CA Group Sues To Invalidate Cap-And-Trade

Jason Dearen, Associated Press

SAN FRANCISCO (AP) — California's largest business group filed a lawsuit Tuesday challenging the validity of the state's cap-and-trade program on the eve of the first pollution permit auction.

The California Chamber of Commerce's lawsuit filed in Sacramento Superior Court was not expected to stop Wednesday's planned cap-and-trade auction. The group was not seeking an injunction to halt the program immediately, said Denise Davis, a chamber spokeswoman.

The suit challenges the California Air Resources Board's authority as stated under the state's 2006 climate-change law, AB32, to sell the permits, called "allowances," for the purpose of generating revenue for the state. It is also challenging the sale of allowances as an illegal tax, arguing that taxes need a two-thirds vote by the Legislature.

"This action by an unelected state board to use regulatory statutes to raise tens of billions of dollars from taxpayers is unprecedented in our state's history," the chamber's complaint said.

The cap-and-trade plan is a central piece of AB32, a suite of regulations meant to reduce dramatically the state's emissions of heat-trapping gases.

The program places a limit, or cap, on emissions from individual polluters. Businesses are required to cut emissions to cap levels or buy allowances from other companies for each ton over the cap that is discharged annually. If a business were to cut emissions below the cap, it could profit by selling its extra allowances.

The first auction was being closely watched. It would essentially put a price on carbon emissions for the first time in state history. Only the European Union has implemented a similar plan in terms of scope.

For the first two years of the program, large industrial emitters will receive 90 percent of their allowances for free in a soft start meant to give companies time to reduce emissions through new technologies or other means. The cap, or number of allowances, will decline over time in an effort to drastically reduce greenhouse gas emissions by 2050.

The chamber's challenge is the latest lawsuit filed over the state's landmark global warming law, which so far has survived myriad legal challenges.

Stanley Young, a board spokesman, said officials were reviewing the suit and expected cap-and-trade to withstand any legal challenges.

"This market-based approach to cutting greenhouse emissions gives businesses the flexibility to best decide how to reduce their emissions. We are going forward with tomorrow's auction."

The board estimates that about $1 billion could be raised from the sale of allowances in fiscal year 2012-13. About 23 million allowances will be sold for 2013 emissions, and 39.5 million allowances are being pre-sold Wednesday for 2015 emissions.

There is some uncertainty about how, exactly, the money will be used. But California law dictates it go into a greenhouse gas reduction account, and any programs that use the funds be consistent with the goals of the state's climate change law.

Rick McNeil, an environmental attorney who represents businesses, said the timing of the lawsuit may raise a judge's eyebrows since the chamber has had six years in which to challenge the program.

"The chamber's arguments are not frivolous, but I don't know whether a judge is going to say, 'You should've brought this up before,'" McNeil said.

California officials hope a successful rollout of its cap-and-trade system will embolden other states to follow suit. Currently, a much less inclusive cap-and-trade scheme that covers only electricity producers is in effect for northeastern states.

When fully implemented, the state's program will cover a vast array of businesses from refineries and cement manufacturers to food processors.

The chamber argues that California's system goes too far and will alienate other states.

"Unless we adopt the most cost-effective way of reducing carbon emissions, other states will not follow us," Allan Zaremberg, the chamber's president and CEO, said in a statement. "The current ... proposal is the most costly way to implement AB32, and it will hurt consumers, the job climate, and the ability of businesses to expand here."