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Legal Updates & News

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Vermont Court Gives the 'Green Light' to California's Greenhouse Gas Emission Standards for New Automobiles

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The eye of the climate change storm is descending upon the United States Environmental Protection Agency. In April, the United States Supreme Court issued its landmark decision in *Massachusetts v. EPA*, holding that greenhouse gases are pollutants under the Clean Air Act and the U.S. EPA has the authority to regulate the emission of those gases. On Wednesday, September 12, 2007, another important court decision on climate change was issued—this time by the United States District Court for the District of Vermont.

The Burlington, Vermont, court decided in *Green Mountain Chrysler v. Crombie* that California's greenhouse gas emission standards for new automobiles (standards that were subsequently adopted by Vermont) are not preempted by federal fuel efficiency laws. The case was brought by automobile manufacturers arguing that the state automobile emission standards for greenhouse gases constituted fuel efficiency standards, and that fuel efficiency standards are exclusively regulated by the federal government under the Environmental Policy and Conservation Act ("EPCA"). Adopted in 1975, EPCA provides for the establishment of national corporate average fuel economy ("CAFÉ") standards that apply to all passenger automobiles and light duty trucks. To avoid dueling standards in various states or regions in the country, EPCA also contains an express preemption clause that prohibits any state or local entity from adopting or enforcing "any law or regulation relating to fuel economy standards." (Section 509(a) of EPCA.) The automobile manufacturers contended that restricting greenhouse gas emissions necessarily amounts to a regulation that requires increased fuel economy.

Section 209 of the federal Clean Air Act explains how a Vermont court decided the automobile industry's legal challenges to California emission standards. Subsection (a) of Section 209 prohibits individual states from adopting emission standards for new motor vehicles. However, in recognition of California's unique smog problems, subsection (b) was included in Section 209 to enable California to adopt standards more stringent than federal standards so long as it applies for and obtains a waiver from the U.S. EPA. The Vermont court explained that under Section 209, "Congress has essentially designated California as a proving ground for innovation in emission control regulations." Other states are then free to adopt California's standards under Section 177 of the Clean Air Act, so long as the standards are adopted at least two years before the model year that they regulate.

In 2002, California passed AB 1493 requiring the California Air Resources Board to develop and adopt regulations for the greenhouse gas emissions of passenger automobiles and light duty trucks. In September of 2004, the Air Resources Board adopted standards that apply to such vehicles beginning with model year 2009. Automobile manufacturers challenged those regulations in federal court in California in a case that is still pending. In the meantime, other states began adopting California's standards, including Vermont in 2005. The automobile manufacturers challenged Vermont's adoption in federal court in Vermont, and ultimately that case was tried first, leading to the *Green Mountain Chrysler* decision on Wednesday.

The Vermont court addressed nearly all of the main legal challenges to California's standards—most notably that EPCA does not preempt California's greenhouse gas emission standards, but also that other theories of preemption do not apply either. The critical missing piece to the automobile emission puzzle is the waiver that California must obtain from the U.S. EPA under Section 209(b) of the Clean Air Act. The Vermont court, in startlingly frank language, stated that "the Court and the parties have proceeded with this case on the assumption that EPA will grant California's waiver application. If it does not, of course, Vermont's regulation is preempted by the CAA's section 209(a)." Already, California and the U.S. EPA are engaged in a tussle over the EPA's several year delay in deciding whether to grant the Section 209(b) waiver. The EPA may deny the

Section 209(b) waiver if it makes any of the following findings: (1) that California's adoption of the standards was arbitrary and capricious; (2) that California does not need the standards to meet compelling and extraordinary conditions; or (3) that the standards are inconsistent with federal emission standards. Governor Schwarzenegger has threatened further litigation if the U.S. EPA does not act soon. This 240-page decision from Vermont only sharpens the focus on the U.S. EPA, an agency that is already under heavy scrutiny after *Massachusetts v. EPA*.

Please contact Morrison & Foerster for the latest on these and other climate change developments.