

PARTICIPATING IN ADMINISTRATIVE RULEMAKING PROCEEDINGS AND CHALLENGES ON BEHALF OF BUSINESSES

Environmental regulations are complex and have significant, and sometimes far-reaching, impacts (both financial and logistic) on the regulated community. Sometimes it is in the interest of the impacted industries to challenge the legality of such regulations, or participate in the drafting process during the comment period. A sophisticated type of environmental litigation involves rulemaking proceedings, including petitions for review of final agency regulations. Parties that challenge government regulations, however, face an uphill battle and need to start to build the administrative record early, during the drafting phase of the rulemaking process.

The Process of Rulemaking

Typically, for federal environmental regulations, EPA or another agency will issue a Notice of Proposed Rulemaking (NPRM). The proposal is then listed in the Federal Register (FR) so that members of the public can send their comments to the agency. The agency will then revise the regulation accordingly and issue a final rule and publish it in the Federal Code of Regulations.

For state environmental rulemaking, for example in California, the Office of Administrative Law established that any state agency regulation must be subject to public notice and comment prior to final rulemaking. "Regulation" is defined by the California law to include "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

Our Experience as California Environmental Regulatory Lawyers

At the core of our rulemaking and legislative practice is our expertise in substantive environmental issues. Our team of California environmental regulatory lawyers has real experience under virtually all of the environmental laws in the country. We use this expertise directly in our rulemaking and legislative practice. Our lawyers have dealt with issues of standing, ripeness, finality of agency action, and exhaustion of administrative remedies on behalf of our clients. Our rulemaking and legislative practice has contributed comments during the public comment period and we have challenged agency regulations and actions under the APA. We have represented members of the regulated community in promulgation of environmental regulations by various government agencies, from the EPA down to local agencies with environmental responsibility. This work includes drafting and commenting on proposed regulations, and litigating challenges to adopted regulations.

Our California environmental regulatory lawyers have significant experience in many states working with industry groups to provide comments during public comment periods in the rulemaking process to build the administrative record for future challenges and to mold the regulations to be effective while not financially destroying business. Our experience as active participants in environmental regulation formation specifically includes: California's Safer Consumer Products Act (one of the first of the "Green Chemistry Initiatives"), Washington's Children's Safe Products Act, the draft Model National Green Chemistry regulation, California's Rigid Plastic Packaging Container Act, Maine's Toxic Chemicals in Children's Products Act, Minnesota's Toxic Free Kids Act, New York's Electronic Equipment Recycling and Reuse Act, the Electronic Equipment Recycling and Disposal Law of Puerto Rico, California's Safe Drinking Water and Toxic Enforcement Act (Proposition 65), among others.

Similarly, on the legislative side, our California environmental regulatory lawyers have represented client interests with respect to the seemingly never-ending evolution of environmental laws. For example, we have drafted proposed environmental legislation, prepared and provided testimony before legislative committees and related governmental hearings, and presented client concerns to legislators.