

Air Quality & Climate Change

California's air quality requirements and the State's pioneering efforts in reducing greenhouse gas emissions are constantly evolving and present many challenges and opportunities for California businesses of all sizes. These businesses turn to Downey Brand to lead them through California's stringent air quality regulations and complex greenhouse gas reduction requirements.

Our air quality attorneys stay current on the latest legal developments and provide cost-efficient environmental compliance solutions for our wide range of clients. Whether it is an energy trader participating in the Cap-and-Trade program, a food processor permitting a new or expanded facility, an oil and gas developer analyzing their carbon impact under the California Environmental Quality Act (CEQA), or a manufacturing facility trying to figure out how to maintain compliance with Clean Air Act (CAA) permits and reporting obligations, Downey Brand's air quality attorneys can provide strategic, practical counsel.

Businesses operating in California face some of the nation's most stringent air quality requirements and these requirements may vary significantly based on location of operations. Our attorneys have strong knowledge of the myriad of federal, state and air district regulations and the practical experience to guide clients through permitting, compliance, and reporting obligations. We work with US EPA and California Air Districts to ensure our client's operating needs are met during the rulemaking process. We assist clients in obtaining air permits required at new facilities and major expansions, including New Source Review (NSR), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants. Our air quality lawyers advise clients on reporting requirements and compliance certifications, including Title V, and defend clients when being investigated by state or federal agencies.

Assembly Bill 32 (commonly referred to as AB 32) has charged the California Air Resources Board (CARB) with reducing greenhouse gas emissions. CARB's actions to meet this challenge have resulted in compliance obligations that affect almost all industries in California. These obligations include reporting GHG emissions, participation in the Cap-and-Trade program, and restrictions on emissions of short-lived climate pollutants including methane. Our main office is located in Sacramento, just blocks from CARB headquarters and the other state agencies that are developing California's greenhouse gas law and policy. Our close proximity to these agencies has given us the unique ability to get to know the key climate change regulators on a personal level. These relationships have helped us address our clients' climate change related issues as quickly and accurately as possible.

Our air quality lawyers have been involved in climate change regulation from the start, participating in the development of regulations to establish California's greenhouse gas reporting system and the Cap-and Trade program. We have also participated in regulations impacting municipal utilities by the California Energy

Commission, and in the statewide rules requiring the increased use of renewable energy resources as a source of power. Our attorneys are keenly aware of the risk that over-regulation of greenhouse gas emissions may cause companies to leave California (also known as emissions “leakage”). To that end, we have helped clients reach solutions with regulators to ensure that California remains on track for its greenhouse gas reduction goals, while ensuring that business operations remain feasible. We advocate on behalf of clients in proceedings to establish who will get rebates from their electric utility. We also obtained a favorable decision that set statewide precedent for how greenhouse gas impacts from gas fired power plants are analyzed in California.

Clients also turn to Downey Brand’s environmental attorneys for advice on addressing greenhouse gas impacts within the construct of CEQA. Where significance standards have not already been set under CEQA, we help develop and apply such standards in a way that is both acceptable to the government and feasible for our clients. We work with our clients and consultants to develop defensible greenhouse gas impact analyses for our clients’ projects. Where necessary, we work to create feasible mitigation strategies to ensure that development is both financially viable and environmentally responsible. We represent our clients in court proceedings to defend appropriate greenhouse gas analyses, and to challenge inappropriate analyses, all with the goal of advancing our clients’ interests.

Our clients include power plant developers, oil and gas developers, transportation companies, food processors, cement manufacturers, aggregate mines, residential developers, and many other types of companies.

Selected Experience

- Assisted clients with developing legally-defensible greenhouse gas significance thresholds under the California Environmental Quality Act (CEQA).
- Advised large industrial and commercial operations included in phase one implementation of the greenhouse gas reporting regulations on their obligations and potential upcoming liability for greenhouse gas emissions. Following implementation of Cap-and-Trade, advised energy clients on the mechanics of and obligations under Cap-and Trade.
- Developed an overarching greenhouse gas emissions analysis and mitigation strategy for an oil and gas extraction project.
- Advised developers regarding compliance with federal greenhouse gas requirements under the Clean Air Act. Represented a large retail service provider in the comprehensive greenhouse gas reduction proceedings in California under Assembly Bill 32 before the California Air Resources Board, California Energy Commission and California Public Utilities Commission.
- Advised clients regarding their ability to participate in California’s existing greenhouse gas emission offset development protocols.
- Worked with CARB to advocate for the development of new statewide greenhouse gas emission offset development protocols to provide new business opportunities for agricultural clients.