Inside Cal/EPA

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9th Circuit Finds EPA Unlawfully Backed California's PM Contingency Rules

Posted August 5, 2026

In a ruling with potentially broad impacts, a split 9th Circuit panel has found that EPA exceeded its authority in approving contingency measures (CMs) for California's San Joaquin Valley to meet federal air quality standards for fine particulate matter (PM2.5), by unlawfully adopting a "feasibility exemption" that the Clean Air Act did not provide.

In a 2-1 ruling Aug. 5 in *Committee for a Better Arvin, et al. v. EPA, et al*., the panel of the U.S. Court of Appeals for the 9th Circuit concludes that Congress "did not expressly provide that the EPA should consider feasibility in Section 172(c)(9)" of the act, which governs CMs, according to a court staff summary included in the opinion. "The

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EJ Groups Press Lawmakers To Strengthen DTSC Oversight Board

Posted August 5, 2026

Environmental justice (EJ) advocates are pressing California lawmakers to strengthen the power of the state toxics department's four-year-old Board of Environmental Safety (BES), which the legislature created as an oversight panel to address long-running complaints that the department was failing to protect communities from hazardous waste.

"I call again on the board and on this Legislature to take clear, decisive action to break the spell of gradualism," Angela Johnson Meszaros, a senior attorney with Earthjustice's Community Partnerships Program, said during an Aug. 4 joint oversight hearing by the Assembly Environmental Safety & Toxic Materials Committee and the Senate Environmental Quality Committee.

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New OEHHA Prop. 65 Warning Proposals Draw Mixed Reviews From Lawyers

Posted August 5, 2026

California's Office of Environmental Health Hazard Assessment (OEHHA) is floating new Proposition 65 warning rules for several product and media categories, drawing mixed reaction from attorneys who enforce the toxic labeling law in private actions and others who defend companies accused of failing to adequately warn consumers.

During a July 30 "pre-regulatory" workshop, OEHHA staff laid out concepts to amend Prop. 65 warning-related requirements, including by adding a new "tailored" warning option for off-road vehicle parts; aligning "short-form" warnings with full-length warnings; clarifying when a chemical is naturally occurring in a product such that a warning is not required; clarifying warnings required for internet purchases; simplifying language regarding retailers' responsi-

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ACC Fights DTSC's First Use Of SCP Fast-Track Option To Ban Chemical

Posted August 6, 2026

The American Chemistry Council (ACC) is challenging the California Department of Toxic Substances Control's (DTSC) proposed first-time use of a fast-track mechanism under its Safer Consumer Products (SCP) green chemistry program to ban manufacturers from selling cleaning products containing hydrofluoric acid (HF).

"DTSC must follow the process laid out in the underlying SCP program and the procedural steps required by Health and Safety Code Section 25253(d) to help ensure adequate stakeholder input and informed regulatory proposals. The proposal does not follow the process SB 502 requires," ACC states in July 31 comments to the department.

Stakeholders are commenting on DTSC's June proposal to ban the sale of cleaning products containing HF, after

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determining that "exposure to [HF] during normal use of cleaning products has the potential to cause or contribute to significant or widespread adverse impacts to Californians at work and in the home," according to a regulatory notice.

"Given the severe hazards of [HF] and the wide availability of alternatives, DTSC is proposing to proceed directly to a product sales prohibition, instead of the Alternatives Analysis process, to more expediently protect California workers and consumers," it added.

The proposal relies on SB 502, the 2022 law that created the fast-track mechanism for DTSC to quickly ban products containing listed chemicals. The law was spurred by lawmakers who were unhappy with the SCP's typical years-long process to finalize any actions to place restrictions on toxic chemicals.

Industry attorneys with Beveridge & Diamond said in a June commentary that DTSC's proposed first-time use of the fast-track mechanism could mark a significant milestone. "If finalized as proposed, the rule would constitute DTSC's first use of its new authority under SB 502. That could have implications beyond HF-containing cleaning products, as DTSC's use of this authority may provide a roadmap for future restrictions on other consumer products," they said in a June 10 "alert" on their website.

As proposed, DTSC's proposed ban would cover cleaning products that contain HF directly or contain bifluoride compounds that can release HF, the attorneys explained.

According to DTSC, these may include rust removers, stain removers, bathroom cleaners, automotive cleaners, wheel cleaners, metal cleaners and brighteners and other products.

Companies that "manufacture, distribute, import, or sell cleaning products in California should evaluate whether their products contain HF or HF-releasing bifluoride compounds and consider commenting before the July 20 deadline," they advised.

They also noted DTSC maintains that "alternatives to HF already dominate the cleaning products market and are widely available. DTSC identifies alternatives such as citric acid, gluconic acid, and phosphoric acid."

Combined Steps

But ACC argues that SB 502 "permits DTSC to proceed directly to regulatory action in lieu of an alternatives analysis only after completing the procedural steps required by Health and Safety Code Section 25253(d)."

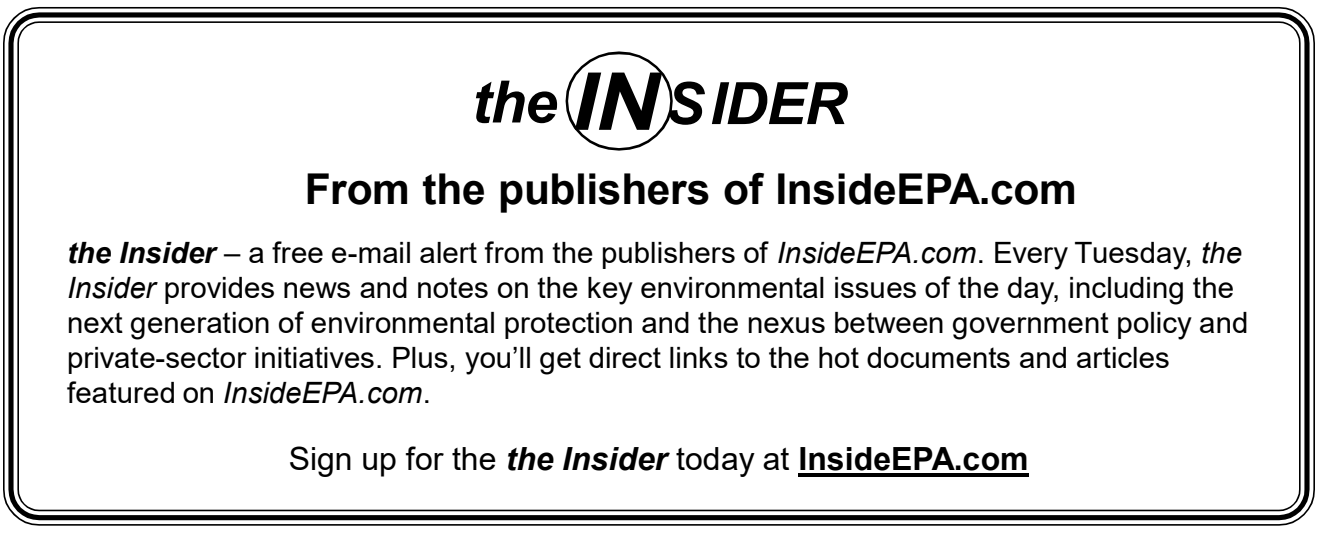
In this case, ACC charges that DTSC has combined two mandatory procedural steps into a single action, "exceeding its statutory authority and undermining the transparency and procedural safeguards that SB 502 requires."

