

Legal Updates & News

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U.S. EPA Grants California's Request for Waiver to Allow GHG Regulation of Autos, Reversing Bush Administration

July 2009
by [Michael Steel](#)

In what may be a largely symbolic action, the U.S. Environmental Protection Agency today announced that it was reversing the Bush Administration and granted California's request for a waiver of federal preemption to allow the state to regulate greenhouse gas emissions from automobiles. The saga leading up to the announcement began in 2002 with California legislation (AB 1493, Pavley), which called for new standards for GHG emissions from automobiles. In 2004, California's Air Resources Board adopted regulations to implement the statute, with new standards set to take effect in 2009. The regulations would reduce GHG emissions from California passenger vehicles by about 22 percent by 2012 and about 30 percent by 2016. The regulations had been stalled by automaker lawsuits and the EPA's refusal to grant California a waiver.

The legal significance of the waiver was summed up by the EPA: "With the decision to grant the California waiver, EPA returns to its traditional legal interpretation of the Clean Air Act that has been applied consistently during the past 40 years. EPA finds that California continues to have a need for its motor vehicle emissions program, including the greenhouse gas standards. EPA also finds that the California program meets legal requirements regarding the protectiveness of public health and welfare as well as technological feasibility." In effect, the EPA now takes the position that California need not demonstrate the need for a specific regulation, but merely that its air pollution problems are serious. With the dismissal of litigation challenging the EPA's approach to waivers, the important legal issues raised by the agency's interpretation remain open to dispute in future cases.

Immediately after President Obama took office, California requested that the waiver be reconsidered, and the EPA held a re-hearing on the issue in March 2009. On May 19, 2009, a deal struck between President Obama, the EPA, the ARB, and the automakers called for uniform national standards for GHG emissions from automobiles and the end of the litigation surrounding these standards. California agreed to allow additional time for the auto companies to comply, although it appears that the auto makers are already meeting the state's 2009 standards and are likely to meet the 2010 standards. The deal also requires that, beginning in 2012, the state and federal standards be identical.

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California officials are, of course, pleased. Attorney General Jerry Brown, who is now running for Governor, said: "EPA's reversal tears down the last remaining barrier preventing California from enforcing its laws curbing greenhouse gases. Today's decision stands in sharp contrast to the Bush EPA's politically driven denial two years ago." Brown brought the lawsuit to force the EPA to grant the waiver, and has now achieved that goal. The auto industry, though certainly not celebrating, did achieve one of its primary goals—a delay of the standards until manufacturers could gear up for compliance.

All rhetoric aside, the granting of this waiver is largely superseded by the deal struck in May. However, the symbolic importance—as an indication that California will be not only allowed to continue its efforts to fight climate change but perhaps encouraged to do so—cannot be lost on either policymakers or the regulated community.