



Your Pacific Northwest Law Firm®

Sustainability & Climate Change Reporter

September 30, 2011 by Mike Nesteroff

California Moves (Slightly) Closer to Cap-and-Trade

California's cap-and-trade program, targeted for startup on January 1, 2012, inched forward when the state Supreme Court on September 28th [rejected](#) the Association of Irrigated Residents' petition for review and application for stay of the Scoping Plan issued by California Air Resources Board (CARB). The Scoping Plan is CARB's outline for implementing AB 32, the measure that requires reduction of California greenhouse gas emissions to 1990 levels by 2020 and ultimately 80 percent of 1990 by 2050. The centerpiece of the Scoping Plan is cap-and-trade, but CARB still needs to adopt formal rules to implement it. The state Supreme Court's ruling allows CARB to continue its rule-making [process](#) and adopt final rules before an October 28, 2011, deadline. However, there are likely to be more legal hurdles that must be cleared before cap-and-trade becomes a reality in California.

The case is complicated procedurally and UCLA's Anne Carlson has a good [summary](#) on the Legal Planet blog. Still pending is an [appeal](#) of the May 20, 2011, trial court ruling that CARB failed to consider alternatives to cap-and-trade in its Scoping Plan. Subsequently, CARB adopted a [supplement](#) to the Scoping Plan, including an more detailed analysis of the feasibility of a carbon tax as an alternative (CARB's conclusion: it isn't due to requirements for approval of tax and fee increases by a supermajority in the legislature or voter initiative). Once CARB adopts the final cap-and-trade rules there are sure to be more lawsuits, not just by environmental justice groups but also by industries affected by the program.

Finally, even though January 1, 2012, may be the start date for implementing cap-and-trade in order to comply with AB 32, CARB already has postponed full enforcement to 2013, although it will hold two auctions of allowances next year.

Seattle

1420 Fifth Avenue
Suite 4100
Seattle, WA 98101-2339
Phone: 206.223.7000
Fax: 206.223.7107

Portland

601 SW Second Avenue
Suite 2100
Portland, OR 97204-3158
Phone: 503.778.2100
Fax: 503.778.2200

Olympia

111 Market Street NE
Suite 360
Olympia, WA 98501
Phone: 360.754.6001
Fax: 360.754.1605

Anchorage

301 West Northern Lights Blvd.
Suite 301
Anchorage, AK 99503
Phone: 907.277.9511
Fax: 907.276.2631

London

Office 2.24
148 Leadenhall Street
London, EC3V 4QT, England
Phone: 020.7645.8240
Fax: 020.7645.8241