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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ENGINE MANUFACTURERS )  
ASSOCIATION, )

CV 00-09065 FMC (BQRx)

Plaintiff, )

**ORDER RE: CROSS MOTIONS FOR  
SUMMARY JUDGMENT**

vs. )

SOUTH COAST AIR QUALITY )  
MANAGEMENT DISTRICT ("SCAQMD"), )  
et al., )

Defendants. )

CERTIFIED FOR PUBLICATION

NATURAL RESOURCES DEFENSE )  
COUNCIL, COALITION FOR CLEAN )  
AIR, INC., COMMUNITIES FOR A )  
BETTER ENVIRONMENT, INC., )  
PLANNING AND CONSERVATION )  
LEAGUE, AND SIERRA CLUB, )

Intervenors. )

WESTERN STATES PETROLEUM )  
ASSOCIATION, )

Intervenor. )

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**I. Background**

**A. The Parties**

Plaintiff Engine Manufacturers Association (“EMA”) is the not-for-profit trade association representing the leading manufacturers of internal combustion engines used in most all medium-duty and heavy-duty motor vehicles, other than passenger cars. EMA members manufacture the medium-duty and heavy-duty compression-ignition, diesel-fueled engines that are installed in certain pickup trucks and sports-utility vehicles, delivery vans, shuttle vans, and cargo vehicles, trucks, tractor-trailers, waste haulers, street-sweepers and buses, and sold throughout the United States.

Plaintiff-in-Intervention Western States Petroleum Association (“WSPA”) is a trade association organized as a nonprofit corporation under California law. Its members consist of companies engaged in the exploration, production, transportation, refining and marketing of crude oil and petroleum products, including diesel fuel.

Defendant South Coast Air Quality Management District (“SCAQMD”) is the air quality management district established under the California Health and Safety Code to develop and implement a strategy for achieving and maintaining ambient air quality standards within the South Coast Air Basin. Agents of the SCAMQD, including the SCAMQD Defendants,<sup>1</sup> are responsible for administering the Fleet Rules at issue.

Defendants-in-Intervention “Environmental Intervenors” are non-profit organizations<sup>2</sup> dedicated to the protection of the environment and public health.

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<sup>1</sup> The “SCAQMD Defendants” consist of thirteen (13) Board members of the SCAQMD, including the SCAQMD’s Executive Director.

<sup>2</sup> The non-profit organizations include: Coalition for Clean Air, Inc.; Natural Resources Defense Council, Inc.; Communities for a Better Environment, Inc.; Planning and Conservation League; and Sierra Club.

1 California Attorney General Bill Lockyer submitted an *amicus curiae* brief on  
2 behalf of the State of California in support of the SCAQMD's motion for summary  
3 judgment and in opposition to the cross-motions for summary judgment filed by EMA  
4 and WSPA.

5  
6 B. The South Coast Air Basin

7 The South Coast Air Basin ("the Basin"), which includes Los Angeles, San  
8 Bernardino, Riverside, and Orange Counties, experiences the most serious air quality  
9 problems in the nation, primarily due to motor vehicle pollution. (Staff Report ("SR")  
10 1191-1, p. 7439) It is the only air basin in the country classified by the United States  
11 Environmental Protection Agency ("E.P.A.") as an extreme nonattainment area. See  
12 42 U.S.C. § 7511(a). On-road motor vehicles contribute more than one-half of the  
13 ozone precursors emitted in the Basin and are a principal source of toxic pollution.  
14 (Administrative Record ("AR") 57 R-6252)

15 Emission of particulate matter from diesel vehicles and equipment is the most  
16 significant individual toxic air pollutant in the Basin, accounting for fully seventy-one  
17 percent (71%) of the air-borne cancer risk. (AR 57 R-6258) The California Air  
18 Resources Board ("CARB") has formally designated particulate emissions from  
19 diesel-fueled vehicles as a Toxic Air Contaminant. Studies reveal that exposure to  
20 diesel exhaust increases the risk of developing lung cancer and other non-cancer  
21 adverse health effects. (AR 41 R-1840) Diesel exhaust has also long been  
22 considered a probable human carcinogen by the National Institute of Occupational  
23 Safety and Health and by the International Agency for Research on Cancer. (AR 41  
24 R-1841)

25 Diesel trucks and buses are also significant contributors to smog and fine  
26 particles, two pollutants that have serious public health impacts. On-road motor  
27 vehicles contribute more than half of all smog-forming hydrocarbons and oxides of  
28 nitrogen in the entire emissions inventory. (SR 1191-1, p. 7439). More than ninety-

1 percent (90%) of the particles emitted from diesel engines are fine particles. (AR 54  
2 R-5514-5515) Fine particles are particularly hazardous because they can bypass  
3 respiratory defense mechanisms and penetrate deeply into the lungs. (AR 20 R-  
4 5783) The presence of high quantities of fine particles in the air has been shown to  
5 lead to higher mortality rates, greater occurrences and severity of asthma,  
6 cardiovascular disease, and potentially to a higher incidence of cancer. (AR 39 R-  
7 1325)

### 9 C. Legislative Background

#### 10 1. The Clean Air Act

11 The Clean Air Act, 42 U.S.C. §§ 7401-7671q (“CAA”), “is one of the  
12 most comprehensive pieces of legislation in our nation’s history.” *Motor Vehicle*  
13 *Mfrs. Ass’n v. New York State Dep’t of Env’tl. Conservation*, 17 F.3d 521, 524 (2d  
14 Cir. 1994). The CAA makes “the States and the Federal Government partners in the  
15 struggle against air pollution.” *General Motors Corp. v. U.S.*, 496 U.S. 530, 532  
16 (1990). A primary purpose of the CAA is “to encourage or otherwise promote  
17 reasonable Federal, State, and local governmental actions, consistent with the  
18 provisions of this chapter, for pollution prevention.” 42 U.S.C. § 7401(c).  
19 Additionally, Congress envisioned the CAA as a means of encouraging and assisting  
20 “the development and operation of regional air pollution prevention and control  
21 programs.” 42 U.S.C. § 7401(b)(4).

