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California Low Carbon Fuel Standard Provides a Preview for Washington, Oregon and the Fed's

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Breaking Developments In Environmental Law

California's adoption of the first-ever regulation to reduce the carbon content of fuels is likely to set the template for similar efforts by Washington, Oregon and the federal government, and provides a good look at the issues that arise. The California Air Resources Board voted 9-1 on April 23 to adopt rules intended to reduce the carbon intensity of fuels 10 percent by 2020. The regulation does not set the specific lower carbon fuels to be used, but sets a framework that uses market mechanisms to spur introduction of fuels that would achieve the targeted reduction in carbon intensity.

Transportation fuel providers would have to demonstrate that the mix of fuels they supply meets the low carbon fuel intensity standards for each annual compliance period beginning in 2011. A system of credits and deficits will be created to track carbon intensity and producers of fuels must, on average, equal the set carbon intensity. Producers could meet the standard by adjusting their balance of fuels, blending low carbon ethanol into gasoline or biofuels in diesel, or buying credits from other producers to offset deficits. The regulations are set up so that greater reductions are required in the second five-year compliance period and anticipate that newer fuel formulations or more efficient, advanced-technology vehicles will be developed to replace existing fuels.

The regulation is the result of a two-year process that began when Gov. Arnold Schwarzenegger signed an executive order requiring California to cut back its greenhouse gas emissions and reduce its reliance on petroleum. One of the Air Resources Board members described the rule adoption as the "end of the start." The U.S. Congress, and states like Washington and Oregon, are also considering similar low carbon fuel standards to address climate change, greenhouse gas emissions and energy independence. Washington and Oregon in particular have set goals similar to California's, but have not yet taken steps to adopt rules to reach those goals. The new California rule provides an outline for how our states might proceed.

The debates over the California rule also provide some important insight into the scope and nature of the issues that adopting such a rule generates. The lengthy process included a considerable amount of comment from a variety of environmental organizations, business interests and community activists. Among the many issues was whether the measure of corn-based ethanol's carbon intensity should include the carbon impacts of converting farmland to grow corn for fuel instead of food. Backers of ethanol argued that adding that consideration to

corn-based ethanol while not examining indirect impacts of other fuels created an unfair disadvantage for ethanol. That issue is likely to be at the forefront as the low carbon fuel standard moves to the national stage.

In adopting the rule the California Air Resources Board members conceded that it is a work in progress and that some of the provisions could change as more data, better models and technological developments become available. Still unanswered are questions about the economic impact of a low carbon fuel standard, and how that is resolved may depend largely upon the timing and scope of the economic recession and recovery.

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