

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MEDICAL ADVOCATES FOR
HEALTHY AIR; LATINOS UNITED
FOR CLEAN AIR; SIERRA CLUB;
NATIONAL PARKS CONSERVATION
ASSOCIATION; NATURAL
RESOURCES DEFENSE COUNCIL,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; LISA P. JACKSON,
Administrator, U.S. EPA; JARED
BLUMENFELD, Regional Administrator,
Region IX, U.S. EPA,

Respondents,

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT; SAN
JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT;
NATIONAL ENVIRONMENTAL
DEVELOPMENT ASSOCIATION'S
CLEAN AIR PROJECT,

Respondents-Intervenors.

No. 12-73386

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

On Petition for Review of an Order of the
Environmental Protection Agency

Argued and Submitted February 12, 2015
San Francisco, California

Before: SCHROEDER and SILVERMAN, Circuit Judges and GARBIS,** Senior District Judge.

This case arises out of the Environmental Protection Agency's ("EPA") 1997 decision to change the measurement standard for setting the national ambient air quality standard ("NAAQS") for the pollutant ozone. Prior to 1997, the EPA measured average pollutant concentrations hourly. In 1997, however, the EPA concluded that measuring average pollutant concentrations over an 8-hour span would better protect public health. The EPA also made the standard slightly more stringent, thus changing not only "the measuring stick [but also] the target." *South Coast Air Quality Mgmt. Dist. v. EPA* ("South Coast"), 472 F.3d 882, 892 (D.C. Cir. 2006).

Section 172(e) of the Clean Air Act ("CAA") provides that when a NAAQS is "relaxed," the EPA is authorized to approve controls that are "not less stringent" than controls previously in effect. The CAA does not address a change to the NAAQS that results in a strengthened standard.

** The Honorable Marvin J. Garbis, Senior United States District Judge for the District of Maryland, sitting by designation.

This petition for review is a challenge by numerous environmental groups to the EPA's approval of a revision to California's State Implementation Plan ("SIP") that authorized the San Joaquin Valley Unified Air Pollution Control District ("Pollution Control District") to impose fees on mobile sources of pollution—primarily motor vehicles—as an alternative to the fees previously imposed on stationary sources of pollution pursuant to Section 185 of the CAA.

Respondent-Intervenors, including the Pollution Control District and industry groups, question petitioners' standing, arguing that because the alternative control is not only "not less stringent" than Section 185, but is in fact more stringent, the petitioners are not injured. The practical effect of the alternative control, however, is to shift costs from stationary sources to the multitude of vehicle owners, and this has an impact on the individuals petitioners represent that is sufficient to satisfy standing requirements. *See Natural Res. Def. Council v. EPA*, 643 F.3d 311, 319 (D.C. Cir. 2011) (recognizing that a plan that EPA might legitimately find equivalent to the Section 185 controls "could nonetheless be so meaningfully different as to cause cognizable Article III injury.").

The merits of the petitioners' challenge go to the same issues we addressed in *Natural Res. Def. Council v. EPA* ("NRDC"), 779 F.3d 1119 (9th Cir. 2015). We there held that the principles of Section 172(e) that address the relaxation of a

NAAQS should apply when a standard is strengthened. Therefore, so long as an alternative control is “not less stringent,” the principles of Section 172(e) are satisfied. We followed the D.C. Circuit in *South Coast* in recognizing that Section 185 is a “control” to which Section 172(e) applies. 472 F.3d at 903. The petitioners do not contend that the alternative control proposed by the Pollution Control District is “less stringent” than Section 185 controls.

We held in *NRDC* that the EPA reasonably interpreted Section 172(e) to authorize the EPA to approve alternative controls not less stringent than the Section 185 fee program. 779 F.3d at 1128. We must reach the same result here. Because the EPA concluded that the Pollution Control District’s revision to its portion of California’s SIP is not less stringent than the Section 185 controls, the EPA was authorized to approve it.

The petition for review is **DENIED**.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
Excerpt of Record	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Opening Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Answering Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
Other**	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	
TOTAL:				\$ <input type="text"/>	TOTAL:				\$ <input type="text"/>

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk