

1 **MAYER BROWN LLP**
Dario J. Frommer (SBN 161248)
2 dfrommer@mayerbrown.com
C. Mitchell Hendy (SBN 282036)
3 mhendy@mayerbrown.com
333 South Grand Avenue, 47th Floor
4 Los Angeles, California 90071
Telephone: (213) 229-9500
5 Facsimile: (213) 625-0248

6 *Attorneys for Petitioner and Plaintiff*
7 *Western Propane Gas Association*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**

10 WESTERN PROPANE GAS ASSOCIATION,

11 Plaintiff and Petitioner,

12 v.

13
14 CALIFORNIA AIR RESOURCES
BOARD; STEVEN S. CLIFF, in his
15 official capacity as Executive Officer of
the California Air Resources Board; and
16 DOES 1 through 50, inclusive,

17 Respondents and
18 Defendants.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(California Environmental Quality Act;
California Health and Safety Code;
California Administrative Procedure Act;
California Constitution; fundamental vested
rights)

Judge:

Action Filed: August 23, 2024

1 Plaintiff and Petitioner Western Propane Gas Association (WPGA) brings this verified
2 petition for a writ of mandate and complaint for declaratory and injunctive relief against
3 Respondents and Defendants California Air Resources Board (CARB), Steven S. Cliff in his
4 official capacity as Executive Officer of CARB, and Does 1 through 50, inclusive, (collectively,
5 “Respondents”) and allege as follows.

6 **INTRODUCTION**

7 1. This action challenges CARB’s decision to approve the Zero-Emissions Forklift
8 (ZEF) Regulation in violation of the California Environmental Quality Act (CEQA), Public
9 Resources Code Sections 21000 et seq.; the California Administrative Procedure Act (APA),
10 Government Code Sections 11340 et seq.; the California Health and Safety Code, and the California
11 Constitution.

12 2. In the ZEF Regulation, CARB attempts to pursue an important goal shared by
13 Petitioner WPGA—the reduction of pollutants, including greenhouse gas (GHG) emissions. But
14 the ZEF Regulation pursues this aim in a poorly designed, cost-ineffective, and legally inadequate
15 manner. The ZEF Regulation bluntly requires forklift dealers to cease selling non-zero-emission
16 forklifts by January 1, 2026, and mandates that forklift fleet operators phase out those forklifts from
17 their fleets starting January 1, 2028. CARB’s focus on zero-emission forklifts to the exclusion of
18 all alternatives, such as forklifts powered by renewable energy such as renewable propane
19 supported by CARB’s Low Carbon Fuel Standard Program, completely undermines its efforts and
20 runs afoul of California law. Among other things, CARB has relied on findings of fact that are
21 demonstrably incorrect. As a result, CARB vastly undercounted the number of forklifts that will be
22 affected by the ZEF Regulation and significantly underestimated the costs of compliance. Those
23 costs include building infrastructure necessary to charge and store the electric batteries used by
24 ZEFs and the need for operators to use three ZEFs to replace one combustion-engine-powered
25 forklift. California law requires an approach to its legitimate environmental concerns that is based
26 on substantial evidence and that accurately considers the benefits and costs of the proposed plan.
27 The ZEF Regulation fails this test.

28 3. The ZEF Regulation consists of two primary components: (1) a restriction of the

1 sale and acquisition of large-spark ignition (LSI) forklifts starting on January 1, 2026; and (2) a
2 requirement that existing fleet operators phase out existing LSI forklifts, starting on January 1,
3 2028.

4 4. The ZEF Regulation will impose disruptive consequences on stakeholders in
5 California and beyond, both economically and environmentally.

6 5. Numerous industries use forklifts, and fleet operators across those industries must
7 start preparing for the ZEF Regulation immediately by making procurement decisions and
8 associated infrastructure investments. For instance, the transition to ZEFs will require fleet
9 operators to invest in facilities to charge electric forklifts.

10 6. Notwithstanding the concerns expressed by numerous stakeholders during the
11 comment period, the ZEF Regulation contains a number of legal flaws, each of which
12 independently warrants the relief requested by Petitioner.

13 7. First, the ZEF Regulation violates CEQA because Respondents' Environmental
14 Impact Analysis (EIA) is not based on substantial evidence; instead, the EIA relies on incorrect
15 factual assumptions about the number of affected forklifts, overestimates the cumulative fuel
16 savings, and underestimates the replacement costs to convert LSI forklifts to ZEFs. Additionally,
17 the EIA misrepresents the magnitude of the electrical loads required to power ZEFs, further
18 undermining the analysis.

19 8. Second, the ZEF Regulation violates CEQA because Respondents failed to provide
20 accurate information to the public to enable the public to understand the impacts from disposing
21 LSI forklifts that are replaced by ZEFs and from the increased energy demand and construction
22 emissions resulting from constructing the necessary electrical infrastructure to support ZEFs.

23 9. Third, the ZEF Regulation violates CEQA because Respondents did not consider
24 the entire scope of environmental impacts created by implementing the Regulation, including the
25 impacts from (1) electricity generation and construction of electrical transmission infrastructure
26 necessary to support ZEFs and (2) construction of the necessary electrical charging infrastructure.

27 10. Fourth, the ZEF Regulation violates CEQA and the Health & Safety Code because
28 Respondents underestimated the Regulation's operational impacts, including that, as a result of

1 electric battery charging cycles, businesses operating forklifts 24 hours a day will be required to
2 acquire 3 ZEFs for every one LSI forklift that they are required to replace.

3 11. Fifth, the ZEF Regulation violates CEQA and the Health & Safety Code because
4 Respondents overestimate the reduction in GHG emissions from the Regulation, including that
5 diesel-powered mobile generators will be used to charge ZEFs and LSI forklift supply will simply
6 be transferred out of state, resulting in no net reduction of GHG emissions or criteria air pollutants.

7 12. Sixth, the ZEF Regulation violates CEQA because CARB failed to adequately
8 respond to public comments on the draft regulation.

9 13. Seventh, the ZEF Regulation violates CEQA, the Health and Safety Code and
10 section 11346.2(b)(4)(A) of the Government Code because CARB failed to analyze a reasonable
11 range of alternatives, including the use of renewable fuels.

12 14. Eighth, the ZEF Regulation violates the Health and Safety Code and Administrative
13 Procedure Act because CARB did not adequately consider the economic impacts of the Regulation,

14 15. Ninth, the ZEF Regulation is an impermissible exercise of legislative authority by
15 CARB, is an *ultra vires* act, and infringes under the fundamental vested rights of California
16 individuals and businesses protected by the California Constitution.

17 16. Because the ZEF Regulation violates California law, Petitioner requests the
18 following:

19 a. A writ of mandate directing Respondents, pursuant to Section 21080.5 of the
20 Public Resources Code and Sections 1085 and 1094.5 of the Code of Civil
21 Procedure, and all applicable laws as alleged herein, to set aside certain decisions
22 made by Respondents described below and to enforce compliance with the laws of
23 California;

24 b. A declaration and judgment pursuant to Section 1060 of the Code of Civil
25 Procedure and Section 11350 of the Government Code that Respondents' acts,
26 omissions, and findings with respect to the ZEF Regulation did not comply with the
27 laws of California; and

28 c. Injunctive relief pursuant to Sections 525 and 526 of the Code of Civil

1 Procedure to enjoin implementation and/or enforcement of the ZEF Regulation.

2 **THE PARTIES**

3 17. WPGA is a California-based non-profit organization founded in 1949 that represents
4 the propane industry in California, which is the largest propane market in the United States.

5 18. The propane industry is a significant contributor to California's economy, job
6 market, and manufacturing and agricultural sectors. In 2023, California sold 534 million gallons of
7 propane. The California propane industry contributes \$40 billion annually to the national economy.

8 19. WPGA supports a low-carbon future and advocates for propane as a low-carbon,
9 high-energy fuel for vehicle fleets, agriculture, shipping, industrial work, and landscape
10 management among other uses.

11 20. WPGA's members fuel forklifts for commercial, industrial, and agricultural
12 consumers, school buses for local school districts, space/water heating and cooking for residential
13 and commercial consumers, dryers and irrigation engines for agricultural consumers, combined
14 heat and power systems for commercial and industrial consumers, and backup and primary power
15 generation for every residential and commercial industry, amongst others, including in Fresno.
16 WPGA members produce and distribute nearly 1.5 million gallons of propane every day to support
17 California businesses and households.

18 21. WPGA members employ more than 8,000 people in California.

19 22. WPGA and its members are actively working to expand the production of low-
20 carbon renewable propane. Renewable propane is made from sustainable sources, including plants,
21 oils, and animal fats. Renewable propane has a smaller carbon footprint than many sources of
22 gasoline, diesel, natural gas, and non-renewable propane. Approximately 17% of propane used for
23 transportation in California is renewable and the industry is on track to achieve 100% renewable
24 propane in the transportation sector by 2035.

25 23. WPGA and its members are beneficially interested in the subject matter of the
26 proceedings as they will be adversely impacted by the ZEF Regulation. By creating a compliance
27 system that incentivizes the use of ZEFs only, the ZEF Regulation discourages dealers and fleet
28 operators in forklifts powered by renewable propane, which will harm WPGA members. In

1 addition, the interests WPGA seeks to protect are germane to its organizational purpose. WPGA
2 was founded on the belief that wider adoption of vehicles powered by propane is key to helping
3 California reduce GHG emissions, air pollution, and petroleum dependence. WPGA seeks to
4 compel CARB to incentivize use of renewable resource fuels to mitigate the significant air quality
5 and other environmental and economic impacts that would result from the ZEF Regulation.

6 24. WPGA participated extensively in the ZEF Regulation rulemaking process,
7 submitting written comments to CARB that set forth WPGA’s objections to the Regulation.
8 Specifically, WPGA provided written comments to CARB on December 26, 2023, May 30, 2024,
9 and June 7, 2024, and provided additional commentary during workshops on March 22, 2023,
10 January 24, 2023, February 22, 2022, and August 17, 2021.

11 25. Neither the claims asserted nor the relief requested requires participation of
12 WPGA’s members in the lawsuit. Nor do they require the Court to consider the individual
13 circumstances of WPGA’s members.

14 26. Based on the foregoing and other allegations in this petition, WPGA has standing to
15 bring this action on behalf of itself and its members.

16 27. CARB is an agency of the State of California

17 28. CARB is the “lead agency” with “principal responsibility for carrying out or
18 approving” the ZEF Regulation, “which may have a significant effect upon the environment,” Cal.
19 Pub. Res. Code § 21067.¹

20 29. Respondent Steven S. Cliff is the current Executive Officer of CARB and is a party
21 to this action in his official capacity only. Mr. Cliff acts as the director and manager of the CARB
22 professionals and other personnel, who all report to him.

23 30. WPGA is ignorant of the true names and capacities of respondents and defendants
24 sued as Does 1 through 50, inclusive, and therefore sues these respondents and defendants by
25 fictitious names. WPGA will request leave to amend this petition and complaint to allege their true
26 names and capacities when ascertained. WPGA is informed and believes the respondents and

27 ¹ Cal. Air Res. Bd., *Final Environmental Impact Analysis For The Proposed Zero Emission*
28 *Forklift Regulation* 10, 15 (June 26, 2024), [https://ww2.arb.ca.gov/sites/default/files/
barcu/regact/2024/zeforklifts/finalea.pdf](https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/zeforklifts/finalea.pdf).

1 defendants sued as Does 1 through 50 were responsible in some manner for the damages alleged in
2 this petition and complaint.

3 **JURISDICTION AND VENUE**

4 31. This Court has jurisdiction over this action pursuant to its general subject matter
5 jurisdiction, as well as Section 1085 of the Code of Civil Procedure and Section 21168.5 of the
6 Public Resources Code. Sections 525-26 of the Code of Civil Procedure provide for an injunction
7 when it appears that the petitioner is entitled to the relief sought. Accordingly, and based on the
8 facts stated in this petition, this Court has jurisdiction to grant injunctive relief and to issue a writ
9 of mandate on the claims presented here.