22 The CAA directs the E.P.A. to establish and enforce national ambient  
23 air quality standards (“NAAQS”) for pollutants that “cause or contribute to air pollution  
24 which may reasonably be anticipated to endanger public health or welfare.” 42  
25 U.S.C. § 7408(a). To achieve and maintain these NAAQS by regulating sources of  
26 air pollution, each state is required to submit a state implementation plan (“SIP”) to  
27 the EPA for approval. CAA § 110, 42 U.S.C. § 7410(a)(1). However, states may not  
28 promulgate individual motor vehicle emission standards to attain the NAAQS set by

1 the EPA. Section 209(a) expressly preempts all state regulation of motor vehicle  
2 emissions. Congress preempted the field of vehicle emission regulation for two  
3 reasons: "to ensure uniformity throughout the nation, and to avoid the undue burden  
4 on motor vehicle manufacturers which would result from different state standards."  
5 *Motor Vehicles Mfrs. Ass'n v. New York State Dep't. of Env'tl. Conservation*, 810 F.  
6 Supp. 1331, 1337 (N.D. N.Y.1993), *aff'd in part, rev'd in part*, 17 F.3d 521 (2d  
7 Cir.1994).

8 Both the history and text of the [CAA] show that the ... preemption  
9 section was made not to hamstring localities in their fight against air  
10 pollution but to prevent the burden on interstate commerce which would  
11 result if, instead of uniform standards, every state and locality were left  
12 free to impose different standards for exhaust emission control devices  
13 for the manufacture and sale of new cars."

14 *Allway Taxi, Inc. v. City of New York*, 340 F. Supp. 1120, 1124 (S.D. N.Y. 1972).

## 15 2. Preemption

16 The United States Supreme Court has given substantial weight in the  
17 preemption analysis to evidence that Congress intended to preserve the state  
18 regulatory authority, stating that courts must "give full effect to evidence that  
19 Congress considered, and sought to preserve, the States' coordinate regulatory role  
20 in our federal scheme." *California v. Fed. Energy Regulatory Comm'n*, 495 U.S.  
21 490, 497 (1990). Moreover, the Supreme Court has cautioned that preemption  
22 provisions must be narrowly and strictly construed. *See Kelly v. Robinson*, 479 U.S.  
23 36, 43 (1986); *see also Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1265  
24 (9th Cir. 1999); *Chrysler Corp. v. Tofany*, 419 F.2d 499, 511 (2d Cir. 1969) (where  
25 exercise of local police power serves the purpose of a federal Act, the preemptive  
26 effect of that Act should be narrowly construed).

27 The Clean Air Act explicitly protects the authority of states to regulate air  
28 pollution. The first section of the CAA, entitled "Congressional Findings", 42 U.S.C. §  
7401, makes clear that the states retain the leading authority in regulating matters of

1 health and air quality: "air pollution prevention (that is, the reduction or elimination,  
2 through any measures, of the amount of pollutants produced or created at the  
3 source) and air pollution control at its source is the primary responsibility of States  
4 and local governments." 42 U.S.C. § 7401(a)(3). Similarly, 42 U.S.C. § 7407, which  
5 focuses on SIPs, provides: "Each state shall have the primary responsibility for  
6 assuring air quality within the entire geographic area comprising such State by  
7 submitting an implementation plan for such State which will specify the manner in  
8 which national primary and secondary ambient air quality standards will be achieved  
9 and maintained within each air quality control region in such State." 42 U.S.C. §  
10 7407(a).

11 "In preemption analysis, the Supreme Court is highly deferential to state  
12 law in areas traditionally regulated by the states." *Exxon Mobil Corp. v. E.P.A.*, 217  
13 F.3d 1246, 1255 (9th Cir. 2000). The Court has explained:

14 [W]e have never assumed lightly that Congress has derogated state  
15 regulation, but instead have addressed claims of pre-emption with the  
16 starting presumption that Congress does not intend to supplant state law  
17 ... [I]n cases like this one, where federal law is said to bar state action in  
18 fields of traditional state regulation ... we have worked on the  
19 'assumption that the historic police powers of the States were not to be  
20 superseded by the Federal Act unless that  
21 was the clear and manifest purpose of Congress.'

22 *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514  
23 U.S. 645, 654-55 (1995) (internal citations omitted). "Air pollution prevention falls  
24 under the broad police powers of the states, which include the power to protect the  
25 health of citizens in the state. Environmental regulation has traditionally been a  
26 matter of state authority." *Exxon Mobil Corp.*, 217 F.3d at 1255; see also  
27 *Massachusetts v. U.S. Dep't of Transp.*, 93 F.3d 890, 894 (D.C. Cir. 1996). The  
28 Supreme Court has directed that the preemption analysis begin with the presumption  
that such local police powers are not preempted: "Throughout our history the several  
States have exercised their police powers to protect the health and safety of their  
citizens. Because these are 'primarily, ... matter[s] of local concern,' the 'States

1 traditionally have had great latitude under their police powers to legislate as to the  
2 protection of the lives, limbs, health, comfort, and quiet of all persons.' " *Medtronic,*  
3 *Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (internal citations omitted). The CAA  
4 "explicitly preserved this principle: 'Each state shall have the primary responsibility for  
5 assuring air quality within the entire geographic area comprising such State.'" *Train*  
6 *v. Natural Res. Def. Council, Inc.*, 421 U.S. 60, 64 (1975).

