

REPORT TO COUNCIL

City of Sacramento

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www.CityofSacramento.org



CONSENT
June 17, 2008

Honorable Mayor and
Members of the City Council

Title: Authorization to Join Amicus Curiae Brief in Support of State of California in *State of California v. U.S. Environmental Protection Agency*

Location/Council District: Citywide.

Recommendation: Adopt a **Resolution** authorizing the City Attorney to take the necessary steps to have the City of Sacramento join the amicus curiae brief of the National Association of Clean Air Agencies (NACAA), in support of the State of California in *State of California et al. v. U.S. Environmental Protection Agency et al.* (United States Court of Appeals for the Ninth Circuit, Case No. 08-70011).

Contact: Eileen Teichert, City Attorney, (916) 808-5346; Matthew Ruyak, Supervising Deputy City Attorney, (916) 808-5346.

Presenters: None

Department: City Attorney

Organization No: 0500

Description/Analysis

Issue: In *State of California et al. v. U.S. Environmental Protection Agency et al.* (United States Court of Appeals for the Ninth Circuit, Case No. 08-70011), the State of California has petitioned the Court of Appeals for review of the United States Environmental Protection Agency's (EPA) denial of California's request for a waiver of preemption for California's regulations to control new motor vehicle greenhouse gas emissions. This report recommends that the City Council authorize the City Attorney to take the steps necessary to have the City of Sacramento join an amicus curiae brief to be drafted and filed by the National Association of Clean Air Agencies.

Policy Considerations: The Court of Appeals' decision has the potential to affect the ability of the State of California to regulate automobile tailpipe emissions. If the court denies the State's petition, the State will not be able to impose emission standards stricter than those mandated by the federal government, as it has done

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for the past three decades; such a decision could adversely impact the air quality of Sacramento. If the court grants the State of California's petition, the State will be able to continue its historical practice of implementing air quality regulations more stringent than those established by the federal government.

Environmental Considerations: Authorization to join in an amicus curiae brief in support of the State of California does not constitute a "project" that requires environmental review under the California Environmental Quality Act.

Rationale for Recommendation: Authorization to join NACAA's amicus curiae brief is requested in order to inform the United States Court of Appeals for the Ninth Circuit that the City supports California's vanguard efforts to enforce strict greenhouse gas emission standards.

Financial Considerations: Joining an amicus curiae brief has no financial impact on the City.

Emerging Small Business Development (ESBD): Not applicable, as this item does not relate to the procurement of goods or services.

Respectfully Submitted by:


EILEEN M. TEICHERT
City Attorney

Recommendation Approved:

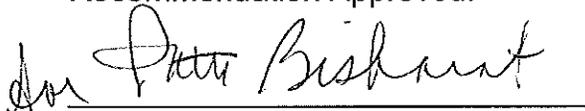

RAY KERRIDGE
City Manager

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Background Information:

The federal Clean Air Act ("CAA") authorizes the United States Environmental Protection Agency ("EPA") to regulate tailpipe emissions from new motor vehicles. Although the CAA generally prohibits states from adopting their own emission standards for new motor vehicles, it also grants California the authority to set its own emission standards because of the state's long-standing, severe air pollution problems, as well as its "pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program; in short, to act as a kind of laboratory for innovation." (Motor and Equip. Mfrs. Ass'n, Inc. v. EPA, 627 F.2d 1095, 1110-1111 (D.C. Cir.1979) [explaining reasons for California's unique status].) However, California must request and be granted a waiver of preemption from EPA before it may enforce any emissions regulations.

On December 19, 2007, the EPA Administrator sent a letter to Governor Schwarzenegger, denying California's most recent request for a waiver.