The group notes that DTSC must "provide public notice and an opportunity for comment 'on the proposal to rely on the studies or evaluations.' Following that notice-and-comment period, DTSC must make a 'formal determination' regarding whether those studies or evaluations are applicable, meet the required reliability criteria, and address all relevant factors."

The statute "requires at least two distinct notice-and-comment opportunities: one on DTSC's proposed reliance on existing studies to proceed without an alternatives analysis, and a second, following DTSC's formal determination, on the proposed regulatory response itself," ACC continues.

The Legislature's "use of the word 'following' requires one step to follow the other and does not provide DTSC any discretion to combine these steps. Adhering to this requirement is not only required by statute, but is important to preserve transparency, allow meaningful stakeholder input, and help ensure the resulting regulatory action is grounded in a complete and properly developed record."

As a result, ACC "respectfully urges DTSC to withdraw the proposed sales prohibition and follow the process required by Health and Safety Code Section 25253(d) before considering any regulatory response." — *Curt Barry* (cbarry@iwpnews.com)



California Plan To Ease Tire Efficiency Rule Draws Clashing Reactions

Posted August 6, 2026

The California Energy Commission's (CEC) proposal to scale back first-time requirements for tire manufacturers and retailers to sell only low rolling-resistance tires when replacing vehicles' original tires is drawing clashing responses, including partial support from industry and strong criticism from environmentalists.

"Every year of delay defers tangible economic benefits for California drivers and slows progress toward the state's air quality and climate requirements," writes Bill Magavern, policy director of the Coalition for Clean Air, in July 29 comments to CEC.

Stakeholders are responding to CEC's proposed amended Replacement Tire Efficiency Program Rulemaking, which was released July 17 and revises an initial proposal unveiled on April 24. CEC staff held a June 10 virtual public hearing on the initial proposal, which drew opposition from some manufacturers over cost, availability and safety, and support from environmental and climate advocacy groups.

The measure aims to increase fuel efficiency while lowering air pollution from vehicles. The rules were originally required to be pursued by CEC by a 2003 law, AB 844.

The regulation will be implemented in two phases. CEC's initial proposal stated that, starting in 2028, regulated entities would be subject to certain standards under Phase 1; and beginning in 2031, they would face more stringent standards under Phase 2.

However, the revised July 17 proposal delays the start of Phase 1 to 2029, while Phase 2 would not begin until 2033.

CEC staff is also proposing to significantly revise the original proposal by exempting all-season winter performance tires from rolling resistance and wet grip standards, and to exempt large off-road tires.

Tire manufacturer Michelin North America is applauding those and other changes, including revisions affecting treadwear standards, clarifications for commercial vehicle tires, and modifications to wet grip testing standards, according to the company's July 31 comments.

"The improvements to the express terms published on July 17, 2026, were critical to ensure tires could be tested and to clarify the tire segments subject to the regulation," the company states.

However, Michelin is also seeking an additional revision — to "exempt collector cars under Vehicle Code § 259 from the tire efficiency regulation while ensuring appropriate enforcement is feasible."

The Specialty Equipment Market Association (SEMA) and its subsidiary Off-Road Business Association (ORBA), while supporting the revisions to the proposal, are nonetheless reiterating broad concerns they raised about the original plan and are asking CEC to substantially scale back the rules.

"[W]e continue to have significant concerns about higher tire costs, reduced consumer choice, and the impact on small businesses," the groups' July 31 comments state.

"The Commission continues to rely on the assumption that compliance will increase the per-tire cost of replacements by only approximately $6-10 each. The revised materials do not identify representative baseline and compliant tire models, nor do they provide supporting retail-price data," the groups argue. "These revised materials also fail to update the Standardized Regulatory Impact Assessment to reflect current market conditions."

Further, "the regulation will increase tire prices and reduce the number of affordable choices available to California drivers. Delaying implementation postpones those effects; it does not eliminate them. This is particularly concerning because replacement tires are necessary safety purchases that consumers often must make unexpectedly and cannot defer indefinitely," the letter adds.

The groups are also urging CEC to expand the off-road tire exemption, among other revisions, to lessen impacts on the industry.

'Particularly Problematic'

But the Coalition for Clean Air and other environmental and climate groups are pushing back on CEC's revisions and recommending the agency insert tougher measures.

"Delaying Phase 2 is particularly problematic because the Phase 2 standards will deliver the vast majority of the program's benefits — generating most of the consumer fuel savings and statewide emissions reductions — while fulfilling the legislative mandate to ensure replacement tires are as efficient as original equipment tires," the Coalition for Clean Air's Magavern writes.

"A 2032 compliance date would still give manufacturers more than five years to redesign their products for Phase 2. For these reasons, we urge the Commission to adopt a Phase 2 compliance date of no later than 2032."

The proposed exemption for all-season winter performance tires could "undermine overall savings over time," he adds. "All-season winter performance tires represent a rapidly growing market segment; these tires leverage advanced rubber compounds and tread designs to achieve strong snow traction without sacrificing year-round performance, and they avoid the severe rolling resistance trade-offs typical of dedicated winter tires."

"Failing to cover this expanding market segment risks leaving significant energy savings unrealized," he adds. "The

Commission should commit now to evaluating and adopting standards for all-season winter performance tires in a future rulemaking, informed by the rolling resistance and wet grip data that will be collected on these tires under Phase 1."

Similar concerns are being raised by Environment California and CALPIRG Education Fund in their July 31 comments and the American Council for an Energy-Efficient Economy in its Aug. 3 comments. — *Curt Barry* (cbarry@iwpnews.com)

Judges Apply Loper In Contingency Rule Decision . . . begins on page one

panel held that the EPA erred by plucking a feasibility exemption out of thin air and reading it into Section 172(c)(9) when the language of the provision does not provide for one."

The feasibility exemption essentially allowed EPA to approve a state implementation plan (SIP) for the region that omitted a number of pollution-reduction measures the environmental plaintiffs argued should be included.

The panel "further held that the provision's directive to design 'specific' contingency measures that shall 'take effect'" did not implicitly grant the EPA discretion to consider feasibility.

In addition, "permitting a feasibility exemption for contingency measures undermines both the specific function of Section 172(c)(9) and the overarching purpose of the Act," the summary adds.

The panel majority remanded EPA's rule approving the CMs back to the agency for reconsideration but did not vacate it "given the potential disruptive consequences of the Valley lacking contingency measures while the EPA reconsiders the rule," the summary says.

The opinion was written by Judge Salvador Mendoza, Jr., a Biden appointee, and joined by Judge Sidney Thomas, a Clinton appointee.

Importantly, those judges applied the Supreme Court's 2024 ruling in *Loper Bright Enterprises v. Raimondo* to find that EPA exceeded its authority when it "grafted a feasibility exemption onto Section 172(c)(9)." Specifically, the panel held that "because the text of Section 172(c)(9) is ambiguous, it must use statutory interpretation to independently interpret the statute to determine its most faithful reading."

The high court in *Loper Bright* generally held that the *Chevron* doctrine, which served as the basis for countless decisions on the lawfulness of EPA rules, guidance and other actions over 40 years, violated the Administrative Procedure Act. Instead, Chief Justice John Roberts said in his 6-3 ruling that, rather than granting deference to agencies' reasonable interpretations of vague statutory text, courts must independently find the "single, best reading" of a statute.

