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## Summary of Litigation Strategy Against CARB Advanced Clean Fleets (ACF) Rule October 2023

The Western States Trucking Association (WSTA) is a non-profit organization with interstate and in-state motor carrier members that are impacted by the ACT/ACF Regulations<sup>1</sup>, which is an official state regulation with an October 1, 2023 effective date. This document summarizes the two lawsuits filed by WSTA to date, outlines our approach to litigation and extends an invitation to like-minded organizations to support our early actions.

The ACT/ACF Regulations damage the trucking industry in general, and WSTA members specifically, by imposing a new unfunded mandate that requires the forced turnover of trucks recently replaced to comply with the last CARB mandate (i.e. "Statewide Truck & Bus Regulation"). Affected fleet owners are now forced to transition to battery electric or hydrogen trucks that are not currently a "one-to-one" replacement for internal combustion engines and have enormous upfront costs. While zero emission trucks could potentially save fleet owners the cost of petroleum diesel it is very clear that the massive additional truck and infrastructure costs are not fully offset by government funding programs. The environmental and economic analysis performed by CARB is lacking. Additionally, CARB continues to request and has received federal government approval to enforce prior costly regulations. WSTA is challenging CARB and the US Environmental Protection Agency (EPA) in federal and state courts to rescind both the ACT and the ACF and ensure that it cannot happen again without complying with federal and state laws.

### Pre-Litigation Summary

WSTA has participated in every regulatory proceeding in this subject area since the initial workshop conducted by CARB in 2016. In the summer of 2022, WSTA retained

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<sup>1</sup> What is the Difference Between the ACF and ACT? Navigating all the various new CARB rules can be confusing for anyone, especially with the use of so many similar acronyms for each regulation, instead of the actual rule name. The ACF stands for Advanced Clean Fleets and ACT is the Advanced Clean Trucks regulation. To be direct, the rules are inextricably linked together as part of CARB's overall efforts to eliminate all combustion engine technology.

The ACF was passed by CARB in 2023 and is basically a mandate that fleets begin to purchase only ZEV's beginning as early as 2024 (next year). Regulated fleets are those with 50 or more trucks (or \$50 mil or more in annual revenue even if only operating one truck in CA) to begin reporting to CARB in 2024 and choosing their pathway to converting their fleets to ZEV's, and requiring drayage trucks in 2023 to register their existing legacy trucks (diesels) with CARB and beginning in 2024 only ZEV's can be added to a drayage fleet.

The ACT is a manufacturers sales mandate of ZEV only trucks that CARB passed in 2020. The truck manufacturers must make an increasing percentage of the trucks they offer for sale in 2024 and forward in an electric or hydrogen configuration.

CARB continues to be an agency that believes that it is immune from basic economic principles because it is forcing the supply of ZEVs and then forcing the purchase of those ZEVs. Stand by as CARB plans to remove the 50-truck/\$50 million threshold by 2028, so fleets of 49 to one truck would face a purchase mandate. Our efforts to monitor and stop this effort will be critical.

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legal counsel that has defeated CARB on two prior occasions and obligated in excess of \$100,000 to ensure that the Association has legal standing as well as document CARB's failure to produce a workable state regulation. WSTA's Executive Staff, General Counsel and CARB Consultants have all invested their time and resources on preparing for litigation. The WSTA Legal Fund was augmented by contributions from several aligned associations as well as more than 15 member companies. The Fund has been depleted and will now need to be replenished to carry on with the litigation noted below.

### **Federal Litigation Summary**

*Western States Trucking Association, Inc., et al v. EPA, et al* filed on June 5, 2023 in the U.S. Court of Appeals, D.C. Circuit In early 2023, EPA held hearings on three CARB "waiver" requests that would allow CARB to enforce electric truck manufacturing mandates ("ACT"), Emissions Warranty and Airport Shuttle Bus operator requirements to buy only ZEVs. EPA granted the waivers. WSTA took rapid action to file the lawsuit. Our opening brief is due in November of this year and the briefing will be completed in April 2024. Thereafter, we will have oral argument on a schedule developed by the court.

### **State Litigation Summary**

*Western States Trucking Association vs. Steven Cliff / CEQA* filed on July 21, 2023 in Fresno County Superior Court. The suit requests a temporary and permanent injunction that would halt the implementation of ACF. The causes of action relate to 1) inadequate CEQA analysis; 2) improper cost analysis; 3) lack of scientific review and 4) procedural violations by removing documents from the public record. An initial hearing is scheduled for next month. See the References page to access court records.