7           Furthermore, the Supreme Court has made clear that the objectives and  
8 purpose of a statute, as well as the text, are critical to the preemption analysis. See  
9 *Travelers*, 514 U.S. at 654; *Medtronic*, 518 U.S. at 486. "The overriding purpose of  
10 the Clean Air Act is to force states to do their job in regulating air pollution effectively  
11 so as to achieve baseline air quality standards, the NAAQS. The primary mechanism  
12 for achieving the NAAQS are through the local and state planning process which  
13 create the SIPs." *Exxon Mobil Corp.*, 217 F.3d at 1255-56. "As regulating air  
14 pollution falls under the historic police powers of the states, the authority of the states  
15 is assumed not to have been preempted unless it was the clear and manifest purpose  
16 of Congress to do so." *Id.* at 1256; see also *Rice v. Santa Fe Elevator Corp.*, 331  
17 U.S. 218, 230 (1947) ("[W]e start with the assumption that the historic police powers  
18 of the States were not to be superseded by the Federal Act unless that was the clear  
19 and manifest purpose of Congress.").

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### 21           3. Legislative History of the Clean Air Act

22           The original CAA, enacted by Congress in 1955, was aimed primarily at  
23 increasing federal research and assistance in air pollution prevention. It made no  
24 provision for federal motor vehicle emission standards. After several states adopted  
25 their own motor vehicle emission standards, the Senate Committee on Public Works  
26 decided that national standards were to be preferred over having each state go its  
27 own way, "which could result in chaos insofar as manufacturers, dealers, and users  
28 are concerned." S. Rep. No. 192, 89th Cong., 1st Sess. 5-6 (1965). As a result,

1 Congress enacted emission standards for new motor vehicle engines.

2           Despite this enactment, a number of states continued to develop  
3 separate emission programs. Congress promptly amended the CAA in 1967 to  
4 impose federal preemption over motor vehicle emission standards. See Air Quality  
5 Act of 1967, Pub. L. No. 90-148, § 208, 81 Stat. 485. An exception, however, was  
6 made for California because of its “unique problems” and its “pioneering efforts” to  
7 control its particularly severe air quality problems. *Id.* at § 208(b); S. Rep. No. 403,  
8 90th Cong., 1st Sess. (1967). In 1970, the Act was amended to establish national  
9 ambient air quality standards (“NAAQS”), which required even more stringent uniform  
10 emission standards for new motor vehicles. See Clean Air Amendments of 1970,  
11 Pub. L. No. 91-604, §§ 4, 6, 84 Stat. 1676.

12           In 1990, the Clean Air Act was amended once again. Title I of the Act  
13 directs the E.P.A. Administrator to develop NAAQS for pollutants the Administrator  
14 determines “cause or contribute to air pollution which may reasonably be anticipated  
15 to endanger public health or welfare.” 42 U.S.C. § 7408(a)(1)(A). The states are  
16 vested with the primary responsibility for attaining and maintaining the NAAQS  
17 through the development and implementation of a state implementation plan (“SIP”).  
18 See CAA § 110, 42 U.S.C. § 7410. Each state’s SIP, which is submitted to the  
19 E.P.A., must explain exactly how the state intends to reduce or maintain the  
20 concentration of pollution in the air to meet the NAAQS. “The states have broad  
21 license to institute their own programs for the reduction of air pollution....” *Motor*  
22 *Vehicle Mfrs. Ass’n*, 17 F.3d at 525.

23           Title II of the Act reflects Congress’ endeavor to resolve the problems  
24 caused by moveable sources or vehicle emissions. The emission standards  
25 applicable to any given vehicle depend upon its weight and use classification, and its  
26 model year designation. See CAA §§ 202, 207(c), 42 U.S.C. §§ 7521, 7541 (c).  
27 Section 202 authorizes the E.P.A. Administrator to promulgate emission standards for  
28 motor vehicles sold in the United States. Motor vehicle emission standards primarily



1 regulate emissions of carbon monoxide (CO), hydrocarbons or volatile organic  
2 compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>).

3           The “cornerstone of Title II is Congress’ continued express preemption  
4 of state regulation of automobile emissions.” *Motor Vehicles Mfrs. Ass’n*, 17 F.3d at  
5 526; see CAA § 209(a), 42 U.S.C. § 7543(a); see also *Engine Mfrs. Ass’n v. U.S.*  
6 *Env’tl. Prot. Agency*, 88 F.3d 1075, 1079 (D.C. Cir. 1996). The majority of states  
7 have chosen to rely on the federal emission standards set forth in § 202 of the CAA,  
8 42 U.S.C. § 7521. Only California enjoys a statutory exemption allowing it to  
9 promulgate its own emission standards. See CAA § 209(b), 42 U.S.C. § 7543(b)(1).  
10 California may only adopt and enforce its own emission standards, however, after  
11 applying to and obtaining the approval of the E.P.A. for a waiver of preemption. See  
12 CAA § 209(b), 42 U.S.C. 7543. The California Air Resources Board (“CARB”)  
13 submits an application upon determining that its proposed standards “will be, in the  
14 aggregate, at least as protective of public health and welfare as the applicable  
15 Federal standards.” *Id.* Were California simply to change its standards, and such  
16 change were found to be within the scope of an existing waiver, California need not  
17 submit a new waiver application. *Id.*