Judge Daniel Bress, a Trump appointee, dissented from the new 9th Circuit ruling, writing "that the majority's interpretation of the Clean Air Act — that California's contingency measures do not meet the requirements of Section 172(c)(9) because *any* consideration of feasibility is completely forbidden when it comes to meeting air quality benchmarks — reflects serious legal error, conflating a supposedly improper feasibility assessment with what are merely the statutory requirements for an emissions reduction measure to qualify as a contingency measure under Section 172(c)(9) of the Clean Air Act," the summary states.

EPA Can't 'Invent' Loophole

The ruling is winning praise from environmental plaintiffs. "This is the third time the 9th Circuit has rejected [EPA's] attempts to gut Clean Air Act rules designed by Congress to serve as a backup plan when states fail to deliver healthy air," Brent Newell, a co-counsel for the environmental group plaintiffs, tells *Inside EPA*.

"This decision ensures that the EPA can't invent a loophole to excuse state officials from adopting meaningful measures to improve air quality. San Joaquin Valley residents will soon enjoy the benefits of more significant pollution reductions," he adds.

And Colin O'Brien, a deputy managing attorney with Earthjustice who argued the case at November oral arguments, says: "We are grateful the court decided that the EPA and California must follow the Clean Air Act as Congress intended, which is to ensure states do their part to improve air quality and protect public health."

An EPA spokesperson said the agency is reviewing the decision.

At issue in the case is EPA's approval of CMs for the San Joaquin Valley area, incorporated in a state implementation plan (SIP) for meeting federal air quality standards for PM2.5. The approved measures include steps to reduce emissions from wood-burning stoves, the state's pollution controls for vehicles, and an extension of fugitive dust control requirements to an increasing number of residential and commercial lots.

The measures are aimed at meeting the 1997 annual, 2006 24-hour, and 2012 annual national ambient air quality standards (NAAQS) for PM2.5.

States must include CMs in their plans to attain NAAQS as additional steps that apply if areas miss milestones toward NAAQS attainment, or if attainment deadlines themselves are missed. The Clean Air Act does not prescribe specific measures as CMs, leaving regulators leeway to include novel ideas.

Environmentalists argued in this case the measures are inadequate and EPA approved them unlawfully under a policy first outlined in 2023 draft guidance crafted by the Biden administration.

As such, the court's ruling in the case may set a significant precedent on CMs, notably in California, where the

measures are often required as local regulators struggle to improve long-term bad air quality.

For example, four environmental and environmental justice groups July 30 filed suit in the 9th Circuit over EPA's June 4 final conditional approval of a SIP that addresses CM requirements for the 2008 ozone NAAQS for the San Joaquin Valley nonattainment area.

While the petition contains no details of the forthcoming arguments, the groups charged in 2024 comments on EPA's proposed approval of the plan that it would violate multiple laws and fail to meet mandates for CMs to reduce excess pollution.

"This proposed attempt to weaken contingency measures violates [presidential] Executive Orders 14008 and 14096, the Procedural Due Process Clause of the Fifth Amendment, the Clean Air Act, the Administrative Procedure Act, and is arbitrary and capricious," the groups said in Nov. 25, 2024 comments.

In addition, the 9th Circuit in a July 14 order in *Central California Environmental Justice Network, et al. v. EPA, et al*. granted a joint request from the parties to stay appellate proceedings pending the outcome of *Committee for a Better Arvin.*

The 9th Circuit required EPA to file a status report and motion for further relief within seven days of any ruling in *Committee for a Better Arvin. — Curt Barry* (cbarry@iwpnews.com)

Fight Heats Up Over California Ballot Initiative To Expedite CEQA Reviews

Posted August 6, 2026

The battle is intensifying over an industry-backed initiative on the Nov. 3 ballot to expedite California Environmental Quality Act (CEQA) reviews for multiple types of projects, with environmentalists touting a vote by state Democrats to oppose the measure, and supporters citing favorable polls and expected benefits for residents.

"More than 270 organizations and California's Democratic Party are now standing together to oppose Prop. 45," states an Aug. 5 press release from opponents of the initiative ahead of a rally at the Capitol in Sacramento, citing the party's vote over the weekend to oppose the measure.

"Prop. 45 shifts the cost of pollution onto taxpayers and strips public oversight from a wide variety of harmful projects that affect clean air, clean water, and public health," the release adds.

The release refers to the California Democratic Party's Aug. 2 election endorsements, which shows the state party opposing Prop. 45.

In contrast, the California Chamber of Commerce, which is sponsoring Prop. 45, asserts that there is bipartisan support for the measure to "modernize" CEQA, and that a recent poll shows an "overwhelming majority of likely California voters say they would vote in favor of" the initiative, according to a July 31 item.

The statewide poll by the nonpartisan Public Policy Institute of California found that 73 percent of respondents support Prop. 45, which the industry group calls the "Building an Affordable California Act."

According to a summary by the California Secretary of State's office, Prop. 45 would amend CEQA to "expedite environmental review of specified project categories (including most housing, transportation, water, health, and clean energy projects)."

For those types of projects, Prop. 45 would: set deadlines for public agencies to complete environmental review and take required actions for projects; allow expedited review of projects' environmental impacts, "limiting public agencies' current obligation to consider a range of feasible project alternatives to reduce environmental impacts"; and limit "court review of project approvals by establishing deadlines for filing and resolving lawsuits and limiting evidence court may consider and relief it can order," the summary states.

For example, Prop. 45 allows a project applicant "to request an agency hearing — and potentially file a lawsuit with the courts — if an agency does not meet the 365-business-day time limit for finishing the" environmental impact report (EIR), according to an analysis of the initiative by the Legislative Analyst's Office (LAO).

In terms of legal reviews, Prop. 45 "prevents the court from stopping the whole project if it finds that the agency did not follow CEQA correctly. Instead, the court can only stop the part of the project where the environmental review did not comply with CEQA while the agency fixes the problem."

'Reduce Unnecessary Delays'

The Chamber and supporters of Prop. 45 claim it will "improve accountability and reduce unnecessary delays while preserving strong environmental, labor, and tribal cultural resource protections," according to the Chamber commentary.

"The message from California voters is unmistakable: the status quo isn't working, and we're all paying the price," Chamber President and CEO Jennifer Barrera said. "When it takes years longer than necessary to build affordable housing, clean water infrastructure, hospitals, and clean energy projects, the costs are passed along to families already struggling with California's high cost of living. Prop. 45 is about making California more affordable by cutting unnecessary delays to deliver the essential projects our communities need faster and more affordably."

But environmental and community groups argue Prop. 45 will do "nothing to lower your costs and contains no

requirements to lower rents, housing costs, or utility bills," their press release states.

They cite the LAO's analysis as saying Prop. 45 "could raise costs to taxpayers by more than $100 million a year."

Further, the critics claim Prop. 45 will "silence community voices and [give] you less say over what gets built near your home, your children's school, and your water supply," and it will allow "developers to fast-track new data centers, landfill gas plants, CO2 pipelines, and sprawl housing in high wildfire-risk areas, all with less public review and oversight." — *Curt Barry* (cbarry@iwpnews.com)

DTSC Board Chair Sees Room For Improvement . . . begins on page one

"The role of the board is to provide leadership to move the department beyond some of its most vexing, long-identified problems. And if the board is unwilling or unable to provide leadership, its role and functions become much less clear. And change remains unlikely," she continued.

