



Air Quality

Kaplan Kirsch & Rockwell has extensive experience with the spectrum of Clean Air Act and state regulatory programs, including mobile source emission regulations, stationary source permitting, greenhouse gas regulation, conformity, air toxics, air quality planning, and enforcement actions. Our technical understanding of these air quality regulations enables us to provide targeted and strategic advice to clients to work through complex air quality challenges, as well as effective representation before agencies and courts. We have represented a wide range of industries, including airports, gas-fired power plants, cogeneration facilities, automotive and trucking, aircraft, other non-road sources, power plants, natural gas facilities, oil refineries, chemical plants, mining facilities, and others. Over the last decade, our attorneys have taken lead roles in advising clients on many of the most important air quality, energy and climate issues in Colorado as well as advising clients on highly consequential national matters. Our team also has extensive experience with the unique jurisdictional and regulatory issues associated with air quality regulation in Indian Country.

Representative Experience

Conformity and Permitting for Airport, Energy, and Infrastructure Projects

- Counseled airports on complex air quality challenges by proposed airfield, terminal, and ground access projects and proposed operational rules at Los Angeles, Las Vegas, Philadelphia, Chicago, Seattle, Naples, Palm Beach, and other airports; addressed issues regarding criteria and air toxic emissions from non-road sources and stationary sources under permitting regulations, the Clean Air Act's conformity regulations, National Environmental Protection Act (NEPA), and the California Environmental Quality Act (CEQA).
- Advised airports and local entities on the extent to which the federal Clean Air Act or other requirements may preempt airport or other local air quality initiatives.
- Addressed complicated transportation conformity, NEPA, and air toxics issues associated with highway development in states including California, Colorado, Illinois, Indiana, Nevada, and Pennsylvania.
- Advised clients on a range of stationary source permit requirements for gas-fired power plants, cogeneration facilities, heating and cooling plants, fuel facilities, ethanol plants, and similar infrastructure in California, Colorado, Illinois, Pennsylvania, and other states.
- Addressed general conformity and NEPA air quality analyses in a range of public lands, water project, and other developments.

State Air & Climate Policies

- Representing Colorado Communities for Climate Action (CC4CA) in Colorado Air Quality Control Commission (AQCC) rulemaking hearing regarding implementation of regional haze requirements.
- Firm attorney represented Environmental Defense Fund in numerous state implementation plan (SIP) actions and rulemakings for the 2008 and 2015 ozone standards and for regional haze, including successful defense of legal challenge in state court to regional haze rules.
- Representing clients such as Environmental Defense Fund and CC4CA in numerous precedent-setting AQCC rulemaking hearings addressing air quality issues from oil and gas activities in Colorado. For example, Firm attorney represented Environmental Defense Fund in hearings resulting in the first statewide rules addressing methane (which became the model for federal regulation), advanced leak detection and repair (LDAR) requirements for conventional pollution from oil and gas sources, an innovate intensity-based regulation for the oil and gas transmission sector, and the first state regulation to adopt the national control techniques guidelines (CTGs) for the oil and gas sector.



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- Represented coalition of non-profits and CC4CA in AQCC two rulemaking proceedings related to vehicle emission standards in Colorado, one to adopt low-emission vehicle (LEV) standards and another to adopt zero-emission vehicle (ZEV) standards.
- Represented a coalition of state and federal environmental organizations in administrative hearings before the AQCC and Colorado Public Utilities Commission (PUC) to implement the Clean Air Clean Jobs Act, which transformed the regional haze program in Colorado and became a model for the federal Clean Power Plan.
- Advised confidential client regarding implementation of the federal Clean Power Plan in multiple states.
- Advised a coalition of advocates for market mechanisms on the legislative reauthorization of California's AB 32, the California Global Warming Solutions Act, which requires California to reduce its greenhouse gas emissions to 1990 levels by 2020.
- Represented stakeholders in a successful effort to amend California's cap-and-trade regulation to authorize participation by tribal governments.
- Secured a substantial increase in GHG allowance allocation for efficient building product manufacturers under California's AB 32.

Compliance and Enforcement

- Advised public and private sector clients in enforcement and compliance matters arising under air quality regulations, including:
 - Alleged Clean Air Act Title V permit condition violations at a major international airport.
 - Alleged false claims under the False Claims Act stemming from claimed Title V deficiencies at three major international airports.
 - Alleged installation of mobile source "defeat devices."
 - Alleged violations of Prevention of Significant Deterioration permit requirements at natural gas treatment plants.
 - Alleged violations of California's Truck and Bus Rule
 - Alleged non-compliance with California's greenhouse gas cap-and-trade program
 - Negotiation of an amendment to a New Source Review Consent Decree on behalf of the purchaser of an oil refinery.
 - Compliance with risk management, safety, and permit requirements for metals and chemical plants.
 - Alleged Prevention of Significant Deterioration and New Source Review permit violations by large Midwestern power producers.

Emissions Offset Project Development

- Firm attorney advised on the development of an Alaska Native Village Corporation forestry project generating nearly 2 million offsets for the California carbon market and protecting old-growth forest and important salmon habitat adjacent to Kenai Fjords National Park.
- Firm attorney advised on the structure and development of the first tribal forestry offset project for the California carbon market. The project has generated more than 500,000 offsets used to fund the tribe's forestry and conservation programs.
- Firm attorney advised on the development of a 200,000-acre forestry offset project in New Mexico. The project is projected to generate nearly 4 million offsets for the California market, supporting fire risk reduction and rural economic development.
- Firm attorney advised on the development of a Northern California tribal forestry offset project valued at nearly \$20 million. The project supports re-acquisition of ancestral lands and protection of culturally-important watersheds.



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- Firm attorney advised developer of \$400 million Bay Area resort project on the purchase and retirement of NOx credits.
- Firm attorney successfully defended one of California's largest olive oil producers against enforcement action alleging failure to retire sufficient NOx and carbon credits.

Representative Cases

Garfield County v. Air Quality Control Commission (AQCC), No. 2020CV30997 (Denver Dist. Ct. 2020); *Weld County v. Ryan*, No. 2020CV31022 (Denver Dist. Ct. 2020) (representing environmental nonprofit organizations as intervenors in defense of regulations to reduce air pollution emissions from oil and gas operations in Colorado; continuing to represent same organizations to defend regulations in appellate court (Colorado Court of Appeals Case No. 2020CA1445))

Colorado Automobile Dealers Association v. Colorado Department of Public Health & Environment, No. 2019CV30343 (Denver Dist. Ct. 2019) (representing coalition of environmental nonprofit organizations as intervenors in defense of low-emission vehicle (LEV) standards; representing same coalition to defend regulations in appellate court (Colorado Court of Appeals Case No. 2019CA1386))

Freedom to Drive v. AQCC, No. 2019CV34156 (Denver Dist. Ct. filed 2019) (representing coalition of environmental nonprofit organizations as intervenors in defense of zero-emission vehicle (ZEV) standards)

EELI v. Epel, 793 F.3d 1169 (10th Cir. 2015) (addressed air quality impacts of coal and renewable power generation in discovery for Commerce Clause litigation)

Colorado Mining Association v. Urbina, 318 P.3d 562 (Colo. App. 2013) (represented a coalition of nonprofit organizations that successfully defended the Regional Haze State Implementation Plan and Clean Air Clean Jobs Act implementation, including before the district court, court of appeals, and the Colorado Supreme Court)

Tinicum Township v. U.S. Dept. of Transp., 685 F. 3d 288 (3d Cir. 2012) (successfully defended air quality and conformity analyses for airport development)