

The New York Times<https://nyti.ms/2yrQgV4>

U.S. Climate Change Policy: Made in California

A peculiar confluence of history, legal precedent and defiance has set the stage for a regulatory mutiny in California that would reverberate throughout the country.

By HIROKO TABUCHI SEPT. 27, 2017

SACRAMENTO — The Trump administration may appear to control climate policy in Washington, but the nation's most dynamic environmental regulator is here in California.

Mary D. Nichols, California's electric-car-driving, hoodie-wearing, 72-year-old air quality regulator, is pressing ahead with a far-reaching agenda of environmental and climate actions. She says she will not let the Trump administration stand in her way.

As chairwoman of the California Air Resources Board, or CARB, Ms. Nichols is the de facto enforcer of the single biggest step the United States has taken to combat the effects of climate change: standards adopted under the Obama administration that mandate a deep cut in emissions from the 190 million passenger cars on America's roads. Together, those vehicles regularly emit more earth-warming gases than the country's power plants.

At the request of the major automakers, the Environmental Protection Agency officially opened a review of those standards last month. The move was seen as the

8

ARTICLES REMAINING

But a peculiar confluence of history, legal precedent and regulatory defiance has given California unique authority to write its own air pollution rules. And because 12 other states now follow California's standards, the state finds itself in an extraordinary position to stage a regulatory mutiny of sorts — with much of the country's car market in tow.

"We're standing firm. We're prepared to sue. We're prepared to do what we need to do," Ms. Nichols said in a recent interview. "We aren't going anywhere."

At stake in the dispute between officials in Sacramento, the state capital, and Washington is a measure that the Obama administration estimated would eliminate as much as six billion metric tons of greenhouse gas emissions and save consumers more than \$1 trillion at the pump over the lifetime of the cars affected.

For now, Scott Pruitt, the administrator of the E.P.A., has said that he will not seek to revoke the federal waiver that allows California to set auto emissions standards — an action that would likely propel the issue to court. Automakers, similarly, have not publicly asked for such a move.

Still, the auto industry has hardly conceded defeat, several industry officials said. The car companies are urging California to negotiate a loosening of the current standards.

"We all have a common stake in working together," said Mitch Bainwol, president and chief executive of the Alliance of Automobile Manufacturers, which represents 12 major automakers in the United States. Automakers, he said, want "the certainty of achievable targets."

A Choking Haze

To understand why California has long blazed the trail for the rest of the country in air quality, gaze down from the hills above Turnbull Canyon at the Los Angeles haze.

nation's worst areas for ozone and particle pollution.

But California's smog was once much worse.

For much of the 20th century, swaths of Southern California were hit with smog outbreaks that turned the skies so dark that locals once mistook a particularly intense episode for a solar eclipse. Crops wilted; school events were canceled; Hollywood studios shut down their outdoor shoots.

The state moved quickly to regulate the obvious sources, like factory smoke stacks, steel mills and coal power plants. Yet the acrid smog persisted.

"You couldn't see the mountains around L.A. on smoggy days," said John R. Balmes, a physician, air pollution expert and a member of CARB's board, who has lived in the region for almost four decades. "People's eyes would burn. They'd have headaches. They'd have problems breathing."

It took Arie J. Haagen-Smit, a Dutch biochemist at the California Institute of Technology, to link the smog to auto emissions. An avid gardener, he became alarmed in the late 1940s by the discolored leaves and flowers in his garden. He soon tracked down the culprit: the largely invisible exhaust from motor vehicles or factories was reacting with sunlight, forming ozone, or smog.

Major automakers disputed the chemist's findings. But a determined Dr. Haagen-Smit pressed his case, recreating smog in flasks to release at public hearings — proving, beyond a doubt, that cars were the source. That fervor elevated him to a job as the first chairman of the state's air resources board, set up by then Gov. Ronald Reagan in 1967.

When Congress established the E.P.A. in 1970 and passed the Clean Air Act later that year, California was granted a waiver to follow air pollution rules it had already established.

Automakers Cut a Deal

8

ARTICLES REMAINING

1

At a March meeting of the CARB board — where she and her fellow board members resolved to push ahead with stricter emissions rules for cars and trucks, with or without the federal government — she stared down the auto industry representatives present.

No matter that Ms. Nichols, a former environmental lawyer and Wall Street Journal reporter who is known to keep a grueling schedule shuttling between CARB's Sacramento headquarters and her Los Angeles home, was nursing a cold and “could barely croak.”

“What were you thinking when you threw yourselves upon the mercy of the Trump administration to try to solve your problems?” she scolded. “Let’s take action today, and let’s move on.”

Ms. Nichols is on her second tour as chairwoman of the air resources board; the current California governor, Jerry Brown, appointed her in 1979, during his first stint in office. She was again tapped to head the board in 2007, when Gov. Arnold Schwarzenegger asked her to return.

A clean-car evangelist, she is often seen driving around Los Angeles, where she lives, in her zero-emissions Honda Fit in “electric violet blue.” (She recently leased a second vehicle, a Toyota Mirai, a zero-emissions hydrogen fuel cell car, also in blue.)