"The board must be willing to choose to speak publicly rather than to stay silent. It must choose to be active, rather than to be passive. And in the end, it must choose to decide whether to defer to [department] staff, or to push them," she added.

Andrew Rakestraw, the current BES chair, defended the panel's performance and accomplishments while acknowledging some faults and limitations. For example, he said the BES has made the Department of Toxic Substances Control (DTSC) "more transparent, accountable and fiscally stable."

However, he agreed with critics that the board could be more involved and assertive and engage in key issues earlier in the process, instead of reacting to "potentially settled matters."

Nevertheless, Rakestraw said there is a "mismatch" between the public's expectations of the BES and its objectives and mission. He said many incorrectly view the BES as a "watchdog" for DTSC.

He noted that the board has a full-time chair and four part-time members and a staff of 11, while DTSC has a staff of 1,000.

The public expects "detailed oversight of every aspect of DTSC operations and compel DTSC to take" certain actions and make certain decisions, "but much of the work is outside of the board's discretion," he said.

Navigating such "tensions remains one of the board's greatest challenges," Rakestraw added.

He told lawmakers that the board may need "more resources" to enhance its performance and effectiveness.

Lawmakers are reviewing the performance of the BES, which was created in 2021 budget trailer legislation, SB 158. That law also overhauled DTSC's fee system to boost revenue for hazardous waste permitting and cleanup.

State leaders worked for years to overhaul the embattled DTSC, which experienced core permitting and cleanup program failures, a lack of transparency, dwindling revenue, a failure to collect millions of dollars from parties responsible for contaminating property, and outrage from communities near facilities that produce, manage and store hazardous waste.

The BES is responsible for aligning fees with legislative mandates on an annual basis; hearing and deciding appeals of hazardous waste facility permit decisions; providing opportunities for public hearings on permit and remediation decisions; reviewing and approving the DTSC director's annual priorities and adopting performance metrics; and developing long-term goals for DTSC's programs and conducting an analysis of its fee structure.

Disadvantaged Communities

But environmental and EJ groups have criticized the BES on numerous occasions over the past several years for failing to stand up to DTSC policies and decisions that they believe are not in the interest of disadvantaged communities.

For example, late last year, they attacked the BES for approving a revised DTSC hazardous waste management plan that they claimed would weaken protections and negatively impact disadvantaged communities.

The critics have also repeatedly pointed out over the past several years that DTSC has failed to adopt permitting and regulatory reforms required by the 2015 law SB 673. Earlier this year, they attacked DTSC's proposed update of its hazardous waste facility permit criteria to provide additional community protections, arguing it falls far short of statutory requirements to safeguard disadvantaged communities.

Johnson Meszaros told lawmakers at the Aug. 4 hearing that the BES was "silent" about the DTSC proposal, seemingly ignoring the EJ and environmental groups' concerns.

Miguel Alatorre, executive director of the UNIDOS Network, an EJ group focused on rural communities, was more complimentary of the BES, but told lawmakers that while it is eager to "lift up community voices," it is not "consistently equipped to act on what it hears" from community members.

In addition, the BES should have more input on budgetary issues at DTSC, he said. Currently, budget change proposals are developed inside DTSC and are sent to the Department of Finance without the BES "playing any formal role."

Alatorre and Johnson Meszaros also suggested that the BES' current permit appeals process is cumbersome and potentially a waste of staff time and resources.

Assemblyman Damon Connolly (D-San Rafael), chair of the Assembly committee, asked panelists what recommendations they have for lawmakers to potentially pursue legislation to improve the BES.

Johnson Meszaros said lawmakers could "make sure it's clear that the board's obligation is to push DTSC, rather than receive information from DTSC." Currently, "DTSC staff does what it wants to do and the board says, 'Gosh, we

wish you wouldn't do that,' and staff says, 'Thanks,'" she told lawmakers.

BES Performance

Echoing Alatorre, Rakestraw said the BES is not consulted on budgetary items. If there was more engagement between the BES, DTSC and the administration on budget change proposals, it "would allow the board to more effectively manage fees," for example, he added.

DTSC Director Katherine Butler provided lawmakers with details about how the department in recent years has significantly improved its performance and accomplishments across a number of areas, including enforcement, community engagement, advancing science and innovation and building collaborations and partnerships across governmental and external partners.

She made few comments about the performance of the BES or DTSC staff's relationship and interaction with the board in terms of policy and regulatory proposals.

Lawmakers on the committees did not indicate whether they plan to introduce legislation addressing the BES this year. — *Curt Barry* (cbarry@iwpnews.com)

Senate GOP Starts Bid To Scrap More Waivers For California Vehicle Rules

Posted August 6, 2026

Senate Republicans are starting the process to scrap EPA's preemption waivers for more California mobile source emissions programs, floating resolutions to repeal four waivers for three programs — the state's Advanced Clean Cars (ACC I) program, greenhouse gas limits for 2009 and later vehicles, and small offroad engine (SORE) controls.

The move echoes last year's controversial enactment of Congressional Review Act (CRA) legislation to repeal waivers for other rules including the state's ACC II program, which includes a 100 percent by 2035 zero emissions vehicle mandate, and California's heavy truck nitrogen oxides standards.

It also comes after EPA last month opened a path to separate CRA attacks on waivers for California rules governing ocean-going vessels at berth and commercial harbor craft, by submitting the waivers to Congress as "rules" under the CRA.

"Congress must pass these resolutions and reaffirm that California does not have the authority to dictate what types of cars and equipment are available to U.S. consumers," the American Fuel and Petrochemical Manufacturers (AFPM) says in an Aug. 6 statement touting the new CRA resolutions targeting three California programs.

The CRA, subject to certain conditions, sets up an expedited process to repeal agency rules.

EPA last year took the unprecedented step of teeing up an attack on California's vehicle standards by claiming that California's waivers — which EPA and other experts previously said were not subject to the CRA — are "rules" subject to the review law and submitting them to Congress. That allowed lawmakers to repeal the waivers using the CRA, even as California and its allies in subsequent litigation are claiming that EPA's action and subsequent Senate votes to scrap those waivers are invalid.

The Golden State is also pursuing separate litigation over EPA's submission of the waivers for ACC I, GHG limits and SORE rules.

Vehicle Electrification

Critics of California's programs have backed Hill repeal efforts as part of a broader fight against state or federal regulations that encourage or require electrification.

Sen. Pete Ricketts (R-NE) is shepherding the new resolution targeting EPA's original waiver for ACC I, Sen. John Husted (R-OH) introduced a separate resolution to repeal EPA's reinstatement of that waiver after it was rescinded by the first Trump administration, Sen. Eric Schmitt (R-MO) is leading the resolution targeting the waiver for MY09 and subsequent vehicle GHG limits, and Sen. Cynthia Lummis (R-WY) is spearheading a resolution focused on the SORE rule waiver.

House Republicans earlier moved to tee up CRA votes, with Rep. Harriet Hageman (R-WY) last month introducing a resolution to repeal EPA's waiver for the 2009 and later vehicle standards. — *Doug Obey* (dobey@iwpnews.com)

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bility to give manufacturer warnings to the public; and adding QR codes as a warning method.

