

Environmental Justice Lawsuit May Delay California Cap and Trade

Mike Sandler, Huffington Post, 2-24-11

In Congress, the polluting industry's lobbyists are taking aim at federal climate regulations. In California, climate regs are facing a court challenge from a different source.

On January 24, 2011, a San Francisco Superior Court judge issued a tentative ruling that could block the implementation of the AB32 Scoping Plan, the document that details how the state of California will implement the Global Warming Solutions Act of 2006.

Who took the state to court over their efforts to protect the climate this time? Not the oil companies, coal-dependent utilities, or anti-government Tea Partiers. No, this time it was environmental justice (EJ) interests represented by the Center on Race, Poverty and the Environment and Communities for a Better Environment, and including West County Toxics Coalition, as well as several well-known EJ activists, many of whom served on a state environmental justice advisory committee. The case is called *Association of Irritated Residents, et al. v. California Air Resources Board*.

The specifics of the case relate to how California Air Resources Board (CARB) implemented the California Environmental Quality Act (CEQA). The plaintiffs claimed CARB failed to adequately consider alternatives to the policies selected in the Scoping Plan, especially cap and trade. The judge's tentative ruling mostly agreed, and could result in a delay in the 2012 implementation date for cap and trade, and possibly many other policies. The EJ groups' lawsuit is on procedural grounds, but a quick study of their complaints may be found in a report put out by a professor at the University of Southern California called "Minding the Climate Gap." The EJ groups also host a blog at EJ Matters.org.

Those familiar with environmental justice concerns will recognize a focus on health impacts at sites of existing major point source polluters and in neighborhoods near major transportation hubs and highways. When it comes to market mechanisms to fight climate change, the EJ groups believe that the trading of permits benefits big polluters, who accumulate them, creating "hot spots" of pollution. Low-income and disadvantaged communities would continue to suffer while the emission reductions take place in wealthier areas first.

The EJ groups correctly call out problems with past market mechanisms, especially the European Emissions Trading System, which gave away permits for free to large polluters and is linked to a shady offset scheme, and RECLAIM, the Southern California criteria pollutant trading system where some power plants gamed the system to delay emission reductions. The EJ folks are also rightfully skeptical of the claims of some trading proponents whose free market ideology does not match up with the facts that giveaways of free permits enrich polluting corporations and utilities, and offsets have the potential for financial shell games and manipulation.

However, the EJ groups have clearly romanticized command and control regulations. Unlike criteria pollutants, there is no quick regulatory fix for CO₂. Carbon sequestration has not been proven. They would be the first to tell you that there is no such thing as "clean coal." Substituting biofuels can be problematic. This is why economists came up with cap and trade. The price signal encourages cost effective measures that ideally allow for faster clean up and greater long-term success. The EJ groups like carbon fees or taxes. Good luck with that, now that Prop 26 passed.

The EJ groups also gloss over the specifics of carbon market design elements that could address their specific objections. Dislike giveaways? Well, CARB could auction 100% of permits. Dislike offsets? Ban 'em. What about inequality in the use of allowance value? A Cap & Dividend, or Carbon Share, approach addresses this directly.

As University of Massachusetts professor James Boyce writes:

Pollution burdens should be distributed fairly, as advocated by the EJ movement, rather than concentrated in particular communities... [and] polluters should pay for their use of the limited waste-absorptive capacities of our air and water... In keeping with the principle that the environment belongs in common and equal measure to us all, the money the polluters pay should be distributed fairly to the public, as we are the ultimate owners of the air and water.

Similarly in an article titled "New Hope for Bridging America's Economic Divide", the authors note that "in 2004, the median family net worth of African Americans was \$20,400, only 14.6 percent of the median white family net worth of \$140,700. The median net worth for Latino families was \$27,100." They go on to mention the Cap & Dividend approach and say,

While private wealth is distributed unequally, common wealth belongs to all, and its benefits should, wherever possible, be universally shared. Income from commons-based resources should be used to reduce inequality and expand opportunity.

The EJ lawsuit could delay CARB's Cap and Trade implementation for a year. CARB may have to re-issue an environmental impact report that considers alternatives to the adopted program. If one of those alternatives is Cap & Dividend, the plaintiffs should take a look.