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NRDC Backgrounder

California Global Warming Emissions Rule: Legal Precedent Favors New Tailpipe Standard Despite Automaker Gripes

California is squarely in the driver's seat when it comes to possible court challenges against the state's new global warming pollution standard. On June 14, the California Air Resources Board (CARB) issued the draft proposed standard, which gives car companies until 2014 to achieve a 30 percent reduction in heat-trapping emissions from new cars, pickups, minivans and SUVs sold in the state. The standard – required by landmark legislation passed in July 2002 – is based on extensive cost and feasibility studies.

Automakers quickly attacked the proposed rule, but unambiguous language of the Clean Air Act, the federal fuel economy law, and more than 30 years of judicial reasoning all suggest carmakers would face a steep uphill legal fight, according to comprehensive legal analysis by NRDC (Natural Resources Defense Council). This NRDC backgrounder summarizes the emissions rule and legal issues at stake.

Opposition Claims Don't Stand Up

Attacks on the California law rest mainly on two arguments, both of which are flawed. First, some people claim California lacks authority to set standards for global warming emissions because those emissions are not "air pollutants" under the federal Clean Air Act. Second, they say the new California rule constitutes de facto fuel economy regulation, and is thus barred by the exclusive federal jurisdiction over mileage standards. In each case, the opponents are wrong.

Many issues raised in California are also being played out in a major federal lawsuit now pending before courts in the nation's capital. Twelve state attorneys general, along with NRDC and more than a dozen other groups are suing the Bush administration over a September 2003 decision refusing to issue federal tailpipe standards for global warming pollutants. Briefs were recently filed, and argument is scheduled for the spring. The complete brief is available on request from NRDC.

Semantics of "Pollution"

The Clean Air Act gives California authority to set air pollution standards for motor vehicles. Global warming emissions clearly meet both the legal and commonsense definition of "pollutant":

The Clean Air Act says an “air pollutant” is any “physical, chemical, biological, [or] radioactive... substance or matter which is emitted into or otherwise enters the ambient air” -- terms that obviously include heat-trapping emissions covered by the California law: carbon dioxide, methane, nitrous oxide emitted from vehicle tailpipes and hydrofluorocarbons leaking from their air conditioners.

The Clean Air Act authorizes EPA to regulate any motor vehicle air pollutant determined by the agency to “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” “Welfare” specifically includes “effects...on weather...and climate.”

The potential dangers of global warming emissions were specifically recognized in congressional Clean Air Act debates as far back as 1965. Global climate change was also singled out as a concern under the act during legislative debate over the 1970 and 1977 amendments.

California needs a federal EPA “waiver” for new tailpipe standards. But in more than 30 years no administration in Washington has ever denied a California waiver request. To do so now would be an unprecedented move.

Fuel Economy Fallacy

Under the federal fuel economy law (the Energy Policy and Conservation Act) both California and the EPA retain the clear and unambiguous right to set tailpipe standards regardless of whether they have an impact on fuel economy performance. And to the extent that federal air pollution and fuel economy rules collide, federal law gives priority to the former: pollution safeguards trump fuel economy.

From its beginning, the federal fuel economy law specifically provided for adjustments in efficiency standards in the event that California or federal pollution rules make mileage standards more difficult to meet -- not the other way around.

Today, the agency responsible for fuel economy standards, the National Highway Transportation Safety Administration, is required by law to take emissions rules and other standards into account before setting fuel economy performance targets.

In the early days, air pollution standards tended to increase fuel consumption. Today that conflict is largely gone. The technology to meet today’s air pollution standards tends to *improve* fuel economy at the same time. This is true of the technologies to reduce vehicles’ global warming pollution.

If the fuel economy law does not stand in the way of EPA or California air pollution standards when they make better fuel economy *harder* to achieve, it certainly doesn’t stand in the way when air pollution standards make better fuel economy *easier* to achieve.

California Consumers Support Emissions Law

California alone makes up about 12 percent of the 50-state vehicle market. The state is second only to Texas in state carbon dioxide emissions, forty percent of which its 23 million cars and trucks. Surveys show that voters are very much aware of the problem, and want action to fix it.

More than 80 percent of California residents polled at the time it passed supported the emissions law, even after a multi-million dollar opposition media blitz. That support remains strong. An April 2004 survey by Greenberg Quinlan Rosner Research found that by a margin of 58 to 39 percent state voters favor new

standards over voluntary industry agreements to cut global warming emissions. In May, 87 percent of California adults surveyed by Field Research said it is important for the state to play a leading role enforcing laws to cut automotive global warming emissions. Finally, a July 2004 survey by the nonpartisan Public Policy Institute of California found that 81 percent of Californians support the law.

While California is the only state allowed by law to set its own vehicle emission standards, other states can choose California standards as a stricter alternative to federal rules. States that have adopted, or are in the process of adopting, current California rules include Connecticut, Massachusetts, New Jersey, New York, Rhode Island and Vermont.

Clean and Cost Effective

The new proposal requires a 23 percent emissions cut by the 2011 model year, and 30 percent starting with 2014 models. CARB estimates the first target will add \$241 to the cost of a typical passenger car, and \$326 for a large pickup or SUV. Phase two would cost an average \$539 and \$851 more, respectively.

By comparison, the average sticker price of new passenger vehicles in the U.S. this year tops \$28,000, according to CNW Market Research.

Cost-effective technologies are already available that would reduce carbon dioxide pollution from cars and light trucks of all sizes. Emissions can be cut significantly with advanced technologies including variable valve timing, displacement-on-demand, turbocharging; continuously variable transmissions; slicker aerodynamics; and low rolling resistance tires.

On a pound for pound basis, methane, nitrous oxide and hydrofluorocarbons refrigerants are more potent warming pollutants than carbon dioxide. Methane is 21 times more powerful, nitrous oxide is 310 times more powerful, and the refrigerant HFC-134a is 1,300 times more powerful. Fortunately solutions also exist to reduce or even eliminate them from vehicles, including new catalysts; reduced refrigerant leakage from air conditioners; or safer alternatives that replace HFC-134a altogether.

Time to Beat the Global Warming Challenge

Scientists report that Earth is warming faster today than at any time in history, and faster than any natural factors can explain. They say pollution is the reason. Since 1990, we've seen the ten hottest years on record, and 19 of the hottest 20 since 1980. That means more heat waves, more air pollution alert days, and costly flooding due to rising seas. California experts also predict more prolonged drought and water shortages, and greater risk of fire.

California leaders in both political parties have demonstrated the courage and foresight to demand cleaner vehicle technologies that reduce emissions without compromising performance. They should be applauded. Strong public support for these actions means opponents challenge the new standards at their own peril.

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The Natural Resources Defense Council is a national, nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 1 million members and e-activists nationwide, served from offices in New York, Washington, Santa Monica and San Francisco.