

SAE Presentation

I. Massachusetts v. EPA Decision

1. Massachusetts “standing” -- impacts alleged sufficient for court to decide.
 - 5-4 (dissent on this point)
2. CAA § 202(a)/302 -- sufficient authority to regulate CO₂/ghgs.
 - 3 sentences
3. Ordered EPA to make “endangerment” determination under § 202(a)(1).
 - Almost required EPA to say “YES”
4. Recognized the potential overlap with NHTSA.
 - Two agencies can work together -- others do

II. Who Can Regulate CO₂/GHG In Wake of Massachusetts v. EPA?

1. Wall constructed between NHTSA and EPA by Congress in 1975 was shattered.
2. Now two federal agencies with different statutes/criteria plus states are asserting authority.
 - NHTSA - EPCA
 - o Maximum feasible
 - o economic practicability

- EPA - 202(a)
 - o leadtime, cost
 - o “basic market demand” -- International Harvester
- States -- California (plus 12 others)
 - o completely different criteria for cost effectiveness

3. New Executive Order.

- The President ordered EPA, DOT, DOE, together with the Department of Agriculture, to develop rules to implement his “20 in 10” proposal by fall of 2007 -- final rule the end of 2008.
 - o Can this schedule be met?
- EPA Administrator Johnson noted that regulation of vehicles is a likely outcome of this process.
- Questions remain regarding what criteria will be used and the various roles of these agencies.

4. Litigation over state authority.

- Vermont trial over
- Post-trial briefs due June 8
- Judge questioned EPA role under waiver
- What role will Massachusetts v. EPA play
 - o completely different versions from industry and state perspectives

III. What Does EPA Have To Do As A Result of Massachusetts v. EPA?

1. Waiver of AB 1493.
 - Hearings May 22 and 30
 - Written comments due June 15

Different than any other waiver -- but will EPA view it that way?

What role, if any, does NHTSA play?

2. "Endangerment" Determination.
 - Narrow demand from Supreme Court and D.C. Circuit
 - How does new Executive Order affect this??
3. If EPA finds "Endangerment" -- rulemaking.
 - What form will standard take?
 - How do CAA criteria mesh with EPCA?
4. Timing of each of these.
 - Will this Administration finish any/all?

IV. Other Implications

1. CO₂ as ambient NAAQS?
 - CAA ill-suited
2. Impact on LDT challenge 9th Circuit.
 - Oral argument Monday

- Will this decision cause 9th Circuit to remand on CO₂ valuation?

If so, what does that mean for existing/future LDT rules?

V. Conclusion

- Perfect Storm
 - o Congressional Activity
 - o EPA Waiver/Endangerment
 - o New Administration rulemaking
 - o Vermont/Ninth Circuit - LDT
- Congressional Action Needed!!!