OEHHA is accepting written comments on the proposals through Sept. 8.

The proposal to alter the naturally occurring chemical warning rules was one of the more controversial topics during the workshop, with business and industry attorneys criticizing it for potentially forcing companies to provide a warning despite a current exception for chemicals that are "naturally occurring."

OEHHA's presentation explains that existing law "has an exception to the warning requirement for chemicals 'naturally occurring' in food, not resulting from 'human activity.'"

"This proposal makes it clear that 'human activity' *may* occur even if the [Chemical Abstract Services Registry Number [CAS] . . . of a chemical does not change during extraction or concentration of that chemical. Whether or not a chemical is present in a product as a result of human activity will continue to depend on the specific facts."

Gary Roberts, a partner with Dentons, argued that OEHHA's position that the proposed changes to the naturally occurring chemical warning are merely "clarifying" is "misleading and misdescriptive. The current regulation is clear and does not need clarification. This regulation has been in place for over 35 years, and should remain as-is."

Further, "Why is this specific proposal being made now? And what is the problem that OEHHA feels this needs to address?" Roberts asked. "It would be helpful to have the answers to these questions in order to provide the most meaningful feedback during the written comment period."

However, OEHHA staff did not provide any answers to questions and comments raised during the workshop.

Emily Rooney, president of the Agricultural Council of California, also criticized the proposed changes to the naturally occurring chemical warning rules. "I would like a better understanding on the philosophy behind the proposed changes," she said. "It felt like it's just a matter of misinterpretation, which happens all over the place all of the time. And so, if this language is to remain intact . . . I would just offer that it be stricken, quite frankly."

She added that because there is "human activity throughout the entire process" of harvesting food, "the way I interpret this regulation, is basically the entirety of California agriculture would be on the hook" for providing Prop. 65 warnings for naturally occurring chemicals in food.

Short-Form & Internet Warnings

But Prop. 65 enforcer lawyers, who regularly sue companies for failing to provide warnings on numerous products, raised concerns about OEHHA's proposals to alter the short-form and internet warnings — where manufacturers and retailers can specify only one chemical for warning even if multiple Prop. 65-listed chemicals are in the products.

They also raised concerns about OEHHA's proposal to allow QR code warnings, where consumers would have to possess the technology to click on a QR code to link to more detailed Prop. 65 warning information.

Rachel Doughty, an attorney with Greenfire Law, said she fears the new language being proposed could limit liability for certain industry segments, but she did not say why.

She also criticized the internet proposal for allowing companies to name only one Prop. 65-listed chemical on the warning even if the product contains multiple substances that are listed, such as identifying a chemical that is less toxic than mercury, for example.

"I find that to be misleading, not a clear and reasonable warning," Doughty said.

In addition, she raised similar concerns on the QR code warning proposal. "Using a QR code, you have potentially unlimited space" for a warning. "So I don't see any reason at this point for limiting the number of chemicals for which a warning may be provided."

Moreover, QR codes are inaccessible to many consumers, she added.

David Bush, another Prop. 65 enforcer lawyer, more broadly criticized the short-form provisions as failing to provide adequate warnings to people in part by allowing retailers to name only one chemical, which allows them "to deceive people and further expose cancer on them without their knowledge."

Libby Davis, a scientist with the Center for Environmental Health, faulted the QR code warning proposal, citing research showing that "smart phone usage varies with age, race and socioeconomic status," and that many lower-income, older adults often do not possess smart phones that can process QR codes.

And Christina Tusan, another Prop. 65 enforcer lawyer, said the QR code warning proposal "is extremely problematic," and "could be potentially toxic," because it appears to have no clear point of contact for information about the product and what it contains.

Industry attorneys and representatives generally voiced support for the internet, short-form and QR code proposals.

— *Curt Barry* (cbarry@iwpnews.com)

Full D.C. Circuit Restores 'Green Bank' Awards In Landmark Grantee Win

Posted August 4, 2026

The full D.C. Circuit, in a divided opinion, is ordering EPA to restore the $20 billion Greenhouse Gas Reduction Fund (GHGRF), reviving most of the Inflation Reduction Act (IRA) grants that the Trump EPA has scrapped and giving grantees a landmark win that could bolster suits challenging other grant terminations.

In an Aug. 4 ruling in *Climate United Fund, et al. v. Citibank, et al.*, the U.S. Court of Appeals for the D.C. Circuit upheld the entirety of an April 2025 preliminary injunction blocking EPA and its contractor Citibank from terminating the program and ordering funds to be disbursed.

The court in a separate order said that within seven days, it would formally issue its mandate implementing the decision — while also dissolving an "administrative stay" of the injunction that was issued shortly after a district court issued it.

If the decision is not reversed by the Supreme Court, it will allow a major "green bank" investment in clean energy projects and zero-emissions technology to move forward, after the Trump EPA made the program the centerpiece of its campaign to seize environmental grants allocated by Congress under President Biden.

The ruling restores roughly two-thirds of the $30 billion in IRA funds that EPA has terminated. In addition to the $20 billion GHGRF, $7 billion in canceled awards under the Solar for All program is currently under litigation in several venues, and the $3 billion Environmental and Climate Justice block grant program was recently restored by a South Carolina federal court.

The 10 active D.C. Circuit judges that participated in the case were sharply divided on several sections of the preliminary injunction, but the injunction received enough votes to be upheld in full,

The portion of the preliminary injunction blocking EPA from terminating the program was affirmed 6-4, with Judges Patricia Millett, Nina Pillard, Robert Wilkins, Michelle Childs, Florence Pan and Brad Garcia upholding that provision.

"The court affirms that portion of the preliminary injunction because: (1) EPA, in attempting to terminate Plaintiffs' grants and to claw back funds already disbursed into Plaintiffs' bank accounts based solely on a policy disagreement with [IRA section 60103 that created the GHGRF], likely contravened the IRA's mandatory appropriation, and (2) EPA has made no argument or showing that it would not still take those steps if the injunction were lifted," the order says.

But the court was evenly split on whether to affirm the rest of the injunction, reflecting disagreement about the effect of last year's budget reconciliation law — known as the One Big Beautiful Bill Act (OBBBA) — on the litigation. That even split allows the injunction to remain in place, thus requiring EPA to restore the funds.

The OBBBA rescinded all "unobligated" funds for the program and repealed its underlying statutory authority in July 2025 — several months after EPA seized the funds.

During February oral arguments, the court struggled with the effects of that law on plaintiffs' arguments that EPA violated congressional mandates in the IRA. Afterwards, they requested supplemental briefs on the issue.

Pillard, Wilkins, Childs, Pan and Garcia voted to affirm the entire injunction "because they conclude that [the OBBBA], which repealed Section 60103 of the IRA, likely does not affect the applicability of Section 60103 to grant funds that were obligated and disbursed to Plaintiffs at the time of the OBBBA's enactment," the order says.

And while Millett supports the provision blocking EPA's termination, the opinion says she would have vacated other sections because "EPA likely cannot be enjoined to expend other general discretionary funds to continue administering the Section 60103 grants going forward."

