

We've extensively covered the litigation over California's landmark climate change law, AB 32. Now, per the Clean Energy Report, CARB might be able to move ahead with the cap-and-trade regulations anyway: the trial court might very well stay its decision pending appeal, which is not unheard of, and according to the state's attorneys, occurs automatically upon appeal:

The order rejected requests made by state attorneys in February to allow the GHG rules to continue to apply while the state redoes the environmental impact review found to be deficient by the court. It is expected that this review would take at least several months to complete, raising questions about when certain GHG rules — including the cap-and-trade program — will take effect, and which must be suspended. The cap-and-trade program is currently scheduled to launch in January 2012, with a number of key policies yet to be finalized.

But state attorneys argue that when they appeal the ruling, expected shortly after the final writ is issued, the judgment by the superior court is immediately stayed, meaning all GHG rules can continue to be implemented pending the result of the appeal.

CARB's forthcoming appeal of the case "will automatically stay the judgment and writ, including any injunction," states Ellen Peter, CARB's chief counsel, in [a March 31 letter](#) to South Coast air district general counsel regarding a separate matter.

Another lawyer for the state agrees, saying it would be up to the plaintiff environmental justice groups to persuade the appellate court to lift the stay. "If the automatic stay on appeal does apply, then yes, the cap-and-trade rule could take effect."

But lawyers for the plaintiffs in the case disagree, saying that the onus will be on the state to prove to the appellate court that a stay of the ruling is warranted. "They'd have to file a motion to stay the writ pending appeal — this would force discussion," says a lawyer with the plaintiff groups....

An industry attorney not directly involved in the case agrees with the state's point of view. "Once CARB appeals, there is an automatic stay of the lower court writ," the source says. "So that appeal effectively allows

CARB to continue moving forward on the implementation of the scoping plan provisions. I think most people believe that when CARB appeals, the lower court decision is stayed. . . . The question then becomes, what do the petitioners do — and they could file with the appellate court asking the court to keep the injunction against CARB in place.”

No link because you need a subscription to see the entire piece (this is just an excerpt). Your intrepid Legal Planet reporters and crack analytic staff will have more on this once we get a chance to look at the briefs concerning the stay.