



1940 Chevrolet Dump Truck, Redwood City, CA

The California Dump Truck Owners Association (“CDTOA”) [filed suit](#) in February 2011 against the California Air Resources Board (“CARB”). The suit alleges that CARB’s Truck and Bus Regulation, which is part of the suite of regulations under AB 32 to address greenhouse gas emissions, is unconstitutional.

[CARB’s Truck and Bus Regulation](#) sets stricter emissions standards for dump trucks and other diesel-fuel vehicles. The regulation requires particulate matter retrofits beginning in 2012, and will require replacement of older vehicles beginning in 2015. Note that these retrofits and replacements will address a variety of public health concerns from diesel particulate emissions, not just greenhouse gas emissions.

CDTOA, in their [press release](#), makes the case that these retrofits and replacement requirements are economically devastating to their members. According to CDTOA, the majority of its members are sole proprietors, that is, one-truck independent owner-operators. A new CARB-compliant truck costs more than \$150,000, and resale value of the old trucks has decreased dramatically due to the new regulations. Furthermore, CDTOA argues that retrofit devices cost tens of thousands of dollars and are mechanically unreliable.

Curiously, CDTOA makes no mention of [EPA’s Clean Diesel Campaign](#) in its press release. EPA’s program includes funding assistance and state grants. In January 2011, President Obama [signed](#) the reauthorization of the Diesel Emission Reduction Act, which will provide additional funding. EPA reports that the program is an excellent value: for every \$1 spent, \$13 in health and environmental benefits have been achieved.

Parker Hannafin Corporation has been [field testing](#) a new hybrid drive train, [RunWise](#), in fleets of garbage trucks in Florida. That hybrid train has now been placed on EPA's Emerging Technologies list, as part of its Clean Diesel Campaign.

Perhaps CDTOA is correct that more needs to be done to help independent owner-operators upgrade their dump trucks. But it looks like a promising future for cleaner diesel technology and more efficient dump trucks in particular.

BTW, CDTOA has advanced a curious legal argument. CDTOA alleges that CARB's regulation violates the Supremacy Clause because it supposedly conflicts with the Federal Aviation Administration Act of 1994. [49 U.S.C. § 14501\(c\)\(1\)](#) has a preemption clause:

[A] State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

CDTOA alleges that CARB is thereby preempted from regulating diesel emissions of its members, because the regulation "directly impacts the price, route, and service" of its members.

I said that this is a curious legal argument because CARB's diesel regulation seems to have no relation to the types of regulation meant to be prohibited by the Act. [Here](#) is President Clinton, at the signing of the Act in 1994:

State regulation preempted under this provision takes the form of controls on who can enter the trucking industry within a State, what they can carry and where they can carry it, and whether competitors can sit down and arrange among themselves how much to charge shippers and consumers. . . . New carriers will be able to enter the trucking industry, particularly women-and minority-owned carriers who may have been "frozen out" in the past by strict entry controls.

From what I can tell, CARB's regulation has no effect on who can enter the trucking industry. It merely requires emissions standards of the industry as a whole. Certainly, the

emissions requirements will make the price of entry more expensive, but it will also create costs for existing participants in the industry, as CDTOA points out.

The CDTOA complaint presents a losing argument because it attempts a linguistic slight-of-hand. CDTOA would have the court believe that the Act prohibits States from “directly impacting” price of its members’ services. But the Act actually prohibits States from passing regulation that interferes with pricing autonomy of CDTOA’s members. CARB’s regulation does not affect the ability of CDTOA members to increase prices commensurate with the increased cost of providing the dump truck service. It just cannot be the case that California is prohibited by the FAAA from imposing any regulation or licensing scheme on dump truck owner/operators that may cause them economic hardship.

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