OBBBA Repeal

Four judges — Chief Judge Sri Srinivasan and Judges Gregory Katsas, Neomi Rao and Justin Walker — voted to vacate the injunction's anti-termination provision "because, among other things, Plaintiffs have not demonstrated that [such a provision] remains warranted after the OBBBA's repeal of Section 60103 of the IRA."

"Under those judges' understanding of the repeal, EPA defendants likely could now take actions to terminate Plaintiffs' grants without violation Section 60103 of the IRA," the ruling says. "If not for the OBBBA's repeal of Section 60103 of the IRA, Chief Judge Srinivasan would vote to affirm" the anti-termination provision.

Additionally, "the court is equally divided as to whether, following the enactment of the OBBBA, EPA Defendants' authority to suspend or terminate Plaintiffs' grants in the future is limited by both the contractual terms and Section 60103 of the IRA, or only by the contractual terms," the order notes.

Judge Karen Henderson, the only other active D.C. Circuit judge, did not participate in this case, the order notes.

The long-awaited decision is expected to affect other major grant suits, including on questions of the correct court venue and the OBBBA's impacts.

For example, plaintiffs have cited key government concessions on those issues, made in oral arguments in *Climate United*, in other cases that have similar issues, including challenges to EPA's termination of the $3 billion Environmental and Climate Justice Grants.

After the D.C. Circuit allowed one such case, *Appalachian Voices, et al. v. EPA, et al.* to proceed in district court, one environmental attorney told *Inside EPA* that a win in *Climate United* could boost plaintiffs' chances in those pro-

ceedings too.

The *en banc* ruling comes after over a year of litigation over the GHGRF. EPA terminated the program in early 2025, making public accusations of lawbreaking that it later struggled to defend in court, leading to the lower court's preliminary injunction.

But the Trump administration argued that the case belonged in the U.S. Court of Federal Claims, which offers much more limited relief — even as observers argued it had a relatively weak defense on the merits. A conservative-leaning panel on the D.C. Circuit then blocked the injunction, backing the government's venue claims.

But the full D.C. Circuit vacated the panel decision when it agreed to the *en banc* review. That move raised hopes that the court would reject the government's venue claims that have plagued plaintiffs in grants cases since Trump took office.

The Aug. 4 order does not mention the venue issue at all — raising questions about how much the ruling will affect venue challenges pending in other courts. — *Emma Gardner* (egardner@iwpnews.com)

EPA Proposal Seeks To Account For SCOTUS' San Francisco Ruling In CGP

Posted July 31, 2026

EPA is proposing updates to its construction general permit (CGP) governing stormwater discharges from construction activity, a measure that seeks to account for the Supreme Court's landmark decision in *San Francisco v. EPA* as well as President Trump's order directing agency review of the permit to promote affordable home construction.

EPA's proposed 2027 CGP for stormwater discharges under the National Pollutant Discharge Elimination System (NPDES) program is scheduled to appear in the Aug. 3 *Federal Register*, a measure that, if finalized, will replace the existing 2022 CGP that expires on Feb. 17, 2027.

"As an overall matter, the changes EPA is proposing for the 2027 CGP are narrow in scope, targeted at specific issues, and are expected to streamline requirements," EPA says in a fact sheet issued alongside the proposal.

The agency notes that its proposed changes fall into several categories, including changes made to conform to the Supreme Court's March 2025 decision in *San Francisco*.

There, the Supreme Court held in a 5-4 ruling that NPDES permit requirements that condition permitholders' compliance on whether receiving waters meet applicable water quality standards are unlawful under the Clean Water Act (CWA).

EPA in April 2025 modified the 2022 CGP to eliminate language that could be considered the type of end-result provision addressed in the *San Francisco* decision, removing a narrative limitation that required discharges to be "controlled as necessary to meet applicable water quality standards" and replacing it with a set of more specific narrative limits that are indicators of water quality problems in the discharge.

That modification, however, was only made applicable to newly eligible sites within Lands of Exclusive Federal Jurisdiction given the narrow modification being made to the permit.

EPA notes that the "proposed change in the 2027 CGP would make these indicator conditions applicable to all CGP permittees. EPA also proposes further conforming edits to other parts of the CGP that contain similar language implicated by the San Francisco decision."

As such, the agency is soliciting input on the water quality conditions that may indicate water quality issues arising from construction stormwater pollutants and discharges from the site that are related to proposed changes to conform with *San Francisco*.

EPA's permit revision, while facing a February 2027 deadline for renewal, also comes after President Trump's March executive order (EO) directing EPA to review the CGP, as well as federally issued total maximum daily loads and construction site and post-construction requirements for municipal separate stormwater systems.

The EO, titled "Removing Regulatory Barriers to Affordable Home Construction," further directed EPA and the U.S. Army Corps of Engineers to "review and revise requirements related to stormwater, wetlands, lakes, rivers, and other bodies of water to reduce housing construction and ownership costs, streamline regulatory and agency decision-making processes, reduce property tax burdens, and increase insurability, as appropriate and consistent with applicable law."

Permit Streamlining

EPA is also proposing changes to the 2027 CGP aimed at streamlining permit requirements while maintaining continued water quality protection.

For example, it is clarifying that perimeter controls are only needed in specific areas of the site, noting that it has found during inspections that "operators frequently interpret the CGP to require the entire perimeter of the construction site to be surrounded by a sediment control regardless of whether stormwater flows in the direction of the control."

"Perimeter controls installed in areas that are not receiving stormwater are not achieving a stormwater control purpose and are therefore an unnecessary expenditure for CGP compliance. For this reason, the EPA proposes to further clarify Part 2.2.3 to emphasize that perimeter controls are necessary only for areas that have the potential to receive

stormwater from disturbed areas," EPA says.

It also seeks to provide flexibility for stabilization during sudden snow or frozen conditions, pointing out that the 2022 CGP does not provide clear direction for sites experiencing unforeseeable winter weather conditions that result in triggering the permit requirement for operators to stabilize exposed portions of the site for 14 or more days of inactivity.

"To provide clarity on this issue and flexibility in the timelines for unforeseeable winter conditions that could cause unplanned delays in construction, the EPA proposes to allow construction sites in these specific circumstances to temporarily suspend the need to stabilize the site while conditions persist," EPA says.

Other changes proposed in the CGP seek to modernize permitting through electronic exchange of site information and provide updates to reflect best industry practice. — *Sam Hess* (shess@iwpnews.com)

States, Cities Urge High Court To Allow Their Climate Suits To Continue

Posted August 4, 2026

State and local government officials are broadly urging the Supreme Court to allow their various climate suits against oil majors to proceed, arguing in new filings over a case from Boulder, CO, that the effort is a routine use of common law tort claims to address significant local damages from various climate change risks.

The claims "seek relief including damages and nuisance abatement for injuries flowing only from the incremental increase in fossil-fuel consumption caused by the challenged deception," the governments say in an Aug. 3 amicus brief in *Suncor Energy, et al. v. County Commissioners of Boulder County, et al.,* one of nearly 30 briefs in support of Boulder officials in the high-stakes case.

The support for Boulder's position comes as the Supreme Court on Aug. 4 set oral arguments in the case for Oct. 5, meaning a decision could be issued relatively early in the court's next term.

Some governments pursuing the cases also raise enforcement claims under local ordinances that prohibit unfair and deceptive acts and practices, the local governments' brief says. None seek to recover damages for environmental injuries caused by the oil companies' deception and do not require showing that the deception — including that the oil companies allegedly knew about the harms of climate change and deliberately concealed that knowledge — caused tangible harm, the filing says.

