

ENVIRONMENTAL ALERT

STATE GREENHOUSE GAS LIMITS ON NEW CARS UPHELD



In a landmark decision, the U.S. District Court for the District of Vermont has upheld state regulations imposing strict limits on greenhouse gas emissions from new motor vehicles. *Green Mountain Chrysler-Plymouth-Dodge-Jeep v. Crombie*, No. 05-cv-302 (D. Vt. Sept. 12, 2007). The court rejected the automobile industry's argument that the state's regulations are preempted by the federal Clean Air Act because they conflict with federal fuel economy standards. The court's rationale – which is broad enough to be applied to other industrial sectors – likely will provide new urgency to calls for federal legislation to address an ever-growing patchwork of state greenhouse gas regulations.

Vermont modeled its regulations after California's new vehicle emission standards, also under challenge from the automobile manufacturers. Vermont first adopted the California standards in 1996 pursuant to a Clean Air Act provision allowing states to seek waivers from the EPA to adopt California's stricter low-emission vehicle standards. In 2005 Vermont adopted California's greenhouse gas emissions regulations as part of a broader state initiative to reduce greenhouse gas emissions. The Vermont regulations apply to new passenger vehicles and light-duty trucks and set decreasing limits on manufacturers' average emissions over the entire fleet. The standards first apply to large-volume automobile manufacturers in 2009 and all other manufacturers in 2016. In addition to setting limits on automobile greenhouse gas emissions, the regulations allow manufacturers to receive "credits" for early compliance that can be banked for later use, transferred between different categories of vehicles or sold to other automobile manufacturers.

The automobile industry challenged these regulations on the grounds that they conflict with federal law – specifically the federal fuel economy standards – and will impose an undue burden on automobile manufacturers. In a 240-page opinion, District Judge William Sessions held that Vermont's regulatory scheme did not set fuel economy standards, even though both measure carbon dioxide emissions from vehicles, because the state's regulations allow various means of compliance with emissions restrictions. The court also rejected the automobile industry's undue burden argument, finding that American automakers are at the "vanguard" of using emissions-reducing technologies and would rise to meet the challenges of Vermont's greenhouse gas regulations.

The Vermont court’s opinion provides important precedent for challenges to the California-style mobile source emissions regulations in other states. Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island and Washington also have adopted the California standards. The automobile industry already has challenged the California regulations in federal courts in Rhode Island and California, the latter of which was stayed pending the Supreme Court’s decision in *Massachusetts v. EPA*. In a letter dated September 13, the governors of 13 states asked the automobile industry to drop these challenges to the state standards. The letter emphasized that the industry and the states should work together to “meet our joint obligations to begin reversing the threat of global warming,” and “follow a path that encourages innovation, not litigation.”

The business community followed the Vermont case because, in the absence of federal legislation, it increasingly faces the prospect of divergent regional or individual state standards for greenhouse gas emissions. This decision likely will provide additional momentum for federal greenhouse gas cap-and-trade legislation, which Democratic leadership has said is a priority in this congressional session. A number of clients have retained Akin Gump to advise them on strategies for addressing the current regulatory environment, as well as participating in Congress’ consideration of climate change legislation and in preparing for long-term solutions to the challenges presented by national and international greenhouse gas regulations.

CONTACT INFORMATION

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