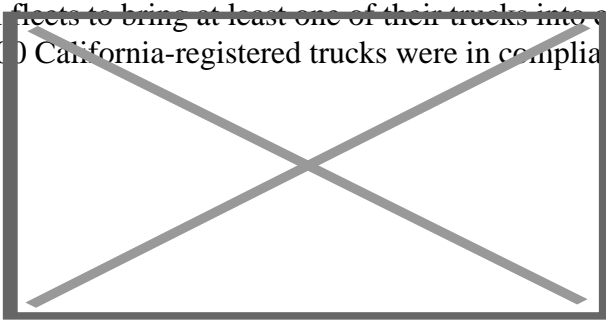


## Air Resources Board's Regulatory Relief For Small Truck Fleets Violated CEQA

A court of appeal has held that the California Air Resources Board violated CEQA when it issued a "regulatory advisory" notifying small trucking operations that they need not meet ARB's regulatory deadline for retrofitting their truck engines, and that the regulation would soon be relaxed. *John R. Lawson Rock & Oil, Inc. v. State Air Resources Board*, 5th Dist. Case No. F074003 (Jan. 31, 2018). The court rejected ARB's argument that it did not need to prepare the equivalent of an environmental impact report before issuing the regulatory advisory. In 2008, ARB adopted its Truck and Bus Regulation, requiring retrofits or upgrades to large diesel vehicles so that their air pollutant emissions would not exceed those of model year 2010 or newer trucks. January 1, 2014, was to be the deadline for small fleets to bring at least one of their trucks into compliance. By October 2013, the vast majority of the 260,000 California-registered trucks were in compliance; of those that still needed retrofits, most

were in small fleets.



In November 2013, ARB decided to ease

the rules applicable to small fleets, issuing a "regulatory advisory" that it would take no enforcement action against noncompliant truck operators before July 1, 2014, and that operators could rely on five regulatory changes ARB planned to adopt in 2014 that would make the Truck and Bus Regulation more lenient. In 2014, ARB approved the revised regulations without preparing an EIR-equivalent CEQA document under its certified regulatory program. ARB reasoned: "The amendments only change the mid-term timing of clean-up of the truck fleet and, therefore, do not result in any increase in emissions compared to existing environmental conditions." A truck operator that had complied with the regulation on time sued, alleging ARB had violated CEQA and the Administrative Procedures Act. Citing the California Supreme Court's decision in *Save Tara v. City of West Hollywood*, the court held that ARB violated CEQA when it approved the regulatory advisory in 2013, because it had publicly announced that the regulation would be changed and that its existing terms would not be enforced. In so doing, ARB significantly furthered its proposed 2014 regulatory changes in a manner that foreclosed alternatives or mitigation measures, including the alternative of not going forward with the project. Accordingly, CEQA compliance was required at that point. The court ruled that that ARB was required to prepare the equivalent of an EIR for its relaxation of the Truck and Bus Regulation, based on the difference between future conditions with and without its proposed regulatory change. The court cited CEQA's requirement that a lead agency discuss any inconsistencies between the proposed project and applicable plans, including the State Implementation Plan for air pollutant reductions and the state's plans for reductions in greenhouse gas emissions. Because there was a fair argument that ARB's action would conflict with these plans, at least in the short- to medium-term, an EIR-equivalent document was required. The decision in *Lawson* demonstrates both the difficulties ARB faces in conforming its regulatory decisionmaking to the demands of CEQA and the heightened attention courts pay to air quality and greenhouse gas impacts.

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