18           Additionally, other states could promulgate regulations requiring  
19 vehicles sold in their state to be in compliance with California’s emission standards,  
20 or, in other words, to “piggyback” onto California’s preemption exception. This opt-in  
21 authority, set forth in CAA § 177, 42 U.S.C. § 7507, is carefully drafted to avoid  
22 placing “an undue burden on the automobile manufacturing industry.” *Motor Vehicle*  
23 *Mfrs. Ass’n*, 17 F.3d at 527. Specifically: (1) an opt-in state must adopt standards  
24 identical to California’s; (2) California must receive a waiver from the E.P.A. for the  
25 standards; and (3) both California and the opt-in state must adopt the standards at  
26 least two years before the beginning of the automobile model year to which they  
27 apply. See CAA § 177, 42 U.S.C. § 7507.

28           The 1990 Amendments to the CAA added two further restrictions to §

1 177. First, Congress added language providing that § 177 shall not be construed as  
2 authorizing an opt-in state to limit the sale of California-certified vehicles. Second, it  
3 forbade opt-in states from taking any action that has the effect of creating a car  
4 different from those produced to meet either federal or California emission standards,  
5 a so-called “third vehicle.”

6

7 4. California’s Plan

8 Pursuant to its authority to adopt separate emission control requirements  
9 for new motor vehicle engines, California, acting through CARB, has enacted two  
10 stringent emission control programs for motor vehicles: one for light- and medium-  
11 duty motor vehicles, including certain diesel-fueled vehicles (the “LEV Program”),  
12 and one for heavy-duty urban transit buses (the “Urban Bus Program”).

13 a. The LEV Program

14 In adopting the LEV Program in 1990-1991, CARB established the  
15 most stringent exhaust regulations ever for light- and medium-duty vehicles. The  
16 regulations include three primary elements: (1) four tiers of exhaust emission  
17 standards for increasingly stringent categories of low-emission vehicles; (2) a  
18 mechanism requiring manufacturers to phase in a progressively cleaner mix of  
19 vehicles from year to year; and (3) a requirement that a specified percentage of  
20 passenger cars and lighter light-duty trucks be zero-emission vehicles (“ZEVs”). (SR  
21 1191-4, p. 7442)

22 The four tiers of exhaust emission standards, in descending order of  
23 emission levels are: (1) Transitional Low-Emission Vehicles (“TLEVs”); (2)  
24 Low-Emission Vehicles (“LEVs”); (3) Ultra-Low-Emission Vehicles (“ULEVs”); and (4)  
25 Zero-Emission Vehicles (“ZEVs”). For each category a set of more stringent  
26 emission standards for carbon monoxide, nitrogen oxides and formaldehyde applies.  
27 The LEV Program achieves emission reductions by requiring manufacturers to sell  
28 progressively cleaner mixes of vehicles over time. The average emissions from the

1 mix of these categories of vehicles produced by a given manufacturer in a given year  
2 must meet an overall "fleet average" requirement. Automobile manufacturers, under  
3 CARB's regulations, have the flexibility to decide how many vehicles of each type  
4 they manufacture and sell in order to meet the fleet average. Additional flexibility is  
5 provided through the establishment of a marketable credit system: manufacturers  
6 may earn credits if they sell more LEVs than needed to meet the fleet average.

7

8 b. The Urban Bus Program

9 On February 24, 2000, CARB adopted its Urban Bus Program ("UBP")  
10 to further reduce air pollution from large urban transit buses. The UBP requires: (i)  
11 reductions in particulate matter ("PM") and oxides of nitrogen ("NOx") fleet emissions  
12 by urban transit bus operators; and (ii) stringent exhaust emission standards  
13 applicable to engine manufacturers. To implement the CARB regulation, urban transit  
14 bus fleet operators are required to choose between two different compliance paths:  
15 (i) a diesel path or (ii) an alternative fuel path. Fleet operators were required to notify  
16 CARB of their choice by January 31, 2001.

17 Fleet operators choosing the diesel path may continue to purchase  
18 diesel powered buses as long as they comply with emission standards. These  
19 emission requirements specify that engines meet an eighty-percent (80%) PM  
20 emission reduction by October 2002. For the 2004 model year, CARB established  
21 an optional NOx emission standard representing an eighty-seven percent (87%)  
22 emission decrease relative to the current NOx standard. For the 2007 model year,  
23 diesel transit bus engines must comply with a NOx emission standard that would result  
24 in a ninety-five percent (95%) emission decreases relative to the current NOx  
25 standard. Transit agencies on the diesel path with more than 200 urban buses in  
26 their active fleet (on January 31, 2001) must place into service at least three zero-  
27 emission buses ("ZEBs") by July 1, 2003, and operate them for a year as a required  
28 demonstration project. From model year 2008 through model year 2015, a minimum

1 fifteen percent (15%) of all new bus purchases or leases must be ZEBs for the transit  
2 agencies on the diesel path. (SR 1192-4, p. 7545) ZEBs must be certified by CARB  
3 and are expected to be powered by fuel cells, electricity, or other fuels that result in  
4 zero-emission exhaust levels. (SR 1192-5, p. 7546)

5           The Alternative-Fuel Path requires at least eighty-five percent (85%) of  
6 new bus purchases to be alternative-fueled. Alternative fuels are defined as  
7 compressed natural gas, liquefied natural gas, liquefied petroleum gas, methanol,  
8 electricity, fuel cells, or other advanced technologies that do not rely on diesel fuel.  
9 (SR 1192-6, p. 7547; SR 1192-2, p. 7543) Transit operators would need to introduce  
10 ZEBs into their fleets by 2010. Additionally, retrofit requirements to reduce PM  
11 emissions from existing buses are required under both paths.