She initially lauded automakers for supporting an effort, started by President Obama in 2009, to harmonize a mishmash of greenhouse gas emissions and fuel economy standards set by the E.P.A., the National Highway Traffic Safety Administration and CARB. Having taken almost \$80 billion in bailout money, General Motors and Chrysler, especially, were in no position to resist.

Still, the automakers soon balked at the ambitious pace of fuel efficiency improvements under the program, which requires automakers to progressively raise the fuel economy of their cars to an average of 54.5 miles per gallon by 2025, nearly double the average in 2012. That comes to about 36 miles per gallon in real-world driving.

hybrid and electric cars, and to improve the fuel efficiency of their conventional fleets. Automakers also argued that meeting that target would be prohibitively costly, forcing them to raise car prices or to make more battery-powered vehicles than Americans want to buy.

In a compromise, the automakers agreed to the program, provided that the standards for the later years — 2022-25 — would be subject to a midterm review.

That review was in full swing when Mr. Trump won the presidency in late 2016. Just a day after his electoral victory, the Auto Alliance reached out to the president-elect, urging him to rework the standards, calling them a “substantial challenge” for the auto industry.

In a similarly swift maneuver, the Obama administration cut short the review and finalized the rules, calling them “feasible, practical and appropriate,” just before leaving office.

The automakers doubled down. In a Feb. 21 letter, the auto industry alliance implored Mr. Pruitt, the E.P.A. head, to overturn President Obama’s 11th-hour decision. The standards, the alliance argued, “threaten to depress an industry that can ill afford spiraling regulatory costs.”

The E.P.A. has reversed President Obama’s decision. Last month, the agency officially called for comments on standards for model years 2021-25, widening the review’s scope. The National Highway Traffic Safety Administration, which focuses mostly on auto safety, not emissions, is expected to lead the review.

“We’re going to work on the CAFE standards so you can make cars in America again,” Mr. Trump said in a speech in Detroit this year, referring to the Corporate Average Fuel Economy standards, which were first put in place in 1975.

For a meaningful reprieve, however, automakers need Ms. Nichols on board. If CARB does not sign onto the reopened review, the automakers face the prospect of separate rules for California and its follower states — a coalition that covers more

Ms. Nichols is not budging. At the first public hearing on the reopened midterm review last week, CARB's emissions compliance chief, Annette Hebert, threatened to abandon the review if the E.P.A. took steps to weaken the emissions standards.

Should the agency try to curtail California's ability to set its own rules — by challenging its Clean Air Act waiver, for example — the fight will more than likely end in court, said Kevin Poloncarz, a San Francisco lawyer focusing on air and climate change law.

"Pulling that waiver would be like declaring an all-out war on California," he said.

Accusations of Overreach

Even in California, some critics challenge the expansive powers of a board of unelected officials with the authority to set environmental policy. All but two of the board's 14 voting members are appointed by the governor, and today include a doctor, an almond farmer and a paint company executive.

Over the years, CARB has expanded its reach, regulating products as diverse as lawn mowers and bulldozers, air fresheners, paint thinners and even hair and bug spray. It has sent inspectors to Tokyo and Stuttgart, Germany, to monitor the testing of cars manufactured overseas. And it oversees a system of air-quality management districts across California that issue and enforce their own local regulations.

The agency is insulated even from state budgetary and legislative pressures. Its \$956 million budget comes from user fees, like permits paid by polluters or the fees paid by car owners for smog certification, instead of from the state's general fund.

Accusations of overreach exploded in 2015, when Mr. Brown made a push to require a 50 percent reduction in petroleum use in motor vehicles by 2030, with CARB managing the reduction. Republicans and even some Democrats balked at the plan, and an oil industry campaign warned that the law would vastly expand CARB's authority and could even lead to gas rationing.

allowing the state Senate and Assembly to appoint one member each to the CARB board, enhancing lawmakers' control over the agency.

"What worries me is that they have unrestrained power," said Mike Morrell, a Republican state senator who is one of CARB's toughest critics. "They think they're the masters of the universe."

A Path to a Cleaner Future

CARB's Arie Jan Haagen-Smit Laboratory in El Monte, Calif., is a reminder of the resources at the agency's command.

At the lab, 120 technicians measure emissions on new engines before they can be used in cars sold in California. They also pull cars from the road to make sure older models stay compliant. A failed test can delay certification, or in the case of an older model, an expensive recall.

Engineers at the lab helped expose Volkswagen's diesel emissions cheating, a scandal that affected about 600,000 cars in the United States. The lab is now strengthening its testing, and will move to a new state-of-the-art new facility in Riverside by 2020.

Even as CARB remains steadfast, however, Ms. Nichols is eager to persuade automakers that they ultimately stand to benefit from stricter fuel economy rules.

This year, Britain and France proposed to end the sale of new gasoline and diesel cars by 2040. Volvo recently said that the models it introduces starting in 2019 will be either hybrids or powered solely by batteries.

Without an aggressive shift toward zero- and low-emissions cars, the American auto industry risks becoming a global laggard, Ms. Nichols said. It is no time, she said, to be meddling with standards already in place.

"We want to start conversations about post-2025," Ms. Nichols said. "That's

A version of this article appears in print on September 27, 2017, on Page A1 of the New York edition with the headline: U.S. Climate Change Policy: Made in California.

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8

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