

California Diesel Engine Regulation – Enforcement resumed

As reported in Loss Prevention Circular No. 04-08 the Court of Appeals recently issued an opinion, agreeing with the district court's decision that CARB had exceeded its authority under the Clean Air Act in issuing and enforcing the regulations without obtaining the prior approval of the Environmental Protection Agency [EPA]. The Court of Appeals also reinstated the permanent injunction which had been issued by the district court. This meant that, as of 27 February 2008, CARB had to suspend enforcement of the regulations.

Immediately following this decision, CARB temporarily suspended enforcement of the regulations. However, in a Notice dated 10 March 2008, CARB announced that it would resume enforcement of the regulations with immediate effect. CARB further stated that it is authorised to continue to enforce the regulations as it intends to seek a rehearing of the Court's decision. According to CARB, this further Appeal means that the Court's earlier stay of the injunction remains in effect. The only vessels that will be exempted from the regulations will be those which departed their last port-of-call prior to 14 March 2008 and are currently on route to California.

If CARB does not succeed in its further Appeal, it may seek approval of the regulations from EPA. It has also been suggested that CARB may try to re-write the regulations as 'in-use' regulations for which approval of the EPA would not be necessary instead of 'emissions standards' which both courts found them to be and for which EPA approval is required.

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