12

13 D. The Fleet Rules

14           In response to the need for the South Coast Basin to reduce pollution levels  
15 dramatically to achieve its NAAQS, the California state legislature in 1987 adopted  
16 Health and Safety Code § 40447.5, which authorizes the SCAQMD to adopt fleet  
17 rules in an effort to reduce public exposure to motor vehicle pollution. On June 16,  
18 2000, August 18, 2000, and October 20, 2000, the SCAQMD adopted six rules  
19 (referred to hereinafter as the “Fleet Rules”), each of which mandates that when  
20 certain local operators of fleets purchase or replace their fleet vehicles, they must  
21 acquire only those specific motor vehicles that the SCAQMD has designated as  
22 meeting its standards and requirements.

23

24           1. Fleet Rule 1191

25           Rule 1191 requires passenger car, light-duty truck, or medium-duty  
26 vehicle public fleet operators to acquire low-emitting gasoline or alternative-fueled

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1 vehicles<sup>3</sup> when procuring or leasing these vehicles in the District. The Rule applies to  
2 all government agencies and any special districts with 15 or more on-road light and  
3 medium-duty vehicles. Rule 1191 also contains specified exemptions. (Rule 1191(f))

4       2. Fleet Rule 1192

5               Rule 1192 requires public transit fleet operators to acquire alternative-  
6 fuel heavy-duty vehicles<sup>4</sup> when procuring or leasing vehicles to reduce air toxic and  
7 criteria pollutant emissions. This Rule applies to public transit fleets with 15 or more  
8 public transit vehicle or urban buses, operated by government agencies or operated  
9 by private entities under contract to government agencies, that provide passenger  
10 transportation services. The Rule requires these fleet operators to acquire  
11 alternative-fuel vehicles when adding or replacing vehicles. Rule 1192 also contains  
12 specified exemptions. (Rule 1192(e))

13       3. Fleet Rule 1193

14               Rule 1193 requires public and private solid waste collection fleet  
15 operators to acquire alternative-fuel<sup>5</sup> refuse collection heavy-duty vehicles when  
16 procuring or leasing these vehicles. The Rule applies to government agencies and  
17 private entities that operate solid waste collection fleets with 15 or more solid waste  
18  
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20       <sup>3</sup> “Alternative-fueled vehicle” is defined under the Rule as “a vehicle or engine that  
21 is not powered by gasoline or diesel fuel and emits hydrocarbon, carbon monoxide, or  
22 nitrogen oxides, on an individual basis at least equivalent to or lower than a ULEV based  
23 on [C]ARB’s certification data.” (Rule 1191(c)(1))

24       <sup>4</sup> “Alternative-fuel heavy-duty vehicle” is defined as a “heavy-duty vehicle, urban  
25 bus or engine that uses compressed or liquified natural gas, propane, methanol,  
26 electricity, fuel cells, or other advanced technologies that do not rely on diesel fuel,” and  
27 that meets the emissions requirements of the Urban Transit Bus Rule adopted by CARB.  
28 (Rule 1192(c)(1))

29       <sup>5</sup> Under Rule 1193, “alternative-fuel heavy-duty vehicles” use compressed or  
30 liquefied natural gas, liquefied petroleum gas, methanol, electricity, fuel cells, or other  
31 advanced technologies that do not rely on diesel fuel. (Rule 1193(c)(1))

1 collection vehicles. Acquisition of dual-fueled vehicles<sup>6</sup> is allowed for fleets of 15 or  
2 more transfer or rolloff vehicles.<sup>7</sup> Rule 1193 also contains specified exemptions.  
3 (Rule 1193(e))

4 4. Fleet Rule 1194

5 Rule 1194 applies to public and private fleet operators of 15 or more  
6 vehicles that transport passengers from commercial airports located in the District.  
7 The affected vehicles include taxis, shuttles, and limousines. The Rule requires  
8 passenger car, light-duty truck, medium-duty transit vehicle, and heavy-duty transit  
9 vehicle fleet operators to acquire cleaner burning or alternative-fueled vehicles<sup>8</sup> when  
10 procuring or leasing these vehicles in the District, unless otherwise exempt. Fleet  
11 operators using passenger cars or medium-duty vehicles to provide airport  
12 transportation services must purchase a specified percentage of vehicles that meet  
13 CARB's standards for ultra low emission vehicles. Fleet operators that use heavy-  
14 duty vehicles must purchase alternative-fuel vehicles. Specified exemptions are  
15 provided for under this Rule as well. (Rule 1194(e))

16 5. Fleet Rule 1186.1

17 Rule 1186.1 requires certain public and private sweeper fleet operators  
18 to acquire alternative-fuel or otherwise less-polluting sweepers when purchasing or  
19 leasing these vehicles for sweeping operations undertaken by or for governments or  
20 governmental agencies in the District's jurisdiction. Rule 1186.1 also requires

