California Construction Trucking Association

Western Trucking Alliance

Why We Should Continue to Fight *(1-28-13)*

Based on the December 19th decision from the U.S. Circuit Court in our case "*CDTOA(CCTA) v. CARB*" (22 months after we filed our original suit), we now have to include the U.S. Environmental Protection Agency (EPA) as a defendant if we choose to appeal our case. EPA approved the California Air Resources Board (CARB) state implementation plan (SIP) during our suit and it apparently changes the dynamics of the case – that's at least what the judge said.

We've discussed various legal strategies with our attorneys and, on January 10, 2013, told them to proceed and file the Notice of Appeal with the 9th Circuit Court in our legal action against the CARB heavy-duty on-road truck and bus regulation. The Notice of Appeal was officially filed on January 16.

Our case is the only active legal challenge to the truck and bus rule, which threatens the future of all small and medium-sized motor carriers and bus company owners in the state – and the rule will be adopted by other states if our case is unsuccessful. If we are successful in this litigation, it will open the door to challenges of all the other California diesel regulations, so the stakes are too high to be ignored.

. We have continually exposed the fraud and corruption within the academic and public agency health community and their "science" that is the justification behind this government taking of our once-valuable equipment; it defines our struggle. This is why we can't just forget all the reasons behind our litigation and let CARB and EPA keep taking our equipment based on junk "science" claims. The statement below succinctly explains what we are facing and why we should not let this happen.

"The Clean Air Act charges the EPA with setting air pollution health standards and subsequent enforcement of those standards. But this means that federal and state regulators decide when their own jobs are finished as those standards are met. Not surprisingly, no matter how clean the air, the EPA and CARB continues to find 'unacceptable risks.' The EPA and state regulators' powers and budgets, as well as most environmental groups like the NRDC, depend on a continued public perception that there is a serious problem to solve with our air and environment. These same regulators are the major funders of the health effects research intended to demonstrate the need for more regulation. They provide millions of dollars (public funds) each year to environmental groups and unfortunately, corrupt academic researchers who then use the money to augment public fear of every imaginable pollutant (real or not) and then seek increases in regulators' powers – especially through our court system. These conflicts of interest largely explain the ubiquitous exaggeration of air pollution levels and risks, even as air quality and related public health has dramatically improved."

We firmly believe, as this statement accurately explains, there will never be an end to claims of "unacceptable" health effects, environmental risks and unsubstantiated claims of premature deaths, even if diesel engines are 100% clean. The "science" behind all of this has been propagated in secret; some by a CARB employee who lied about his academic credentials, the underlying report data was never allowed to be examined by objective third-party reviewers and is now mostly propaganda perpetuating a huge deception – a deception that now threatens the existence of many small business owners, many of which are minorities within the transportation industry.

Given the perpetual motion of this scientific scare machine, the regulatory justification for more regulations will move from diesel and PM2.5 to natural gas and its unique emissions, to CO_2 and global warming as environmental activists in and out of government struggle to perpetuate their cause. More absurd health claims will become their justification to further regulate, holding the trucker, bus owner and small business equipment owner as the sole party responsible for equipment upgrades even though they complied with U.S. EPA standards at time of sale.

The proponents of these regulations often justify their over-regulation by citing the availability of special public funding to subsidize equipment replacement, but there are two things wrong with this claim. First, there may be millions in the funding basket, but the replacement costs will run into the tens of billions, just in California. Second, virtually all of the money given for subsidies so far has actually gone to large-scale operators who naturally turn over their trucks on a regular three-to-five year cycle and thus will never be faced with the forced elimination of their vehicles like vocational and small businesses owners are. These small business owners ironically were the primary "recyclers" of these commercial vehicles sold or traded by the same large carriers.

We believe that as soon as 2018, EPA and CARB will be establishing new regulations, which will cause those involved with commercial transportation to again have to replace their "new" diesel trucks and buses with natural gas powered vehicles. Interestingly, natural gas has its own problems with "different" and allegedly "more dangerous" vapor emissions versus diesel. Also, depending upon the source of the natural gas and the liquefaction efficiency rate, natural gas can reduce CO_2 emissions by about 20 percent, but methane can be a by-product of its use and might be 20-times more potent than CO_2 as a

greenhouse gas. As LNG in fuel tanks warms, methane is released to the environment through a pressure relief valve. In fact, depending upon ambient temperatures, a parked LNG truck could vent most of its fuel over a 7-10 day period. The venting of methane from trucks parked over a short period could result in a net increase in greenhouse gas emissions compared to diesel fuel. Compressed natural gas (CNG) is not practical in a weight sensitive and efficient business environment.

From what we have seen dating back as far as 1998, new studies from the UC Schools of Public Health and those academics within that depend on grants will come pouring out, claiming that natural gas combustion vapors (even filtered), methane and CO_2 are also deadly and will call for new technology replacements within 10 years or less. Assuming technology is available, there will likely be requirements for hydrogen/electric hybrids and then the "battery recycling crisis" will be upon us due to "heavy metal pollution." There will be no end to this – ever.

CCTA members are all for clean air; we all breathe, have kids and grandkids and wish for them a safe environment. In fact, CCTA is, arguably one of the most proactive transportation associations in California working with CARB. We have pushed extensively for logical regulations and reasonable enforcement. On December 8, 2008, during the regulatory hearings to adopt these on-road diesel engine regulations, we provided a thoughtful and well-reasoned eight page report containing 15 unique suggestions that CARB should have considered in implementing these regulations (http://www.arb.ca.gov/lispub/comm/bccomdisp.php?listname=truckbus08&comment_num=921&virt_num=435). Sadly and telling, not one suggestion was even considered – proving the agency's total lack of reasonableness and commitment to actually working with small businesses in our industry.

We agree with those who believe CARB's regulatory over-reach has allowed them to "take" our vehicles through fines and regulatory requirements. The Fifth Amendment of the U.S. Constitution prohibits, "private property" (including personal property like a vehicle) from being taken for public use without just compensation. We believe the loss of use through forced replacement is identical to taking "for public use." The loss of value of this equipment can be measured in terms of hundreds of millions of dollars due to these regulations. One would be hard pressed to say this has no effect on a motor carriers costs, services and routes.

By enforcing rules and regulations instituted against vehicles operated in the state, after being approved as compliant with all existing environmental regulatory standards when they were built and sold, also constitutes an *ex post facto* law, which is a law that retroactively changes the legal consequences (or status) of actions committed or relationships that existed prior to the enactment of the law. The federal government, including the EPA, is prohibited from passing *ex post facto* laws by Clause 3, Article I, Section 9 of the U.S. Constitution and the states are prohibited from the same by Clause 1, Article I, Section 10. We believe that the CARB diesel engine regulations are also a violation of the sovereign rights of other states and even businesses based in foreign countries that may operate within this state.

Another problem is that instead of the engine and truck manufacturers (billion dollar businesses) being held responsible for their diesel engines retroactively, the person (mostly small business owners) in this equation who can least afford it, are solely responsible for this compliance regulation. When the health claims behind all of these regulations are based on secret junk science and are clearly a lie, as is the case today, this government taking of our equipment needs to be stopped here because if not – it will continue forever.

Unfortunately, our counsel suggests that cases associated with "taking" heard by the courts involving government regulations are extremely difficult to win even though there is a clear and well-reasoned argument. We maintain that CARB's truck and bus regulations violate the Supremacy Clause of the U.S. Constitution. In Article VI, Clause 2 of the United States Constitution, it establishes the U.S. Constitution, Federal Statutes, and U.S. Treaties (in that order) as "the supreme law of the land." The text of the Constitution decrees these laws to be the highest form of law in the U.S. legal system, and mandates that all judges must follow federal law when a conflict arises between federal law and either the state constitution or state law of any state. Therefore, we believe we have a stronger case, based on existing federal laws including the Federal Aviation Administration Authorization Act of 1994 (FAAAA) and the Commerce Clause (U.S. Constitution Article I, Section 8, Clause 3) and related Supreme Court decisions.

We intend to use these existing federal laws to push our challenges forward.

This may be the last opportunity for our industry to ever challenge the EPA/CARB diesel engine regulations in a meaningful way as time, money and regulatory "winner and loser" politics whittle away at our industry's capacity to fight it. For these and other reasons, it is our intent to proceed with legal actions as suggested by counsel.

We hope this message resonates with the construction and commercial transportation industries within California, the rest of the U.S., Canada and Mexico and those with the will and vision, will play a supporting role in this historic effort.

Lee Brown
Executive Director
California Construction Trucking Association

(Note: The California Dump Truck Owners Association name was changed to the California Construction Trucking Association on January 1, 2012)