

Facts Behind California's Greenhouse Gas Law — AB 32

The giant wheels are turning to begin implementation of California's Global Warming Solutions Act. Many Californians have likely heard something about this new law, better known as Assembly Bill 32 or AB 32. Because this new law is controversial and not well understood, we provide this fact sheet that explains some basic provisions of the program and Pacific Legal Foundation's lawsuit to challenge the cap and trade auction regulation.

When did AB 32 begin and what does it do?

AB 32 was enacted in 2006. It directs the California Air Resources Board (CARB or Board) to limit emissions of carbon dioxide and other greenhouse gases from California sources. In 2011, CARB adopted a cap and trade regulation to restrict emissions of greenhouse gases from various sources including refineries, industrial facilities, power plants, food processing plants, and transportation fuels. Other than an administrative fee to cover the Board's operating costs, AB 32 does not authorize the collection of any revenue.

What is the main greenhouse gas targeted by AB 32?

The main concern is emissions of carbon dioxide, or CO₂, a normal by-product (along with light and heat) of burning conventional fuels: coal, natural gas, gasoline, diesel, and propane (as well as wood and other biomass). Hence, when the Board limits CO₂ emissions, it's limiting Californians' use of these conventional fuels. Ultimately, limiting CO₂ emissions will limit the fuel use that generates them.

What fuels are regulated by AB 32's cap and trade regulation?

Cap and trade limits CO₂ emissions statewide from the use of coal, natural gas, gasoline, diesel, and propane. The combined emissions from all uses of these fuels cannot exceed the annual limit. The limit is enforced by (1) requiring that emissions from the fuels be reported annually, and (2) the surrender of tradeable permits called "allowances" to match the reported emissions.

How does cap and trade affect fuel users?

Cap and trade limits large and small emissions sources (fuel burners) differently. It requires large fuel users to directly report their emissions and surrender allowances. For everyone else (home owners, motorists, small businesses, vehicle fleets, etc.), their wholesale fuel suppliers have to report the volume of fuel sold and surrender allowances for that fuel.

Cap and trade limits CO₂ emissions statewide, but does not set any "user-specific" limits. If the regulation requires you to report emissions and surrender allowances, you must do so for *all* of your emissions, not just emissions over a limit. Fuel users may *not* avoid allowance surrender obligations by reducing their emissions. Reducing fuel use, and hence emissions, simply reduces the number of allowances a fuel user must surrender. Cap and trade provides very limited ability to buy "offsets" from outside the system to "cover" emissions for which you cannot (or prefer not to) obtain allowances.

What is the cap and trade auction?

Since cap and trade limits almost all conventional fuel use in California (by limiting the CO₂ emissions) to the amount for which allowances can be surrendered, it is critical for fuel users to be able to get the necessary allowances. The mechanism for obtaining these allowances is a

quarterly cap and trade auction, devised by CARB. Fuel users must either bid significant amounts of money for the privilege of continuing to emit carbon dioxide, shutter their operations, or leave the state.

How are the allowances distributed and how much money will they generate?

CARB “makes” the allowances and distributes most them in two ways: (1) it gives about half of them for free to large fuel users according to a formula, and (2) it auctions most of the rest to the highest bidders four times annually. CARB expects to collect between \$12 billion and \$73 billion from these auctions by the end of this decade. The state legislature and Governor Brown have already “borrowed” \$500 million from the 2013 auction proceeds alone to balance the state government’s budget for 2013-2014.

How will AB 32 affect me?

Since there are no free allowances for the fuel (natural gas, gasoline, diesel, and propane) supplied to California’s millions of households, drivers, truck fleets, and businesses, much of these billions in illegal fuel taxes will fall on ordinary homeowners, commuters, small businesses, and other consumers, to whom these new costs of business will most likely be passed.

What is the basis of Pacific Legal Foundation’s lawsuit?

Since AB 32 does not authorize a multi-billion dollar fuel tax, and since AB 32 was not approved by a two-thirds majority of either house of the state legislature, this allowance auction (a fuel tax is what it really is) is an illegal feature of cap and trade — an unconstitutional tax.

PLF filed a lawsuit on April 16, 2013, to challenge the auction regulation. As PLF’s complaint states, the California Air Resources Board devised the auction plan as a means of raising billions of dollars in revenue, without any instruction or direction from the legislature. CARB hatched the auction program purportedly to implement AB 32, but nothing in AB 32 authorizes creation of an auction process to sell carbon dioxide emission allowances for billions of dollars. Nor does AB 32 authorize the creation of any kind of new tax.

Who does PLF represent in the lawsuit?

The plaintiffs in PLF’s lawsuit represent a broad spectrum of California businesses, trade associations, and individual Californians harmed by the regulation. This group includes The Morning Star Packing Company, a tomato processing business that has already paid more than \$375,000 to obtain allowances. Other clients include the California Construction Trucking Association, the Loggers Association of Northern California, family-owned Merit Oil Company, Robinson Enterprises, the National Tax Limitation Committee, and several individuals.

How can I help?

As with all of our clients, Pacific Legal Foundation represents these petitioners free of charge. We rely on the charitable contributions of businesses, organizations, and individuals like you to reign in overreaching government agencies like CARB. You can help advance this challenge with a tax-deductible gift of any amount by going to PLF’s website: www.pacificlegal.org.