

Judge suspends Calif. 'cap-and-trade' program

Jason Dearen, Associated Press, 3-22-11

SAN FRANCISCO ---- A judge has temporarily halted the nation's most ambitious program to give power plants, utilities and other polluters financial incentives to reduce their greenhouse gas emissions.

San Francisco Superior Court Judge Ernest Goldsmith ruled Friday that state air quality regulators failed to properly consider alternatives to their so-called cap-and-trade program, a key piece of California's landmark global warming law, AB 32.

Goldsmith ruled that the failure to consider alternatives violated state environmental law, so the California Air Resources Board must conduct further review before implementing the plan.

The board adopted the plan in December. Environmental justice groups brought the legal challenge because they say the program would allow polluters who are primarily located in poor neighborhoods to continue polluting by buying carbon credits from projects elsewhere.

Air Resources Board spokesman Stanley Young said the board would appeal Goldsmith's ruling.

The judge wrote that the board should not have adopted its cap-and-trade plan before completing a more extensive environmental review required by the California Environmental Quality Act.

Therefore, the board cannot certify a document known as the "scoping plan" for AB 32 ---- which seeks to reduce the state's greenhouse gas emissions to 1990 levels by 2020 ---- until it completes the analysis.

"Because it did not proceed in a manner required by law, ARB abused its discretion," Goldsmith wrote.

California's cap-and-trade program works by giving a polluter, such as a utility or a refinery, a permit from the state that lets it send a specified amount of carbon dioxide and other greenhouse gases into the air.

If a company emits less than its allotted amount of pollution, it can sell its unused "carbon credits" in a marketplace.

Polluters can even make a profit if demand for the permits is high and their prices exceed the initial cost.

The plaintiffs argued that the air board failed to look at alternatives because officials had already made up their minds to implement cap-and-trade.

"ARB was dogmatic in its focus on cap-and-trade even though it is not effective in reducing greenhouse gases, increases pollution in heavily polluted low-income communities and communities of color," said Bill Gallegos, executive director of Communities for a Better Environment, a plaintiff in the case.

"Now the ARB has a chance to do it right and consider real alternatives to pollution trading," he said.

But Young, the board's spokesman, said environmental studies of the cap-and-trade program found there would be no harm to the low-income neighborhoods the plaintiffs represented.

"The record of the cap-and-trade rulemaking ... including findings of the Health Impact Analysis, demonstrates that claims of environmental harm from a program of tradable allowances for greenhouse gases are unfounded," Young said in an email.

He said the board is working with the plaintiffs to find a compromise so the state can move forward with its ambitious clean air goals.

"We are in discussions with the plaintiffs to decide what exactly the scope of the remedy will be ---- that is, what is it that they want us to do to address their complaint," Young said.