in greenhouse gas emissions from the state's fuel supply.

A three-judge panel agreed with CARB's arguments to stay a California federal court's Dec. 29, 2012 decision preventing the Board from enforcing the provisions of the regulation while the merits of the actual case against it worked its way through the appeal process. This new decision allows for full enforcement of the LCFS standards.

This decision follows the 2011 temporary suspension of implementation of the Cap and Trade program for CEQA deficiencies. Subsequently, CARB revised the environmental analysis and was eventually permitted to adopt the program. But that court action cost the Board six months of public process and debate.

This case, Rocky Mountain Farmers Union et al. v. James Goldstene et al., in the U.S. Court of Appeals for the Ninth Circuit, was brought by trade associations representing the oil and ethanol industries. The argument that still needs to be heard and eventually decided deals with whether California's regulation requiring the carbon intensity of transportation fuels in California to be reduced by at least 10 percent by 2020, would violate the U.S. Constitution's Commerce Clause.

"Today's decision allows the Air Resources Board to continue implementation and resume enforcement of this important program to reduce greenhouse gas emissions," stated James Goldstene, CARB's Executive Officer. "The [LCFS] drives investment and innovation, creates new jobs, and provides the next generation of clean fuels to all Californians."

It has long been a concern that the uncertainty associated with AB 32's major regulations, namely LCFS and Cap and Trade, are adding cost and confusion to the program's implementation. This latest start/stop/start episode highlights this issue.

It is expected that the appeal process could take more than a year to be resolved. In the meantime, however, California's fuel providers are again subject to the requirements of the LCFS regulation. These requirements include final quarter 2011 reports that may not have been submitted due to the injunction. Those reports are now due April 30,

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2012 along with the annual 2011 compliance reports. CARB has released a [guidance statement](#) on this issue.

The professionals at Manatt are fully engaged in this issue and those issues surrounding California's efforts to reduce greenhouse gases. For additional information on how this ruling, the LCFS program or the pending Cap and Trade regulatory implementation will affect you, contact [Jon Costantino](#) at 916-552-2365 in the [Energy, Environment & Natural Resources](#) practice group at [Manatt, Phelps & Phillips, LLP](#).

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