Blogs
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CARB's Rejection of Low-NoX Alternative When Adopting Advance Clean Trucks Regulation Did Not Violate CEQA

In *California Natural Gas Vehicle Coalition v. State Air Resources Board*, 105 Cal. App. 5th 304 (2024), the court upheld the Advanced Clean Trucks Regulation ("Regulation"), holding that the California Air Resources Board did not violate CEQA or the Administrative Procedure Act when it rejected the California Natural Gas Vehicle Coalition's proposal for a low-NOx vehicle alternative. The court found the proposed alternative fundamentally opposed to the Regulation's purpose.

CARB issued a notice of preparation for the draft Regulation in 2018, explaining that the Regulation would require 2.5% of annual vehicle sales to be zero-emission vehicles (ZEVs) by 2023, increasing to 15% by 2030. Public comments on the draft EIR advocated for including low-NOx technologies within the Regulation. The final EIR identified 12 project objectives, including incentivizing zero-emission technology and providing market certainty for ZEVs.

The final EIR considered three alternatives: (1) the No Project Alternative, (2) a 3% annual ZEV sales rate, increasing to 15% in 2030, and excluding heavy-duty trucks, and (3) a 15% ZEV sales rate, reaching 40% in 2030. CARB also explained that it had considered and rejected four alternatives, including a "Low NOx Vehicle Credit," which would give credit for low-NOx combustion vehicles. CARB explained that this alternative failed to achieve GHG reductions, eliminate particulate matter, or advance a self-sustaining zero-emission truck market.

The Coalition argued that CARB violated CEQA by not properly considering the Low-NOx Credit as an alternative or mitigation measure, and by failing to consider a reasonable range of alternatives. The Coalition also contended that CARB improperly responded to to comments discussing the low-NOx credit option and violated the APA by failing to consider the Regulation's economic impacts on businesses using low-NOx technology. The Court of Appeal rejected all of these arguments.

First, the court held that CARB's decision to reject the Low-NOx Vehicle Credit alternative was supported by substantial evidence. The court reasoned that CARB's 12 project objectives, including supporting ZEV technology and providing market certainty for ZEVs, met the legal standard and justified CARB's rejection of the Low-NOx alternative because it did not align with these objectives.

Second, the court held that CARB had analyzed a reasonable range of alternatives, satisfying the "rule-of-reason" test. CARB looked at a range of ZEV sales percentages and considered the environmental and technical consequences of inaction. Rejecting the low-NOx alternative was reasonable because it did not meet the project's fundamental purpose.

Third, the court held that CARB was not required to consider the Low-NOx Vehicle Credit as a mitigation measure because it had already deemed that option infeasible from a policy perspective. The court explained that CEQA does not mandate inclusion of mitigation measures that conflict with policy objectives and have therefore been rejected as infeasible.

The court, while acknowledging that CARB had inadequately responded to comments concerning the Low-NOx Vehicle Credit, deemed this harmless error since the comments supported a proposal that had been rejected as unreasonable.

Finally, the court rejected the contention that CARB had violated the APA by not considering the economic impact on businesses investing in low-NOx technology. CARB had conducted an industry-wide economic analysis of trucking fleets that might purchase ZEVs under the Regulation and found there would be no meaningful economic impact. The court also rejected the contention that CARB had failed to adequately consider the Low-NOx option as an alternative under the APA.

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