

CARB's Use of Little-Known Enforcement Tool Should be of Paramount Concern for LCFS Participants



The Low Carbon Fuel Standard (LCFS) Regulation has been embroiled in controversy since its inception. Despite the California Air Resources Board (CARB)'s continuing difficulty following California Environmental Quality Act mandates relating to the LCFS, CARB has maintained diligent enforcement of LCFS requirements. Through these enforcement efforts, CARB has revealed its intent to use California Health & Safety Code section 43027, a provision that contains high civil penalties for "willful or intentional" violations of the LCFS (up to \$250,000 per day), as well as \$50,000 per day for negligent violations and strict liability for all other violations, with penalties of \$35,000 per day.

The recent enforcement action of *CARB v. Paramount Petroleum Corporation* (Case No. BC643285, Superior Court of Los Angeles County) provides the example. There, CARB alleged that Paramount was liable for civil penalties of \$250,000 per day for willful and intentional violations of the LCFS under Health & Safety Code section 43027(a). The violations at issue were an allegedly intentional failure to submit accurate quarterly and annual reports, including an alleged failure to report the production of approximately 13 million gallons of gasoline blendstock during a single quarter. Paramount and CARB ultimately settled the matter for \$300,000 to be paid into the California Air Pollution Control Fund, with judgment entered on March 6, 2018.

Section 43027 provides CARB with heavy settlement leverage in certain LCFS enforcement actions. Given the LCFS' rigorous reporting requirements, and the ever-changing regulatory landscape (CARB is currently aiming to have LCFS amendments adopted and effective by January 1, 2019), regulated entities will need to be

May 11, 2018

AUTHORS

Brook Detterman

Associate

+1.617.419.2345

bdetterman@bdlaw.com



Jake Duginski

Associate

+1.415.262.4018

jduginski@bdlaw.com



ABOUT B&D

Beveridge & Diamond's over 100 lawyers in eight U.S. offices focus on environmental and natural resources law, litigation and alternative dispute resolution. We help clients around the world resolve critical environmental and sustainability issues relating to their products, facilities, and operations.

Learn more at bdlaw.com

diligent in their compliance efforts. Should an LCFS participant find themselves on the wrong end of section 43027, settlement with CARB may prove to be an uphill and expensive battle.

Beveridge & Diamond's [Air and Climate Change](#) practice group helps private and municipal clients navigate all aspects of compliance with Clean Air Act regulations for criteria pollutants, hazardous air pollutants, greenhouse gases, and permitting processes. For more information, please contact the authors.