10 32. Section 21080.5 of the Public Resources Code and Section 1085 of the Code of Civil
11 Procedure provide for review in this Court of actions by state agencies and their officers to
12 determine whether those actions comply with CEQA, the CEQA Guidelines (codified in Cal. Code
13 Regs., tit. 14, § 15000 et seq.), and other CEQA implementing regulations.

14 33. Sections 525, 526, and 527 of the Code of Civil Procedure provide for an injunction
15 when the complaint shows that the plaintiff is entitled to the relief demanded, and the relief, or any
16 part thereof, consists in restraining the commission or continuance of the act complained thereof.

17 34. Section 1060 of the Code of Civil Procedure provides for a judicial declaration of
18 Petitioner's rights and Respondents' duties in a case of actual controversy relating to those legal
19 rights and duties of the respective parties.

20 35. Accordingly, based on the facts alleged in this Petition, this Court has jurisdiction
21 to grant injunctive relief and declaratory relief, and to issue a writ of mandate on the claims
22 presented.

23 36. Venue in this Court is proper pursuant to Section 401 of the Code of Civil Procedure
24 because CARB is a state agency, Mr. Cliff is a state officer, and the Attorney General has an office
25 located in the County of Fresno. In addition, many forklift dealers, fleet operators, and propane
26 providers affected by the ZEF Regulation are located in the County of Fresno.

27 37. Petitioner provided written notice of its intention to commence this action to
28 Respondents, in compliance with Public Resources Code Section 21167.5. A copy of that notice

1 and proof of service is attached as Exhibit A to this Petition.

2 38. At the time of the filing of this Petition, Petitioner has filed a notice requesting that
3 CARB prepare the administrative record for this action, in accordance with Public Resources Code
4 Section 21167.6(a). A copy of this notice is attached as Exhibit B to this Petition.

5 39. Petitioner will provide notice of this action to the Attorney General of the State of
6 California by serving a copy of this Petition to the California Attorney General as required by Public
7 Resources Code Section 21167.7 and Code of Civil Procedure Section 388.

8 **FACTUAL BACKGROUND**

9 40. In addition to the factual allegations made in the foregoing paragraphs, Petitioner
10 alleges the following.

11 **A. The ZEF Regulation**

12 41. On July 24, 2024, CARB filed its Notice of Decision in which it approved the ZEF
13 Regulation.

14 42. The ZEF Regulation will be codified at California Code of Regulations, tit. 13, ch.
15 17, §§ 3000-3011. A copy of the regulation is currently available at
16 <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/zeforklifts/froa1.pdf>.

17 43. In Section 3000(b), CARB states that the purpose of the ZEF Regulation “is to
18 reduce emissions of oxides of nitrogen (NOx), fine particulate matter (PM), other criteria pollutants,
19 toxic air contaminants, and greenhouse gases (GHG) from Large Spark-Ignition (LSI) Forklifts.”

20 44. The Regulation “applies to Forklift and engine manufacturers, as well as any person,
21 public utility, special district, or government agency that operates, allows the operation of, owns,
22 leases, rents, offers for sale, offers for lease, or offers for rent within California” LSI forklifts. *Id.*,
23 § 3000(c).

24 45. The Regulation defines an “LSI Forklift” as a forklift powered by an engine powered
25 by an internal combustion cycle. *Id.*, § 3001.

26 46. Any entity that fails to comply with the Regulation may be subject to civil or
27 criminal penalties, which apply on a per-engine or per-equipment unit basis, and each day in which
28 there is a violation is a separate violation. *Id.*, § 3000(d).

1 47. Under the Regulation, beginning January 1, 2026, a forklift fleet operator may not
2 acquire or take possession of an LSI forklift at a location in California, subject to limited exceptions.
3 *Id.*, § 3002(a).

4 48. Additionally, starting January 1, 2026, a fleet operator is not permitted to possess,
5 operate, or allow the operation of an LSI forklift in California unless it is a model year 2025 or
6 earlier forklift that has not been phased out. *Id.*, 3002(b).

7 49. The ZEF Regulation contains schedules pursuant to which fleet operators must
8 phase out LSI forklifts. *Id.*, § 3006. Pursuant to those schedules, LSI forklifts will be phased out
9 according to model year beginning in January 1, 2028, to be completed by January 1, 2036 or 2038,
10 depending on the class of forklift. *Id.*

11 50. The Regulation also forbids forklift dealers from possessing new LSI forklifts
12 subject to the schedule listed in the Regulation. *Id.*, § 3003(a).

