

UPDATES:

- *California Air Resources Board Chair (and former UCLA colleague) Mary Nichols comments below.*
- *The Complaint in this action is available here (caption page separately available here).*

A coalition of California environmental justice advocates [has filed a lawsuit](#) challenging the legality of the [California Air Resources Board's scoping plan](#) for [AB 32](#), the landmark climate change law enacted in 2006. The plaintiffs include [Communities for a Better Environment](#), [the Center on Race, Poverty, and the Environment](#) (whose visionary executive director Luke Cole [tragically passed away last week](#)), and [California Communities Against Toxics](#).

Under AB 32, the ARB is tasked with developing and implementing regulations that will dramatically reduce the state's emissions of greenhouse gases over the coming years. The scoping plan, which the ARB was required to develop under AB 32, sets forth the blueprint for those regulations, which will be developed over the next 18 months and finalized by the end of 2010.

The scoping plan relies heavily on a market-based ["cap-and-trade" system](#), which would require major greenhouse gas emitters to obtain "allowances" permitting them to emit greenhouse gases. (The Waxman-Markey proposed federal legislation would rely on this same type of mechanism: see links from [my previous post](#) for more details.) The allowance holders could then buy, sell, or trade these allowances among themselves in order to reallocate the right to emit GHGs. The total quantity of GHG emissions allowed by the allowances, or the "cap," would be set at a level low enough to require overall reductions in GHG emissions, and the cap would be reset at a lower level each year.

Poor and minority communities suffer disproportionate harms from environmental problems (both human- and non-human-created). They have significantly more industrial pollution than other communities, resulting, among other impacts, in a higher cancer burden, and have access to fewer resources to address the problems. At the same time, these communities will bear a disproportionate risk from climate change's impacts, such as hotter urban areas and exacerbation of air quality problems.

U.S. environmental justice advocacy groups, which champion the rights of poor communities and communities of color to be free from disproportionate environmental and public health harms, generally oppose cap-and-trade for several reasons. First, they believe that it is likely that allowances to emit greenhouse gases will be overallocated and the

market will be “gamed” by corporate interests, yielding little or no benefit from greenhouse gas reductions. Second, to the extent that allowances are given away rather than auctioned, they argue, corporations will make windfall profits from the free allowances. Finally, they believe that such a system will inevitably result in higher levels of traditional pollutants in “hot spots” in poor communities. They note that polluting facilities in those communities are likely to be able to maintain high levels of operation by obtaining allowances giving them the right to emit greenhouse gases, and they argue that our existing regulatory structure will be inadequate to deal with the co-pollutants generated by these facilities. (These and other reasons are summarized in [this document](#).)

Proponents of [cap-and-trade](#), a group that includes many environmental advocacy organizations such as NRDC (which now calls the system “[cap and invest](#)”) and [EDF](#), many business interests, some economists and other researchers, and of course the California Air Resources Board, argue that none of these problems is inherent in a cap-and-trade system. They contend that a properly designed cap-and-trade program can reduce GHG emissions while avoiding all these problems.

The environmental justice community is widely thought of as being a key player in shaping AB 32’s language to state that market-based greenhouse gas control mechanisms such as cap-and-trade “may” be used, rather than to require the use of market-based tools. But shortly after the legislation was passed, Governor Schwarzenegger issued an [executive order](#) that made clear that he intended for ARB to pursue market-based regulation of GHGs, angering the environmental justice community. Thus, their opposition to the ARB’s scoping plan, which relies heavily on a cap-and-trade program to meet its goals, is not surprising.

I have not yet obtained a copy of the complaint. But according to the [plaintiffs’ media materials](#), the lawsuit [alleges that the ARB violated both the California Environmental Quality Act and AB32 itself in its approval of the scoping plan](#).

It will be interesting to see reactions to this lawsuit, and to watch it work its way through the courts in the coming months.