

## **Potential Litigation Against California Air Quality Management District Rules**

- **ISSUE: The South Coast Air Quality Management District (“SCAQMD”) recently adopted “zero NOx” appliance rules that effectively ban certain gas appliances.**
  - In California, local agencies called Air Quality Management Districts are responsible for adopting and enforcing rules relating to air quality standards.
    - The AQMDs adopt and enforce rules to attain and maintain compliance with national ambient air quality standards set by U.S. EPA. The rules are then submitted (via CARB) to U.S. EPA for approval as part of a State Implementation plan.
    - The AQMD rules remain independently enforceable in California.
  - On June 7, 2024, the SCAQMD adopted [PAR 1146.2](#), which set “zero-NOx” standards for certain natural gas appliances. Propane is excluded.
  - The appliances appear to include commercial and residential. The rule creates Unit I and Unit II categories. Both Unit I and Unit II cover water heaters, boilers, and process heaters (which includes pool heaters). Unit I are < 400,000 Btu/hr; Unit II are from 400,000 to 2 million Btu/hr.
    - Par 1146.2 applies to both new buildings *and* existing buildings, although on different timelines and using an age-of-unit metric for replacements.
  - The Bay Area AQMD also adopted “zero-NOx” appliance rules for furnaces, boilers, and certain gas water heaters. And CARB is considering similar rules.
- **CLAIM: The complaint would bring a single claim that the SCAQMD zero-NOx appliance rules are preempted by the Energy Policy and Conservation Act (“EPCA”).**
  - The zero-NOx rules operate as an effective ban on gas appliances and therefore are preempted by the federal EPCA and unenforceable. 42 U.S.C. § 6297(c).
    - Recent 9<sup>th</sup> Circuit precedent holds that local laws that effectively ban the use of covered gas appliances concern their energy use and are preempted. *Cal. Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. Jan. 2, 2024).
    - The rules would not qualify for an exception to preemption.
- **LOGISTICS:**
  - An EPCA challenge could be brought in federal district court for the Central District of California against the SCAQMD.
  - The suit would seek declaratory and injunctive relief.
  - Anticipated coalition of plaintiffs and/or funders.