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21  
22 <sup>6</sup> A "dual-fuel heavy duty vehicle" is a "heavy-duty vehicle equipped with a diesel  
23 engine that uses an alternative fuel ... in combination with diesel fuel to enable  
24 compression ignition. A dual-fuel engine typically used the alternative fuel to supply 85  
percent of the total engine fuel requirement..." (Rule 1193(c)(2))

25 <sup>7</sup> A "rolloff vehicle" is "any heavy-duty vehicle used for the express purpose of  
26 transporting waste containers such as open boxes or compactors." (Rule 1193(c)(5))

27 <sup>8</sup> An "alternative-fueled vehicle" means "a light- or medium-duty vehicle, or heavy-  
28 duty transit vehicle or engine that is not powered by gasoline or diesel fuel." (Rule  
1194(c)(2))

1 government agencies that contract for sweeping services to solicit bids or contract for  
2 services that use alternative-fuel sweepers. An “alternative-fuel sweeper” is one with  
3 “engine(s) that use compressed or liquefied natural gas, liquefied petroleum gas  
4 (propane), methanol, electricity, or fuel cells. Hybrid-electric and dual-fuel  
5 technologies that use diesel fuel are not considered alternative-fuel technologies for  
6 the purposes of this rule.” (Rule 1186.1(c)(2)) Specified exemptions are also  
7 provided for. (Rule 1186.1(f))

8 6. Fleet Rule 1196

9 Rule 1196 requires public fleet operators of heavy-duty vehicles to  
10 acquire alternative-fuel heavy-duty vehicles when procuring or leasing these vehicles.  
11 The Rule applies to all government agencies located in the District and to any special  
12 districts such as water, air, sanitation, transit, and school districts, with 15 or more  
13 heavy-duty vehicles. These operators must acquire alternative-fuel vehicles, dual-fuel  
14 vehicles, or dedicated gasoline vehicles when adding or replacing heavy-duty  
15 vehicles. Specified exemptions are provided for under the Rule as well. (Rule  
16 1196(f))

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19 E. Procedural History

20 On November 21, 2000, Plaintiff EMA filed its First Amended Complaint against  
21 the SCAQMD Defendants for declaratory and injunctive relief, challenging the  
22 constitutionality of the Fleet Rules. Specifically, Plaintiff EMA claims the Fleet Rules  
23 violate Sections 209 and 177 of the federal Clean Air Act, 42 U.S.C. §§ 7543 and  
24 7507, as well as the Supremacy Clause of the United States Constitution, U.S. Const.  
25 Art. VI, cl. 2, and are therefore preempted as a matter of law. On January 17, 2001,  
26 Plaintiff-in-Intervention WSPA also brought suit against the SCAQMD Defendants  
27 and the Environmental Intervenors for declaratory and injunctive relief, claiming the  
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1 Fleet Rules violate CAA §§ 209 and 177 and the Supremacy Clause.<sup>9</sup>

2 On March 23, 2001, Plaintiffs and Defendants filed cross motions for summary  
3 judgment. Plaintiffs moved for summary judgement on counts one (1) through six (6)  
4 of their respective Complaints.<sup>10</sup> On April 20, 2001 California Attorney General Bill  
5 Lockyer submitted an *amicus curiae* brief on behalf of the State of California in  
6 support of Defendants' Motions for Summary Judgment and in opposition to Plaintiffs'  
7 Motions for Summary Judgment.

8 The parties have stipulated that this case should be adjudicated on the  
9 pleadings, as no material factual disputes are at issue. The case turns entirely on the  
10 scope of the express preemption provisions of §§ 209 and 177 of the Clean Air Act.  
11 After considering the parties' written and oral arguments, the Court issues the  
12 following decision:

## 14 II. Discussion

### 15 A. CAA § 209(a)

16 Section 209(a) of the Clean Air Act provides:

17 No State or any political subdivision thereof shall adopt or attempt to  
18 enforce any standard relating to the control of emissions from new  
19 motor vehicles or new motor vehicle engines subject to this part. No  
20 State shall require certification, inspection, or any other approval  
21 relating to the control of emissions from any new motor vehicle or new  
22 motor vehicle engine as condition precedent to the initial retail sale,  
23 titling (if any), or registration of such motor vehicle, motor vehicle  
24 engine, or equipment. 42 U.S.C. § 7543(a).

25 Plaintiffs argue that the Fleet Rules violate CAA § 209(a) because they  
26 constitute "standard[s] relating to the control of emissions from new motor vehicles or  
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28 <sup>9</sup> Plaintiff EMA and Plaintiff-in-Intervention WSPA will hereinafter collectively be referred to as "Plaintiffs." The SCAQMD Defendants and Defendants-in-Intervention Environmental Intervenors will hereinafter collectively be referred to as "Defendants."

<sup>10</sup> On July 25, 2001 the parties entered into a stipulated dismissal of count seven (7) of Plaintiff EMA's First Amended Complaint.



1 new motor vehicle engines.” Plaintiffs also assert that the Fleet Rules establish  
2 unlawful conditions precedent to the sale of new motor vehicles or engines.