On January 2, 2008, the State of California, by and through Governor Arnold Schwarzenegger, and the California Air Resources Board, filed a Petition for Review with the Ninth Circuit Court of Appeals, seeking review of the final action by the EPA, and its Administrator, Stephen L. Johnson. That final agency action denied California's request, under section 209(b) of the CAA, for a waiver of preemption for California's regulations to control greenhouse gas emissions from new motor vehicles. These regulations would require reductions in fleet-average greenhouse gas emissions, including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (HFCs), for most new passenger motor vehicles sold in California, beginning with the 2009 model year.

Numerous entities have intervened in this case. Fifteen states (New York, Massachusetts, Arizona, Connecticut, Delaware, Illinois, Maine, Maryland, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and Pennsylvania), have intervened as petitioners. Those states seek to follow California's lead by adopting California's standards. The Alliance of Automobile Manufacturers has intervened as a respondent, siding with the EPA.

Councilmember McCarty requested the City Attorney's Office pursue amicus curiae participation in the case. The Deputy Attorney General handling this matter on behalf of the State of California recommended the City contact NACAA for joinder in its amicus curiae brief. NACAA represents air pollution control agencies in 53 States and territories and more than 165 major metropolitan areas across the United States. It is a nonpartisan association of agencies directly responsible for managing and implementing state and local air pollution control programs under the federal Clean Air Act. NACAA's mission is to encourage the exchange of information among air pollution control officials, to enhance communication and cooperation among federal, state, and local regulatory agencies, and

to promote sensible management of the nation's air resources. The Sacramento Metropolitan Air Quality Management District (SMAQMD) is a member of NACAA.

Two other public entities intend on joining NACAA's brief: New York City and King County, Washington (which encompasses Seattle). NACAA's brief is being drafted by Melanie Kleiss Boerger, a Graduate Teaching Fellow/Staff Attorney at the Institute for Public Representation, Georgetown University Law Center.

NACAA will present two major points in its brief:

- (1) The waiver provision gives states and local regulators flexibility when setting policy to protect the health of their citizens. States must have flexible options to craft programs tailored to the particular mix of greenhouse gas ("GHG") sources in their area and to respond to the particular local or regional health impacts and citizens' demands for action in the face of climate change. California's GHG standards for motor vehicle also will reduce emissions for criteria air pollutants such as ozone precursors that significantly affect public health.
- (2) The EPA's decision contradicts congressional intent for California and the States to serve as laboratories for innovation, and contradicts EPA's prior approach to waiver requests in light of that congressional intent. States and local governments are particularly well suited to craft regulatory programs that address GHG emissions from sources including motor vehicles. Not only can they tackle the particular mix of GHG emission sources in their area, but they serve as testing grounds to inform broader national policy.

RESOLUTION NO. 2008-XXXX

Adopted by the Sacramento City Council

June 17, 2008

**AUTHORIZATION TO JOIN NATIONAL ASSOCIATION OF CLEAN AIR AGENCIES'
AMICUS CURIAE BRIEF IN
SUPPORT OF STATE OF CALIFORNIA'S PETITION IN *STATE OF CALIFORNIA ET
AL. V. U.S. ENVIRONMENTAL PROTECTION AGENCY ET AL.***

BACKGROUND

- A. The State of California is seeking judicial review of the United States Environmental Protection Agency's (EPA) denial of California's request, under section 209(b) of the federal Clean Air Act, for a waiver of preemption for California's regulations to control greenhouse gas emissions from new motor vehicles.
- B. The Court of Appeals' decision has the potential to affect the ability of the State of California to regulate automobile tailpipe emissions. A decision against the State could adversely impact the air quality of Sacramento.
- C. The National Association of Clean Air Agencies is filing an amicus curiae brief in support of the State of California. New York City and King County, Washington, intend on joining NACAA's brief.
- D. The City Attorney has been requested to seek amicus curiae participation in support of the State of California.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The City Attorney is authorized to take all steps necessary to join the amicus curiae brief of the National Association of Clean Air Agencies in *State of California et al. v. U.S. Environmental Protection Agency et al.* (United States Court of Appeal for the Ninth Circuit, Case No. 08-70011).