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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DUMP TRUCK OWNERS ASSOC.,
Plaintiff,
v.
MARY D. NICHOLS, et al.,
Defendants.

NO. 2:11-CV-00384-MCE-GGH
MEMORANDUM AND ORDER

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Currently pending before the Court are Cross-Motions for Summary Judgment filed by Plaintiff California Dump Truck Owners Association ("Plaintiff"), Defendants Mary D. Nichols and James Goldstene (collectively, "ARB") and Intervenor-Defendant Natural Resources Defense Council, Inc. ("NRDC"), regarding Plaintiff's claim that California's Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles ("Truck and Bus Regulation"), 13 Cal. Code Reg. § 2025, is preempted by federal law. On May 31, 2012, this Court ordered further briefing on the impact a recent United States Environmental Protection Agency ("EPA") decision had this case.

1 Briefing is now complete, and, having reviewed the parties'
2 papers, the Court has determined oral argument is necessary.
3 Accordingly, this matter is set for hearing on **Thursday,**
4 **August 9, 2012, at 2:00 p.m.** in Courtroom 7. At the hearing, the
5 parties should be prepared to discuss whether:

6 (1) this Court can grant Plaintiff's requested
7 relief under the Supremacy Clause when the underlying
8 federal preemption provision expressly preempts only
9 state law and the challenged state law has now been
10 approved by a federal agency;

11 (2) this Court should undertake to harmonize a
12 federal statute and an arguably federalized state
13 regulation when Plaintiff has not alleged any conflict
14 between either a state and federal law or between two
15 federal laws; and

16 (3) assuming a Supremacy Clause claim can proceed
17 under the facts of this case, any judgment of this
18 Court granting Plaintiff's requested relief will
19 redress Plaintiff's actual injury given the EPA's
20 independent approval of the Truck and Bus Regulation as
21 a federally enforceable part of California's SIP (e.g.,
22 whether the EPA will be bound by a decision of this
23 Court holding the Truck and Bus Regulation is preempted
24 and, if not, whether the EPA could continue to pursue
25 enforcement of the requirements of the existing SIP
26 despite California's potential inability to enforce its
27 own Regulation).

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1 In the meantime, not later than **4:00 p.m. on Thursday August 2,**
2 **2012,** the parties are directed to file additional supplemental
3 briefing, not to exceed ten (10) pages, on the question of
4 whether the EPA is a necessary, and perhaps indispensable, party
5 to the instant dispute.

6 IT IS SO ORDERED.

7 Dated: July 18, 2012

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10 MORRISON C. ENGLAND, JR.
11 UNITED STATES DISTRICT JUDGE
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