3         The Court does not accept Plaintiffs’ interpretation of the impact of the Fleet  
4 Rules. The Rules regulate the purchasing and leasing, not the sale, of vehicles by  
5 fleet operators. Fleet operators are required to purchase “cleaner” vehicles when  
6 adding or replacing fleet vehicles. The Fleet Rules accept as given the existing CARB  
7 vehicle standards; they merely require fleet operators to choose from among the least  
8 polluting of CARB-certified, available vehicles. The Rules impose no new emission  
9 requirements on manufacturers whatsoever, and therefore do not run afoul of  
10 Congress’s purpose behind motor vehicle preemption: namely, the protection of  
11 manufacturers against having to build engines in compliance with a multiplicity of  
12 standards. *See State Air Res. Bd. v. Dep’t of the Navy*, 431 F. Supp. 1271, 1285  
13 (N.D. Cal. 1977), *aff’d by* 624 F.2d 885 (9th Cir. 1980) (“The reasons given for the  
14 enactment of the pre-emption provision can be summarized as follows: to protect the  
15 manufacturer against having to build engines which would comply with a multiplicity of  
16 standards; to protect the vehicle owner from having to deal with different standards in  
17 each state in which he drives; to avoid the unnecessary duplication of federal  
18 standards; to avoid ‘unnecessary expense’ to the owner; and generally to avoid  
19 ‘chaos’ and ‘confusion’.” (internal citations omitted)).

20         Furthermore, the Fleet Rules do not set a “standard relating to the control of  
21 emissions.” Rather than imposing any numerical control on new vehicles, the rules  
22 regulate the purchase of previously-certified vehicles. Plaintiffs rely primarily on two  
23 cases to support their contention that the Fleet Rules constitute unlawful standards:  
24 *Am. Auto. Mfrs. Ass’n v. Cahill*, 152 F.3d 196 (2d Cir. 1998) and *Ass’n of Int’l Auto.*  
25 *Mfrs., Inc. v. Commissioner*, 208 F.3d 1 (1st Cir. 2000). These cases hold that an  
26 attempt to limit the *sale* of vehicles is preempted. In *Cahill and Commissioner*, the  
27 states of New York and Massachusetts, respectively, adopted California’s emission  
28 standards targeting ZEVs. Under the California regulations, two percent (2%) of all

1 new vehicles certified for sale in California for model years 1998-2000, five percent  
2 (5%) for model years 2001-2002, and ten percent (10%) for model year 2003 were  
3 required to be ZEVs. California’s program was granted a § 209(b) waiver by the  
4 E.P.A. in 1993, and New York and Massachusetts adopted the program pursuant to  
5 CAA § 177.<sup>11</sup> Both the Second Circuit in *Cahill* and the First Circuit in  
6 *Commissioner* held that “the ZEV sales requirement must be considered a standard  
7 ‘relating to the control of emissions.’” *Cahill*, 152 F.3d at 200; *Commissioner*, 208  
8 F.3d at 6. The ZEV program mandated that a specified percentage of cars sold by  
9 manufacturers in any model year be ZEVs. “The ZEV sales requirement is,  
10 therefore, in the nature of a command having a direct effect on the level of emissions,  
11 rather than in the nature of a means of enforcing, or testing the effectiveness of, a  
12 command.” *Cahill*, 152 F.3d at 200.

13         It does not follow, however, that a rule regulating the *purchase* of vehicles is  
14 such a standard. The Fleet Rules require purchasers to choose from among a  
15 subset of previously certified California vehicles. Where a state regulation does not

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17         <sup>11</sup> In *Cahill*, the state of New York adopted California’s LEV program for light-duty  
18 vehicles pursuant to the CAA’s opt-in provision. New York’s classification system, fleet  
19 average requirements, and ZEV sales requirements were identical, with one exception,  
20 to those of California for model years 1998-2003. That exception concerned medium-  
21 duty vehicles, which were included in California’s ZEV requirements but not in New  
22 York’s. Additionally, New York maintained the ZEV sales requirement for model years  
1998-2002 even after California had abandoned it. The automobile manufacturers  
associations brought suit to prevent the enforcement of New York’s 1998-2002 ZEV  
sales requirement.

23         In *Commissioner*, automobile manufacturers brought suit against the  
24 Massachusetts Department of Environmental Protection, claiming automobile emission  
25 standards adopted by the state of Massachusetts were preempted by the CAA. After  
26 California repealed its ZEV requirements for the model years 1998-2000, it entered into  
27 memoranda of agreements (“MOAs”) with seven major automakers by which the  
28 manufacturers agreed to develop ZEV technology and introduce a limited number of  
ZEVs into the California market. In exchange, California agreed to provide infra-  
structural support for ZEV implementation. Massachusetts amended its ZEV mandates  
to reflect the automakers’ obligations under the MOAs, but did not include the reciprocal  
obligations undertaken by California.

1 compel manufacturers to meet a new emissions limit, but rather affects the purchase  
2 of vehicles, as the Fleet Rules do, that regulation is not a standard. No restriction on  
3 the sale of vehicles is present here. Plaintiffs may continue to sell any vehicle which  
4 is otherwise certified in California.

5       Furthermore, CAA § 246, 42 U.S.C. § 7586, expressly recognizes that Fleet  
6 Rules must be established in areas with particularly high pollution levels, and  
7 authorizes restrictions on the purchase of fleet vehicles to meet clean-air standards.  
8 Specifically, section 246 requires that “[e]ach state in which there is located all or  
9 part of a covered area...shall submit...a State implementation plan revision...to  
10 establish a clean-fuel vehicle program for fleets under this section.” 42 U.S.C. §  
11 7586(a)(1). Section 246 also mandates that “a specified percentage of all new  
12 covered fleet vehicles...purchased by each covered fleet operator in each covered  
13 area shall be clean-fuel vehicles and shall use clean alternative fuels...” 42 U.S.C. §  
14 7586(b). It is not rational to conclude that the CAA would authorize purchasing  
15 restrictions on the one hand, and prohibit them, as a prohibited adoption of a  
16 “standard,” on the other.

