

California Dump Truck Owners Association Sues State Air Resources Board to Overturn Overreaching Truck & Bus Rule

SACRAMENTO, Calif. (February 15, 2011) – The California Dump Truck Owners Association (“CDTOA”) is suing the California Air Resources Board (“CARB”) challenging the legality of CARB’s Truck and Bus Regulation. The lawsuit, *California Dump Truck Owners Association v. Air Resources Board*, has been filed in the U.S. District Court, Eastern District of California, Sacramento Division, on February 11, 2011. Specifically, CDTOA asserts that CARB’s regulation is unconstitutional as it is preempted by the Federal Aviation Administration Authorization Act (“FAAAA”) and seeks an injunction prohibiting CARB from enforcing their rule.

CDTOA has attempted to work with CARB for more than four years to find reasonable solutions that accomplish the goal of cleaning California’s air while avoiding the needless devastation of the state’s trucking industry and specifically the dump truck industry. The dump truck industry is struggling to survive due to a depressed regional economy, a construction industry suffering through 50% unemployment, and rampant construction price deflation as contractors fight for what little work there is. The compounding damage caused by the construction industry depression, escalating costs and now the devastating impacts of the CARB Truck and Bus Regulations will cause incalculable damage within the construction transportation industry. CARB has repeatedly refused to address these many economic challenges. Due to this lack of cooperation and empathy, CDTOA was left with no remaining option other than litigation.

“Our members are experiencing the worst economic conditions in living memory and CARB continues to place impossible regulatory burdens on them at a time they can least afford it,” says Lee Brown, Executive Director of CDTOA. Adding that, “Our members support clean air, but the air we breathe can’t be more important than the people that are breathing it.”

CARB’s Truck and Bus Regulation essentially requires all heavy-duty diesel vehicles currently on California’s roads to be replaced with new CARB-compliant vehicles. Unfortunately, CDTOA members have based their businesses on the ability to use their trucks for at least 800,000 miles and they only average 50,000 miles a year. Because the rule requires replacement of otherwise perfectly useful, and in most cases clean trucks much earlier than would otherwise be required, the majority of CDTOA members will be unable to comply and forced to close their businesses – leaving hard-working employees (drivers, mechanics, support personal, and managers) and their families jobless during a time of record unemployment levels in California.

For most of CDTOA’s members, their dump trucks are the sole asset for their business – essentially serving as their office, tool of their trade, sole source of capital and investment, and only basis of income and livelihood. A new CARB-compliant truck costs more than \$150,000 to purchase. However, dump truck rates are down 40% and the number of jobs has been cut in half from only a few years ago. And to make compliance a further impossibility for CDTOA’s members, the rule drastically diminishes the resale value of currently-owned trucks as they cannot be operated on California’s roads, thus all companies have lost their primary source of capital for purchasing new CARB-compliant trucks (not to mention increasing the likelihood of defaulting on existing truck financing.) Truck retrofit devices are also purported to be a short-term solution under the rule, yet they still cost tens of thousands of dollars and are infamous for being mechanically unreliable. So not only will CDTOA members be prohibited from purchasing replacement trucks due to a lack of financial resources, they will be prohibited from earning any income at all because the rule prohibits them from operating their currently-owned trucks.

CDTOA President, and small business owner Rob McClernon noted that, “Food on the table, a roof over your head, health care for your family are just as important if not more than nominally cleaner air. From what I can tell, joblessness is far more unhealthy than the air we breathe anywhere in this state today.”

In 1994, the U.S. Congress explicitly acted to retain sole oversight over motor carriers in the United States in order to prevent state agencies from over regulating these motor carriers. The FAAAA specifically prohibits any state or any political subdivision from enacting or enforcing any regulation related to the price, route, or service of a motor carrier. Because CARB’s Truck and Bus Regulation is overreaching and directly impacts all motor carrier members prices, routes, or services, CDTOA believes it to be preempted by federal law pursuant to the supremacy clause of Article VI of the United States Constitution. As such, CDTOA is requesting the court prevent or enjoin the implementation of the CARB Truck and Bus Regulation.

Furthermore it must be noted that CARB’s Truck and Bus Regulation has been wrought with controversy and criticism since originally proposed. In 2008, the lead author of CARB’s scientific report for the rule admittedly misrepresented his qualifications and education, which understandably cast grave doubt on his entire work product. Subsequently, CARB Chair Mary Nichols and other Board Members admitted to full knowledge of this information prior to voting to adopt the regulation, yet failed to disclose these facts to the full Board and public. To date, no true California-specific replacement report has been released that connected diesel related particulate matter (PM) to premature deaths in the state despite promises of such by CARB. The scientific underpinnings of the rule continued to be discredited after a February 2010 CARB-sponsored symposium illustrated that the substantive contents of the report could not be recreated without further deceit, plus there was substantial epidemiologic evidence from six different sources and four separate studies that indicated there’s no current relationship between PM2.5 (specifically diesel PM) and premature deaths in California. In late 2010, CARB acknowledged that they had grossly overestimated diesel emissions for their companion “off-road” rule by 340%. Subsequently, another independent study of the Truck and Bus Regulation revealed that additional scientific miscalculations were made by CARB as the original CARB baseline inventory values for 2009 were about 1.40 times the current CARB baseline inventory values, or, in other words, emissions were overestimated by about 40%.

The case is being litigated by the Law Offices of Brooks Ellison, CDTOA’s General Counsel. *California Dump Truck Owners Association v. Air Resources Board*, is filed with the U.S. District Court, Eastern District of California, Sacramento Division, Case No. 11-cv-00384.

The California Dump Truck Owners Association (CDTOA) is a 501(c)(6) trade association incorporated in 1941. A little over three years ago, CDTOA represented nearly 2,000 construction industry related trucking company members ranging in size from 1 truck to over 350 trucks. Sadly, today that number has diminished to fewer than 1,000 due to the economy and the ramifications of the Truck and Bus Regulation. Approximately 60%, or less than 600, of its members are sole proprietors; small one truck independent contractor owner-operator businesses. Additionally, the majority of its members operate low mileage vehicles, typically between 20,000 – 65,000 per year. These vehicles are all well above 26,001 GVWR, thus do not receive any of the benefits of any exemptions or special provisions found in CARB’s Truck and Bus Regulation. CDTOA’s website is www.cdtoa.org.

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