

Cap and Trade Violates Californians' Civil and Environmental Rights

CRPE and our co-counsel at Communities for a Better Environment, while representing California environmental justice leaders and organizations, have achieved a victory that forces the California Air Resources Board to consider alternatives to the greenhouse gas pollution trading scheme called "Cap and Trade."

Cap and Trade failed in Congress but clings to survival only in California. In 2008, rather than requiring major greenhouse gas sources like refineries, power plants, and factories to reduce their emissions, the California Air Resources Board instead chose to make this Wall Street trading scheme the center piece of its plan to implement the Global Warming Solutions Act, also known as AB 32. Sixty-eight other regulations, from motor vehicle fuel standards to renewable energy mandates, account for the rest of the Board's plan to reduce California's greenhouse gases to 1990 levels by 2020.

In December 2010, the Air Resources Board voted to adopt the trading regulation and has set January 1, 2012 as the starting date for full operation of the scheme. Even though the Board has not finalized the regulation or even responded to public comments, the Board has already started implementing its program while Wall Street traders are buying and selling California carbon futures for 2012 delivery.

For years, environmental justice advocates have strongly maintained that trading pollution violates Californians' civil rights and deprives vulnerable communities of health benefits. The "Cap" part of the scheme limits the total amount of industrial greenhouse gas pollution and decreases over time. The "Trade" part of the scheme gives "allowances" – the right to pollute – to sources for free at first, and then later sources will buy them at auction. Allowances can be bought and sold like any other commodity, so the idea is that some sources will sell allowances while others will buy those allowances in order to continue their pollution. In addition, sources can buy rights to pollute called "offsets" from sources in California, elsewhere in the United States, or most anywhere in the world. For an excellent discussion of Cap and Trade, watch The Story of Cap and Trade by Annie Leonard at www.storyofstuff.com/capandtrade/

Make no mistake: environmental justice advocates want AB 32 to successfully achieve the 2020 goal. However, these leaders went to court to protect their communities and recently obtained a court order that requires the Board to consider other policy options.

Now, three years after the Board chose Cap and Trade, the Board must confront the failure of Cap and Trade as a viable policy. In Europe, Cap and Trade has foundered due to massive fraud and other market failures, and never delivered the promised pollution reductions, even as energy prices skyrocketed. In the United States, the Democrat-controlled Senate failed to pass Cap and Trade after President Obama took office. Nevertheless, the California Air Resources Board and some mainstream environmental groups dogmatically continues to push it forward.

The Board must also confront the fact that Cap and Trade violates Californians' civil and environmental rights. The communities of Richmond and Wilmington, host communities for refineries, exemplify the fact that in California your zip code determines your health. Study after study has shown that if you are Latino, African-American, or Asian-Pacific Islander, you are much more likely to live in a zip code that hosts California's major pollution facilities than if you are white. Dr. Henry Clark, president of the Richmond-based West County Toxics Coalition and one of the plaintiffs in the lawsuit, knows that Cap and Trade allows major polluters like Richmond's Chevron to avoid reducing its pollution – and thereby improving the health of his community – by buying pollution “offsets.” In other words, under Cap and Trade, Chevron could continue emitting the same amount of greenhouse gases and toxic air pollution while it buys credits from a tree planting operation in Chiapas, Mexico, or a clear-cut logger who replants the forest to cut again later, or an industrial-style dairy that captures methane from massive lagoons of cow waste. The Board's Cap and Trade policy choice deprives Henry and his neighbors of pollution reduction benefits in their community that would have occurred if Chevron reduced pollution on-site. Henry and his neighbors will also pay higher fuel and energy prices, all while subsidizing Cap and Trade with their health.

Jesse Marquez, leader of the Wilmington-based Coalition for a Safe Environment and another plaintiff, not only wants pollution reductions and health improvements, but wants his community to benefit from the jobs that can and should be developed here in California to reduce greenhouse gases. Instead of jobs in Wilmington that reduce pollution, Cap and Trade outsources those jobs to other states or even other countries when major polluting facilities buy offsets. California keeps the pollution and loses the jobs because Nichols and the Environmental Defense Fund want California to be a pilot project for a failed policy that is going nowhere on the national level. Instead of making this failed Wall Street approach the center of its efforts, California should be the epicenter of a green economic revolution and the jobs that come with it.

Henry and Jesse want AB 32 to succeed. That is why they and many other environmental justice advocates like them fought hard to save AB 32 from Proposition 23, the failed oil industry effort to kill AB 32. Communities United, a massive voter mobilization effort in communities like Henry's and Jesse's, turned the tide and delivered the votes that not only defeated Prop 23, but catapulted Governor Jerry Brown into office. Without the critical votes from these communities of color, Meg Whitman would be our governor and Prop 23 would be the law.

So don't let people mislead you into thinking that Henry and Jesse want to derail AB 32. Henry and Jesse want AB 32 to succeed and, just as AB 32 requires, they want it to protect the health of their communities while maximizing the benefits of the green economy it can create for all Californians.

The Air Resources Board's devotion to Cap and Trade places California's entire program to reduce greenhouse gases in great peril. On March 18th, a judge ruled that the Board's single-minded pursuit of Cap and Trade violated California's preeminent environmental law, the California Environmental Quality Act, because the Board failed to consider alternative policy choices. As a result, the judge ordered the Board to reconsider its choice of Cap and Trade,

evaluate other options, and suspend Cap and Trade and the other sixty-eight regulations that implement AB 32 until the Board complies. The judge ordered us to prepare the order – formerly called a writ of mandate – and submit it for him to sign.

We recently submitted that order, but included an alternative version which we urged him to sign instead. That alternative order would allow the “good” parts of AB 32 to proceed and only prevent the Board from implementing Cap and Trade until it considered alternatives to Cap and Trade. To date, the Judge has not decided which way he would like to proceed.