

# Judge's ruling puts global warming law on hold

**Sarah Terry-Cobo, California Watch, 3-24-11**

Activists are celebrating a victory in their lawsuit against the state's Air Resources Board, halting the start of the landmark climate change law, at least momentarily.

In San Francisco Superior Court last week, Judge Ernest Goldsmith ruled that the board violated the California Environmental Quality Act (CEQA) by not fully evaluating alternatives to the cap-and-trade system, which is part of the 2006 law.

The lawsuit was brought by a handful of community groups and individuals concerned that low-income and minority groups bear a disproportionate burden of pollution impacts. Alegria De La Cruz, legal counsel for the plaintiffs, said in a phone interview that her clients did not file suit to slow down regulations that would reduce greenhouse gas pollution. Rather, they wanted the board to seriously consider alternatives – such as directly regulating polluters at the smokestack.

A cap-and-trade program aims to reduce pollution by limiting – or capping – the amount that industries can emit. If a facility cannot meet the cap, it can purchase a "carbon offset" or a promise to reduce pollution in another place.

As California Watch previously reported, the plaintiffs argue that allowing industrial facilities to purchase carbon offsets to meet emissions limits – rather than reducing this pollution – can actually increase the amount of harmful and toxic chemicals emitted in the air, in addition to increasing carbon dioxide pollution.

Communities for a Better Environment Protesters gather outside the Environmental Protection Agency's state headquarters, located in Sacramento, Calif., in 2008.

The cap-and-trade program is just one of several ways to achieve the greenhouse gas pollution reductions. The 'scoping plan' details the other measures, including improving energy efficiency, increasing renewable energy sources for electricity and improving gas mileage in vehicles.

The judge's order "will require that the entire program is halted until the Air Resources Board does this in line with this law," De La Cruz said.

The board plans to appeal Judge Goldsmith's ruling. The agency doesn't believe the injunction halts the climate law entirely, said spokesman Stanley Young in an email message.

Cara Horowitz, a law professor at UCLA, noted:

The court concludes, however, that the state failed to conduct adequate environmental review of its implementation decisions under CEQA. In particular, the court holds that the Air Resources Board (1) failed to consider adequately alternatives to the mix of measures adopted in the scoping plan, including especially alternatives to cap-and-trade measures, such as a direct carbon tax; and (2) improperly began implementing the scoping plan measures before its CEQA process was complete.

The court therefore enjoins 'any further implementation of the measures contained in the scoping plan' until the state has complied with CEQA.

Because the judge did not reject the cap-and-trade plan – but rejected the way the board approved it – the board must present a full analysis of the alternatives to satisfy the order. Slowing down the entire scoping plan, "is at odds with the court's more limited discussion of the issue regarding the environmental analysis of the cap-and-trade draft regulation," Young, of the Air Resources Board, wrote.

"We believe plaintiffs did not intend to put on hold efforts to improve energy efficiency, establish clean car standards and develop low carbon fuel regulations," he added.

Young noted they are working with the plaintiffs, but the judge has the ultimate discretion to decide whether to enjoin only cap and trade, or all of the pollution reduction measures.

Jon Costantino, senior adviser on climate change and energy policy at the law firm Manatt, Phelps & Phillips, said that whether the judge will enjoin the entire law or only cap and trade, "is to be determined."

"The plain language reading of the ruling is that no further implementation of measures in the scoping plan can happen, which is very broad," he said in a phone interview.

While the cap-and-trade program itself is scheduled to begin Jan. 1, 2012, Costantino notes the real legal deadline is much earlier. He should know: He previously spent 10 years at the board, the last three as manager of the scoping plan, before leaving public service for the private sector.

"At the end of October – which is one year after the rules were published – if they can't finalize the rule by then, they have to start over." If the two cannot resolve these issues by then, "legally you don't have a program."

In response, Young said in an email message, "We certainly hope to have the legal issues resolved before the statutory deadline for the Office of Administrative Law to act is reached in October."

De La Cruz, who also works for the nonprofit group Center on Race, Poverty and the Environment, said the plaintiffs have been very willing to address real world solutions, and notes that they used "litigation as a last ditch effort and way to get heard (regarding) the ongoing and continuing challenge, (which is) to make sure law that was written properly and is enforced."

Even though it is a big unknown what will happen in the next seven months, Costantino said, "anyone who says 'cap-and-trade is over' is overstating things."