### **Statement**

WSTA believes that CARB's regulatory approach to both the ACT and the ACF are heavy-handed and that BEVs are being mandated as a one-size-fits-all solution to clean air. Over the many years that WSTA participated in the Regulation development and we requested that CARB do the science and produce an unbiased life-cycle analysis of the various lower carbon liquid and gaseous fuels and set a reasonable pathway for fleet owners to economically transition to lower carbon choices. For example, WSTA requested that CARB analyze the benefits of using renewable natural gas and they essentially brushed off our suggestion by noting that "CARB has fulfilled its statutory obligations by conducting a full and robust EA, which included evaluations of upstream fuel cycle emissions, lifecycle emissions, low-carbon fuels, battery electric vehicle and battery production, and electricity generation."<sup>2</sup> WSTA continues to promote technology that is economically sustainable for our members to deliver the goods and services that separate the US from developing countries. WSTA envisions that this litigation strategy will stall the Battery Electric Vehicle only strategy (that does not work for our members) and promote restructuring clean air rules.

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<sup>2</sup> <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/acf22/ac/acffsor.pdf> (at pp. 107-108).

### **Call to Action**

As a non-profit association, WSTA must be fiscally responsible and accountable to the dues paying members in matters that critically affect their businesses. Without the support of the companies that have funded our past efforts we could not have reached this stage of having two strong legal challenges going simultaneously. A budget and request for contributions appears in the following pages. Your checks should be made payable to the "WSTA Legal Fund" and mailed to the Upland office to the attention of Dianna Webster.

WSTA Executive Director Lee Brown can be reached via electronic mail at [LeeBrown@westrk.org](mailto:LeeBrown@westrk.org) or by phone at (909) 992-6156.

WSTA CARB Consultant Sean Edgar can be reached via electronic mail at [Sean@CleanFleets.net](mailto:Sean@CleanFleets.net) or by phone at (916) 718-7050.

## REFERENCE DOCUMENTS

### CARB ACF Announcement of Effective Date of October 1, 2023

The state regulatory process was completed and CARB's notice is found at:

<https://ww2.arb.ca.gov/rulemaking/2022/acf2022>

### CARB ACF Regulatory Record and Fact Sheets

The resources page for information on the Regulation is found at:

<https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets/advanced-clean-fleets-fact-sheets>

### Federal Litigation

***Western States Trucking Association, Inc., et al v. EPA, et al***

(<https://dockets.justia.com/docket/circuit-courts/cadc/23-1143>)

### State Litigation

***Western States Trucking Association vs. CARB & Steven Cliff, Executive Officer***

<https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/DocumentViewer/Index/0BEAF39A0B2F82848376899834BD522949033D3C35FDA2152D4A7A9BD73FFE5ABE1AB2B067486736F5B36B4F6A701C2B01AD359B907E6DC2B0BDE6BD212C1ED0B890075D661DAC028EFF533FD133FCAB?caseNum=23CECG02964&docType=Civil%20Document&docName=7-21->

[23%20Petition%20for%20Writ%20of%20Mandate&eventName=Petition%20%20-%20Writ%20of%20Mandate&docTypeId=2&isVersionId=False&p=0](https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/DocumentViewer/Index/0BEAF39A0B2F82848376899834BD522949033D3C35FDA2152D4A7A9BD73FFE5ABE1AB2B067486736F5B36B4F6A701C2B01AD359B907E6DC2B0BDE6BD212C1ED0B890075D661DAC028EFF533FD133FCAB?caseNum=23CECG02964&docType=Civil%20Document&docName=7-21-23%20Petition%20for%20Writ%20of%20Mandate&eventName=Petition%20%20-%20Writ%20of%20Mandate&docTypeId=2&isVersionId=False&p=0)

### Formal Comments Filed by WSTA During Regulatory Process

***Joint Comment Letter (WSTA & CTA):***

*Established the Environmental Assessment/CEQA and Economic Analysis are Incomplete and in Violation of State Regulatory Requirements*

<https://www.arb.ca.gov/lists/com-attach/313-acf2022-BmUFbFY6BDoHZFQ6.pdf>

<https://www.arb.ca.gov/lists/com-attach/321-acf2022-VTZQOVY6BziRMgln.pdf>

***Supplemental Comments (WSTA):***

*Questioned the State's Legal Authority, Noted the Small Fleet Impacts and Requested Analysis of a CNG Option for Compliance*

<https://www.arb.ca.gov/lists/com-attach/360-acf2022-UCdUIVInUWNWDwd0.pdf>

## **LEGAL FUND BUDGET & SUGGESTED LEGAL FUND CONTRIBUTION REQUEST**

WSTA expects ACF-related litigation to exceed \$200,000 in 2023-2025. The requested contribution from supporting parties appears below.

| Entity Type   | Contribution                         |
|---|--------------------------------------|
| Small Members & Businesses                                | Whatever You Can Afford – Thank You! |
| Associate Members (no trucks)                             | \$2,500                              |
| Fleet Owner (<50 trucks or \$50 million)                  | \$5,000                              |
| Fleet Owner (>50 trucks or >\$50 million annual revenues) | \$10,000                             |
| Trade Association   | \$20,000                             |

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