17       Additionally, through its Health and Safety Code, California has mandated  
18 these Rules be enacted by Districts with severe air quality problems. The South  
19 Coast Air Basin is the only “extreme” nonattainment area for ozone in the country. It  
20 is classified as a “severe” nonattainment area for particulate matter and has  
21 extremely high levels of toxic air pollution throughout the region. The California  
22 legislature enacted Health and Safety Code § 40447.5 in response to the need for the  
23 South Coast Air Basin to reduce pollution. Section 40447.5 authorizes the District to  
24 “[r]equire operators of public and commercial fleet vehicles...in the south coast  
25 district, when adding vehicles to or replacing vehicles in an existing fleet or  
26 purchasing vehicles to form a new fleet, to purchase vehicles which are capable of  
27 operating on methanol or other equivalently clean burning alternative fuel and to  
28 require that these vehicles be operated, to the maximum extent feasible, on the

1 alternative fuel when operating in the south coast district.” Such state regulations are  
2 presumed to be valid. See, e.g., *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996)  
3 (stating that the preemption analysis begins with the presumption that local police  
4 powers, such as air pollution prevention, are not preempted: “Throughout our history  
5 the several states have exercised their police powers to protect the health and safety  
6 of their citizens. Because these are ‘primarily, and historically, ...matter[s] of local  
7 concern,’ the ‘States traditionally have had great latitude under their police powers to  
8 legislate as to the protection of the...health...of all persons.’”) (internal citations  
9 omitted) (cited in *Exxon Mobil Corp. v. U.S. Env’tl. Prot. Agency*, 217 F.3d 1246,  
10 1255 (9th Cir. 2000)).

11 The Court therefore concludes that the Fleet Rules do not constitute unlawful  
12 standards “relating to the control of emissions.”

13

14 **B. Section 177**

15 Plaintiffs argue that the Fleet Rules violate CAA § 177, which provides:

16 Notwithstanding section 7543(a) of this title, any State which has plan  
17 provisions approved under this part may adopt and enforce for any  
18 model year standards relating to control of emissions from new motor  
19 vehicles or new motor vehicle engines and take such other actions as  
20 are referred to in section 7543(a) of this title respecting such vehicles  
21 if--  
(1) such standards are identical to the California standards for which a  
waiver has been granted for such model year, and  
(2) California and such State adopt such standards at least two years  
before commencement of such model year (as determined by  
regulations of the Administrator).

22 Nothing in this section or in subchapter II of this chapter shall be  
23 construed as authorizing any such State to prohibit or limit, directly or  
24 indirectly, the manufacture or sale of a new motor vehicle or motor  
25 vehicle engine that is certified in California as meeting California  
26 standards, or to take any action of any kind to create, or have the effect  
of creating, a motor vehicle or motor vehicle engine different than a  
motor vehicle or engine certified in California under California standards  
(a "third vehicle") or otherwise create such a "third vehicle".

27 42 U.S.C. § 7507.

28 As discussed earlier, CAA §177 permits states other than California to

1 “piggyback” onto California’s standards if the state’s standards are identical to  
2 California standards for which a waiver has been granted for a model year. Section  
3 177, however, applies only to non-California “opt-in” states. The statutory language  
4 supports this conclusion. After first referring to states that adopt the California  
5 standards, section 177 declares that “any such state” is subject to certain limitations.  
6 The word “such” indicates that the statute is referring back to the non-California “opt-  
7 in” states. Section 177 has no application to the right of the District to regulate the  
8 purchase of fleet vehicles.

9       Furthermore, Congress’ purpose in enacting § 177 is to prevent states from  
10 adopting and enforcing standards in a manner that would create a "third vehicle." See  
11 *Motor Vehicle Mfrs. Ass’n*, 17 F.3d at 528. Evident in the statutory scheme is  
12 Congress’ desire not to burden manufacturers with “myriad state emission  
13 regulations.” *Id.* at 531. Congress restricted states to duplicating either federal or  
14 California standards in order “to protect motor vehicle manufacturers from the undue  
15 burden of complying with more than two different regulatory schemes.” *Am. Auto.*  
16 *Mfrs. Ass’n v. Comm’r*, 998 F. Supp. 10, 13 (D. Mass. 1997) (quoting *Motor*  
17 *Vehicles Mfrs. Ass’n*, 810 F. Supp. at 1339).

18               [Section 177] prevents opt-in states from imposing different emission  
19 requirements on new vehicles and engines that would place an undue  
20 burden on manufacturers by requiring them to produce materially  
21 different new vehicles for sale in such areas. To the extent that a  
22 manufacturer could demonstrate that each vehicle leaving the assembly  
23 line performs at levels to which it was certified, that manufacturers could  
24 claim ‘undue burden’ if a state that adopted the California standard  
25 applied enforcement procedures that would require materials [sic]  
26 changes in the manufacture of such vehicles, i.e., production of a third  
27 car.

28       Senate Comm. on Pub. Works, 103d Cong., 1st Sess., *A Legislative History of the*  
*Clean Air Act Amendments of 1990*, Serial No. 103-38, Vol. 1 at 1022. Therefore,  
“there can only be two types of cars in this country: ‘California’ cars or ‘federal’ cars.  
States cannot adopt any other standards which would require automakers to create a  
‘third’ car.” *Commissioner*, 998 F. Supp. at 13.



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