The California Supreme Court granted review last week in a potentially important environmental case, National Paint and Coatings Association v. South Coast Air Quality Management District.

The opinion of the Court of Appeal – certainly among the most colorfully-written appellate opinions I've ever read, and worth checking out for that reason alone – held that the South Coast Air Quality Management District misapplied a statutory "best available technology" standard in a rule limiting air pollution emissions from certain industrial coatings.

These types of technology-based standards require a regulatory agency to examine the technological state of the art in emissions control and to use the availability of technological solutions to set a numerical limit on pollution emissions. That is, the regulator is supposed to set the limit at whatever the amount of pollution control is achievable with state-of-the-art technology. In some cases, as in this one, regulators have anticipated future technological advances in examining the state of the art, in order to force regulated parties to develop and implement even stricter controls.

In this case, the Court of Appeal held that the District could set a standard only at the level achievable through the use of current technology actually available at the time the rule was issued, and not set a standard anticipating future technological advances in pollution control. (I filed a letter supporting review on behalf of amicus curiae Sierra Club, and may participate in the review on the merits as well.)

There are at least two important issues at stake, from an environmental protection perspective. First, the case poses the question whether a requirement to reduce emissions to the degree achievable by the "best available" technology refers only to technology available at the time the rule is issued, and not potential future advances. (Oddly, the court said that the definition is limited in this way, but then remanded the case to the agency to ask it to determine what level of emissions reductions is currently achievable now – seven years after the record supporting the rule was completed – to define the "best available" technology. The holding and the remand seem to be in some tension with one another.) This is important because regulation would lag technology rather than lead it under the Court of Appeal's interpretation of the law. "Technology-forcing" regulations have been responsible for much of our clean air success to date and have been the norm in many contexts.

Second, the court held that air quality regulators' ability to set tough emissions standards is limited by "best available" technology (however that phrase is defined) – that is, that where "best available" technology is required by statute, regulators may not require air quality

improvements that would reduce emissions beyond that level. The alternative point of view, which I believe is correct, is that the standard sets a minimum level of emissions control, not a maximum, and the District is free to regulate more strictly. As I argued in my letter supporting review, there's nothing in the law that limits California air regulators' ability to require stricter emissions reductions than the technology-based standards would mandate, where necessary; on the contrary, the law seems to allow this explicitly.

But it will be interesting to see what the California Supreme Court says about all this.