

A. EPA California Clean Car Rules Waiver

Last month, EPA approved a preemption waiver for the California Air Resources Board's (CARB's) 2012 Advanced Clean Car Program. The Program consists of four major components:

1. Amendments to CARB's light-duty tailpipe standards, entitled "LEV III."
2. Amendments to CARB's light-duty vehicle greenhouse gas (GHG) standards.
3. Amendments to CARB's existing Zero Emission Vehicle (ZEV) standards.
4. A new set of ZEV mandates for model year (MY) 2018 and beyond.

The Clean Air Act generally preempts state motor vehicle emission control laws but allows California to request a preemption waiver. In comments submitted and testimony presented to EPA, Regulatory Affairs opposed the granting of this preemption waiver, focusing on items that CARB intended to allow vehicle manufacturers to comply with the federal CAFE/GHG program in lieu of its program, just as it did with respect to its MY 2011-16 GHG standards. With respect to the MY 2018 and later ZEV rules, Regulatory Affairs argued that they were unnecessary and that they posed a significant risk of negative economic impacts on dealers. Importantly, both manufacturer trade associations also opposed the MY 2018 and later ZEV rules. Regulatory Affairs currently is reviewing potential challenges to EPA's waiver decision. Also, discussions are being had with the nine other CARB ZEV states about the downsides of adopting CARB's MY 2018 and later program.

Burner/Boilers and Non-Hazardous Secondary Materials

In December 2012, EPA issued revisions to its area source burner and boiler rules and to a related rule governing non-hazardous secondary material fuels. These regulatory amendments largely serve to reduce the burden and cost on the regulated community of rules EPA first issued in 2010. As finalized, 99 percent of all smaller commercial boilers of the size commonly used in dealerships are either categorically exempt or will be able to comply simply by performing routine maintenance and tune-ups. For example, dealership boilers that burn natural gas are not covered by this rule. Dealerships with boilers that burn oil, coal, or other fuels must comply initially with the rule's tune-up mandate by no later than February 21, 2014, and periodically thereafter.

In addition, consistent with testimony and comments submitted by Regulatory Affairs, EPA has amended its related rules governing solid waste fuels to exclude scrap tires subject to tire collection and recycling programs and used oil burned on-site in small burners and boilers. EPA's initial proposal would have limited the off-site management of used oil and waste tires to strictly-regulated solid waste incinerators, eliminating a wide range of burners that historically have recovered heat value from these common motor vehicle maintenance wastes. Regulatory Affairs argued that used motor oils and tires should be treated as "traditional fuels" exempt from the definition of "solid waste," pointing in support to a long history of carefully tailored regulation, to the sensitive nature of recycling markets, to the benefits of on-site recycling, to the need to maximize the collection of "do-it-yourselfer" (DIY) used oil, and to the fact that tires

should not be deemed "solid waste" if they are never "discarded." EPA's final rules do not restrict the burning of used oil collected from DIYs in space heaters, which is important given that the willingness to collect DIY oil is a key element of a dealership's eligibility for the federal used oil Superfund exemption. In most states, dealerships may burn the used oil they