The claims "instead aim to remedy and prevent false and misleading marketing directed at *amici*'s residents and seek statutory penalties and injunctive relief against further deception. Boulder's case presents deception-based theories and a theory premised on petitioners' knowing contribution to climate-related harms. Neither are preempted under any of petitioners' theories. [The oil companies] assert that state law is always preempted whenever it touches any set of facts involving pollution that crosses state boundaries."

The state and local governments — and a bevy of other briefs including an Aug. 3 *amicus* filing from law professors that focus on preemption issues — rely heavily on an April 22 Supreme Court ruling in *Hencely v. Fluor* Corp., which emphasized that "[t]here is no federal preemption . . . without a constitutional text or a federal statute to assert it.' . . . That principle decides this case."

The law professors — including Daniel Farber of the University of California-Berkeley, Thomas McGarity of the University of Texas, Nina Mendelson of the University of Michigan, David Rubenstein of the University of Kansas, Wendy Wagner of the University of Texas and Ernest Young of Duke University — add: "Defendants have asserted an unusually aggressive array of preemption arguments, but each boils down to broad structure preemption — that is, that Plaintiffs' claims are categorically preempted," either by the Constitution or the Clean Air Act.

But the constitutional argument "lacks any textual foundation, and the theory upon which it rests has been rejected explicitly since the New Deal." And the Clean Air Act preemption argument also fails because that law holds that "air pollution control at its source is the primary responsibility of states and local governments."

The state and local governments also argue that the Constitution does not automatically federalize interstate air pollution because that common law was "abrogated by the Clean Air Act, and cannot be resurrected through the Constitution's atextual interstices. And in any event, it never would have applied to deception-based claims."

Instead, the brief argues that oil companies "invent a new 'extraterritorial principle' to support their interstate pollution argument, under which every application of state law must be deemed 'bounded by the states' respective borders,'" though this argument has "no basis in the Constitution's text or this Court's precedents."

States' Filing

Another Aug. 3 *amicus* filing from 19 Democratic states led by California and Colorado argues that federal law does not preempt Boulder's suit and that the high court should determine that it does not have jurisdiction to hear the case, given that the court asked parties to address that threshold question.

The states warn that the Supreme Court must let Boulder's case continue in state court, to protect the longstanding role of state courts. They add that a contrary high court decision could have the unintended consequence of federal courts intervening before state court proceedings are complete in a host of other non-climate cases.

"As courts of limited jurisdiction, federal courts must closely scrutinize the basis for exercising their jurisdiction,"

the states' filing says. "Concerns regarding the merits of Boulder's suit are not a valid basis for preempting state common law tort claims. . . . There is nothing in this Court's preemption jurisprudence that would justify preempting state common law claims based on little more than a brooding interest ambiguously arising out of the structure of the Constitution."

Also backing Boulder is an Aug. 3 brief from the Local Government Legal Center, the National Association of Counties and the National League of Cities, which "seriously questions whether this case presents this Court with a proper vehicle," given there is no final judgment from the state court hearing the suit.

The high court is reviewing a Colorado Supreme Court decision rejecting a procedural motion and allowing the case to proceed to the merits in a lower state court.

"Without a final judgment and with their liability uncertain, Petitioner oil companies . . . seek to fit themselves into a narrow band of cases eligible for interlocutory review that this court has reserved for certain government actors and, in very limited cases, private litigants. . . . This action does not qualify."

Other law professors supporting Boulder include Jonathan Adler of the College of William & Mary, who says in an Aug. 3 filing that "nothing in federal law, let alone the Constitution, preempts state-law claims seeking relief from injuries allegedly caused or exacerbated by petitioners' conduct."

The oil industries' claims that they are categorically precluded by the Clean Air Act and the Constitution because they concern interstate pollution are wrong because neither the air law nor the Constitution "imposes such a rule."

The Clean Air Act allows such suits "even if they are viewed as efforts to seek redress for interstate pollution subject to federal regulation."

Also, Adler argues the Constitution's structure "provides no more basis for closing the courthouse doors on respondents' efforts to seek redress for the harms they allege, now that federal common law has been displaced by the air law," adding that *Hencely* is decisive in this regard.

Further, William Buzbee of Georgetown University in an Aug. 3 *amicus* brief cites the high court's 2024 holding in *Loper Bright v. Raimondo,* which vacated *Chevron* deference, to argue that the oil sector is asking the court "to depart from those traditional rules of statutory interpretation in two different ways here: by creating a bespoke clear-statement rule and by applying a presumption of preemption. Both could burden Congress with an obligation to speak clearly on an issue to a court's satisfaction, before its laws will be read to preserve state authority to touch on that issue. And both are so malleable as to risk allowing judicial preferences to substitute for the political branches' actual choices."

The companies' proposed path "lacks any grounding in law" and the court "should reject" it, Buzbee argues.

Environmental Groups

Meanwhile, Public Citizen's Aug. 3 filing says "all forms of preemption must rest on a conflict between federal law and a contrary state law," but the oil industry contends that state common law is contrary to the Clean Air Act. "The liabilities Boulder seeks to impose go beyond those that federal law would impose, but they do not impair the functioning of federal emissions standards," the group says. "The state-law tort principle Boulder invokes are therefore not impliedly preempted."

The Union of Concerned Scientists in its Aug. 3 brief focuses on the oil industry's alleged concealment and denial of climate harms. "Respondents are not asking a Colorado court to set national energy policy, rather, they seek only damages for alleged localized injuries suffered within Colorado." The concealment and misrepresentation are "well supported by the evidence," an "important part of the case" that "have yet to be fully adjudicated."

Finally, the Natural Resources Defense Council's Aug. 3 brief argues that the oil industry incorrectly addresses climate attribution in its opening brief to prejudge Boulder's claims on the merits, "an issue not before this Court," but one will be if the justices allow it to get to the merits.

The *amicus* filings support Boulder's July 27 merits brief that also urged the court to reject the suit.

The oil companies in May filed their opening brief asking the court to overturn the state high court's 2025 ruling. The Trump administration is backing the industry with an *amicus* brief and recently sought permission to participate in yet-to-be-scheduled oral arguments expected this fall. — *Dawn Reeves* (dreeves@iwpnews.com)

Briefing On Due Process Claims Could Limit Impact Of Oregon EPR Suit

Posted July 31, 2026

A federal judge has ordered briefing on whether Oregon's extended producer responsibility (EPR) law for packaging violates constitutional due process rights following a five-day bench trial, signaling judicial interest in a legal issue that observers say could limit the landmark lawsuit's impacts on other states' EPR programs.

If the judge rules on due process grounds, "some of the procedural mechanisms in Oregon are a little different from what's going on in other states," potentially limiting the impact beyond Oregon's EPR program, Jennifer Kwapisz, a partner at industry law firm Arnold & Porter, told *Inside EPA*.

Alternatively, if the ruling focuses on the National Association of Wholesaler-Distributors' (NAW's) dormant Commerce Clause claims, "it's likely to have more far-ranging implications, because all these packaging EPR programs

are having a somewhat similar impact on the stream of commerce," she said. "Depending on which of these are problematic, [it] will tell us if it's just confined to what's unique to Oregon," or if the case will impact other states' programs.

At issue is NAW's lawsuit arguing that Oregon's packaging EPR program violates due process rights — because it lacks transparency and delegates power to a producer responsibility organization (PRO) — and that it violates the dormant Commerce Clause barring states from unduly burdening interstate commerce.

EPR programs generally require producers to join a PRO and pay fees that support infrastructure for recycling or other end-of-life management. Oregon is the first state to implement a packaging EPR program, and California, Colorado, Maine, Minnesota, Maryland and Washington all have similar programs in the works.

Judge Michael Simon of the U.S. District Court for the District of Oregon held the bench trial in the case, *NAW v. Feldon, et al.*, between July 13 and July 17. The trial examined evidence for and against NAW's due process and dormant Commerce Clause claims, with Oregon sharing evidence on the program's structure, oversight and purpose, according to trial coverage from the industry law firm Bergeson & Campbell.

"Coming out of the trial, we can't really say there's a clear winner based on what we've seen," though the evidence "gave the court a lot to think about," Kwapisz said.

On July 17, Simon directed parties to answer six questions about the due process issue in their post-trial briefing. According to Bergeson and Campbell, he asked what protected interest is at stake; what process is constitutionally due; how Oregon's arbitration provisions compare to other laws; what the appropriate remedy is, especially if only certain aspects of the program are held to be unlawful; whether Oregon's use of a private PRO has independent legal significance; and whether NAW's allegations of a lack of confidentiality are premature.

Plaintiffs' Theory 'Evolved'

"I thought that was interesting," Kwapisz said. "Part of where that is coming from is that over time, the plaintiffs' theory of the due process claim sort of evolved."

Initially, NAW emphasized a "traditional due process claim, focusing on the lack of transparency and the limitation on producers' ability to challenge the determinations" of the PRO, Kwapisz said. But later, the due process claims began to focus more on Oregon's delegation of regulatory power to a separate entity.

"What the court seems to be doing, trying to read between the lines of the questions, is trying to redirect the focus to a more traditional due process analysis," she said.

Although the court is focusing on due process in the subsequent briefing, that doesn't necessarily mean the dormant Commerce Clause issue is less relevant, Kwapisz said. "There's a lot of complexities there, particularly with some issues that the Supreme Court has left open in the past, so I think the court's got a lot to chew on as well."

And during the trial, NAW "marshaled strong evidence to show the practical import" of the EPR program on interstate commerce, she said. "But just as a general matter, the dormant Commerce Clause is a challenging area of the law, and it's not entirely clear from Supreme Court precedent just what quantum of evidence is going to be needed to satisfy the standard."

The trial and briefing order come after Simon issued a February preliminary injunction barring EPR enforcement against NAW's members, saying the group had raised "serious questions" about due process and interstate commerce impacts.

Simon has denied other industry groups' efforts to intervene and join in that relief. But a class-action suit opened in June, *Lollicup USA, Inc. v. Feldon*, could allow the EPR program to be blocked more broadly. Simon has stayed that case until September as *NAW* proceeds.

Kwapisz said "the court is likely to act pretty quickly" following the trial. She noted that Simon said the preliminary injunction was issued in part because "the case could be decided quickly and get to trial quickly, and so that minimizes the impact to the state."

Post-trial briefs are due July 31, and motions for potential oral argument on the briefs due Aug. 3, with that argument expected around mid-August if parties request it, she said.

"Reading the tea leaves, there's nothing that requires it to, but it looks like the court may be targeting an August or early September time frame," she said. Such a schedule would align with the resumption of proceedings in *Lollicup*, she noted.

"The court's obviously not beholden to decide by then, but I think it signals the court has a time frame in mind" for a decision, she said.

With that time frame, the case is set to have immediate implications for California's packaging EPR program, said Stacey Halliday, partner with Arnold & Porter.

That state has "deadlines going by" under its EPR law, S.B. 54, with its PRO's implementation plan set to be finalized early next year, Halliday said. Depending on how the Oregon court rules, the state may integrate additional transparency on fee development and other measures into its program, she said.

Other states with packaging EPR programs in the works have "much longer runways" than California, so "implementation will likely just be in a wait-and-see mode" until the Oregon controversy is settled, she said. — *Emma Gardner* (egardner@iwpnews.com)

EPA Agrees To New Deadline For NOx NAAQS After Trump Term Ends

Posted August 3, 2026

EPA and environmentalists are agreeing to delay the legal deadline for the agency to finalize an update to air quality standards for nitrogen oxides (NOx) until after the Trump administration leaves office, after officials appeared poised to miss a court-ordered deadline next month amid a crush of other deadlines.

EPA and the Center for Biological Diversity (CBD) floated the later deadlines in a July 31 joint notice to modify the consent decree in *CBD v. Zeldin* in the U.S. District Court for the Northern District of California, and Judge Rita Lin approved the updated agreement the same day.

The modified decree says the parties "have agreed to an extension of the deadlines for EPA to" issue a final Integrated Science Assessment (ISA) addressing the human health effects of NOx, and to sign proposed and final rulemakings updating the NOx national ambient air quality standard (NAAQS) based on that ISA.

EPA had been facing a Sept. 30 deadline to issue the ISA, and to propose the NAAQS update by Jan. 27, 2028, ahead of a final rule by Nov. 18, 2028.

Under the new agreement, EPA must issue the ISA by Feb. 15, 2027, followed by a proposed rule by April 30, 2029, and a final rule by Dec. 16, 2029.

EPA in the agreement said, "there is good cause for the stipulated extension," including that the Clean Air Scientific Advisory Committee (CASAC) was disbanded and reappointed on March 9, and the new committee's first meeting occurred July 22.

EPA at that meeting planned to "provide introductory information necessary to equip the new CASAC to serve its review and advisory functions. . . . EPA then needs additional time to allow CASAC to review and provide its advice on a draft [ISA], and for the EPA to consider that advice and make revisions, as appropriate, before issuing a final [ISA]."

The extension of the deadline for the ISA "will require additional time for EPA to sign proposed and final decisions based on its review of the primary NAAQS" for NOx, the decree adds.

Even though environmentalists originally sued to force EPA action on the NAAQS, they reportedly agreed to delay the deadlines given expectations that the Trump administration would not issue a strong rule.

"Frankly, we didn't think this administration was going to do anything responsible with the primary NOx NAAQS," said CBD attorney Ryan Maher, according to an *E&E News* report. "We figured it was better to hope for a more favorable future administration that might be more receptive to protecting public health with the NAAQS review, so that's why we pushed the proposed and final deadline."

NAAQS Review Deadlines

The settlement comes about six months after environmentalists said they were growing increasingly skeptical about EPA's ability and willingness to review and update NAAQS every five years as required by the Clean Air Act, and they cited the NOx consent decree to highlight their concern.

EPA was originally supposed to review the current NOx NAAQS by May 2023 but missed that deadline, which prompted the instant suit. The NAAQS is currently set at 100 parts per billion (ppb) of nitrogen dioxide (NO2) averaged over one hour, and 53 ppb averaged over one year. The one-hour limit was first set in 2010, while the one-year limit has been in place since 1971.

In January, EPA had not made any progress toward writing the ISA, which is a lengthy process. At the time, it was dismantling its Office of Research & Development, which had crafted ISAs. — *Dawn Reeves* (dreeves@iwpnews.com)

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