GEORGETOWN CLIMATE CENTER
A Leading Resource for State and Federal Policy

Summary of the Federal District Court's Order Enjoining California's Low Carbon Fuel Standard

(January 19, 2012)

Introduction and Summary

On December 29, 2011, the United States District Court for the Eastern District of California granted partial summary judgment to the plaintiffs in *Rocky Mountain Farmers Union v. Goldstene*, holding that California's Low Carbon Fuel Standard (LCFS) violated the dormant Commerce Clause of the United States Constitution. The court also granted the plaintiffs a preliminary injunction, prohibiting enforcement of the LCFS until the litigation is completed.

Judge Lawrence J. O'Neill acted in response to summary judgment motions filed by California and by two groups of plaintiffs – one associated with corn ethanol producers and led by the Rocky Mountain Farmers Union (RMFU), and one associated with petroleum producers, refiners and users led by the National Petrochemical & Refiners Association (NPRA). Judge O'Neill addressed three central legal issues in the case: whether the LCFS violates the dormant Commerce Clause, whether it is preempted by the federal Renewable Fuel Standard (RFS2), and whether there is a "savings clause" that insulates the LCFS from dormant Commerce Clause or preemption challenges. As discussed below, Judge O'Neill (1) held that the LCFS violates the dormant Commerce Clause both by discriminating against out-of-state crude oil and corn ethanol and by seeking to regulate conduct outside of California, (2) declined to rule on the preemption issue because the parties had not adequately briefed the relevant standard of review, and (3) rejected California's argument that the LCFS was protected from challenge by a savings clause.

1. The Dormant Commerce Clause Claims

The Commerce Clause of the United States Constitution vests Congress with the authority to regulate interstate and foreign commerce. Under the "dormant Commerce Clause" doctrine, the courts have interpreted the Commerce Clause to prohibit state laws that discriminate against or otherwise unduly burden commerce.

Judge O'Neill ruled that the LCFS violates the dormant Commerce Clause both because it discriminates against out-of-state corn ethanol and crude oil and because it regulates extraterritorially. Under the LCFS, the carbon intensity of a fuel is based on the entire lifecycle of its production and use, from the generation and transportation of its feedstock to the use of the fuel by its ultimate consumer. Judge O'Neill found that the LCFS discriminates against corn ethanol from the Midwest by assigning it a higher carbon intensity (CI) value than corn ethanol produced in California, based on factors including the emissions associated with transporting fuel from Midwest to California and the availability of lower CI electricity for the production of ethanol in California.

Similarly, Judge O'Neill concluded that the LCFS discriminates against high-carbon-intensity crude oil (HCICO) that is produced out-of-state. Under the LCFS, high intensity crude oil is assigned a CI value based on whether it is an existing or emerging source, which Judge O'Neill ruled had the effect of giving in-state crude oil artificially low CI scores. (The

California Air Resources Board (CARB) is amending its method for calculating the carbon intensity of HCICO. The amendments, however, are not expected to become effective as final regulations until January 1, 2013, and Judge O'Neill did not address them in his analysis.)

Judge O'Neill also held that the LCFS violates the dormant Commerce Clause by attempting to regulate extraterritorially, given that it includes emissions that occur outside of California – e.g., emissions associated with growing corn in the Midwest or transporting ethanol to California – in calculating the CI of ethanol.

Because Judge O'Neill found that the LCFS discriminates against out-of-state corn ethanol and oil and regulates extraterritorially, it was subject to "strict scrutiny," and therefore California was required to demonstrate that there were no other means available to it to reduce the CI of transportation fuels. Judge O'Neill concluded that California failed to do so, because it could have pursued other approaches, including enacting a tax on fossil fuels. Accordingly, Judge O'Neill ruled that the LCFS violates the dormant Commerce Clause, and granted the plaintiffs' motions for summary judgment on this issue.

2. The Preemption Claim

The RMFU plaintiffs also requested summary judgment on the grounds that the LCFS was preempted by the Renewable Fuel Standard (RFS2) provisions of the Energy Independence and Security Act of 2007 (EISA), which establish quantitative targets for the production of different categories of biofuels. Although under the RFS2 biofuels are generally subject to CI standards, ethanol production facilities that had commenced construction by December of 2009 – including essentially all Midwest corn ethanol – is exempt from CI standards. The plaintiffs argue that the LCFS conflicts with the RFS2 and is therefore preempted by federal law because it does not exempt corn ethanol from CI standards, therefore making it increasingly difficult to sell corn ethanol into the California market and presenting an obstacle to Congress's objective of protecting existing investments in ethanol production facilities. Judge O'Neill denied the plaintiffs' motion for summary judgment on this issue on the grounds that the parties had not adequately explained their position on the relevant standard of review that the court should apply.

3. The Savings Clause Defense

Judge O'Neill rejected California's motion for summary judgment on the grounds that Congress has insulated the LCFS from either preemption or dormant Commerce Clause challenges. California argues that the LCFS is permitted under Section 211(c)(4)(B) of the Clean Air Act, which allows California to regulate fuel or fuel components for the purpose of controlling motor vehicle emissions. California also argues that the LCFS is permissible under another savings clause contained in Section 204(b) of the EISA, which states that the EISA "shall not be construed as superseding, or limiting, any more environmentally protective requirement . . . under any other provision of State or federal law or regulation, including any environmental law or regulation." Judge O'Neill ruled that these savings clauses do not protect the LCFS from challenge on the grounds that it conflicts with the EISA. Moreover, Judge O'Neill held, these savings clauses are not sufficiently clear and unambiguous to insulate the LCFS from scrutiny under the dormant Commerce Clause.

4. What Happens Next

On January 5, 2012, California appealed Judge O'Neill's rulings to the United States Court of Appeals for the Ninth Circuit. California has indicated that it will not enforce the LCFS while the injunction is in effect, but that it will continue its rulemaking and stakeholder processes regarding potential amendments to the LCFS.