13 51. Starting January 1, 2026, California rental agencies are prohibited from renting an
14 LSI forklift, subject to certain limited exceptions. *Id.*, § 3004.

15 52. Starting January 1, 2026, a forklift manufacturer may not produce or offer for sale
16 in California one class of LSI forklifts unless the engine or powertrain qualifies as zero-emission.
17 *Id.*, § 3005.

18 **B. CARB drastically understated the operations impacts of the ZEF Regulation**

19 53. CARB’s Standardized Regulatory Impact Assessment (SRIA) contradicts the finds
20 contained in the Social Science Research Center’s (SSRC) paper commissioned by CARB titled
21 “Survey of Large-Spark Ignited (LSI) Engines Operated in California.”

22 54. In the SRIA, CARB estimated that the ZEF Regulation will result in cumulative
23 savings of between \$13.1 and \$13.9 billion. But a report completed by Andrew Chang & Company,
24 LLC found that the Regulation would result in cumulative costs to forklift operators, ranging from
25 \$12 billion to \$27 billion, with a midpoint value of \$19 billion.

26 55. CARB estimated that the ZEF Regulation will impact 95,000 forklifts, but SSRC
27 found that at least twice as many forklifts—more than 200,000—will be impacted by the
28 Regulation.

1 56. CARB assumed that the number of LSI forklifts will remain stagnant, but the trend
2 is the opposite: the number of LSI forklifts in California has been increasing due to an increase in
3 goods movement.

4 57. Considering this trend, the ZEF Regulation will likely impact more than *390,000*
5 forklifts—75% of the forklifts in California and many times more than the estimated number upon
6 which CARB rested its impact assessment.

7 58. CARB incorrectly assumes that there is a one-to-one replacement for LSI forklifts
8 for ZEFs. For a ZEF to be used for an 8-hour work period, it will likely need an 8-hour charge
9 period and an 8-hour battery cooldown period. Thus, an operator that uses forklifts for 24-hour
10 shifts will face a three-to-one replacement ratio. CARB did not account for these operation costs.

11 59. Further, this limited run time of ZEFs also means that operators will need increased
12 battery charging infrastructure to accommodate the additional forklifts they will require, which
13 CARB did not consider.

14 60. CARB also estimated that the total replacement cost will be \$4.6 billion. That
15 number is both flawed—because CARB inexplicably failed to take into account the potential
16 salvage or scrap value of decommissioned LSI forklifts—and too low by more than half because
17 CARB so drastically underestimated the number of affected forklifts.

18 61. CARB also overstated the savings from moving to electric energy by analyzing the
19 current forklift population as if it were gasoline-powered when in fact most forklifts are propane-
20 powered. Using propane as the main source of fuel for LSI forklifts results in a significantly
21 diminished net operational savings from switching to electrical power.

22 **C. CARB failed to capture the full scope of the Regulations’ environmental**
23 **impacts.**

24 62. CARB’s EIA assumes that fleet operators will be able to phase out their LSI
25 forklifts, but it is silent on how they are intended to accomplish that. That silence speaks loudly,
26 however, because the practical reality is that many fleet operators will find it necessary to sell their
27 LSI forklifts to out-of-state operators. The result is that any purported environmental impact of the
28

1 ZEF Regulation will be offset because many of the LSI forklifts will still be operated in a different
2 State.

3 63. Indeed, the Regulation encourages fleet operators to sell LSI forklifts out of state
4 and thus authorizes them to export GHG-emitting forklifts.

5 64. The cumulative effect of this approach will be that LSI forklifts will continue to
6 produce GHG and criteria air pollutant emissions elsewhere and, in California, ZEFs will generate
7 their own lifecycle emissions. But CARB has not analyzed potential impacts as a result of this
8 process.

9 65. CARB did not adequately consider the environmental impact of emissions from fleet
10 operators with multiple job sites relocating their ZEFs to locations with adequate energy availability
11 where infrastructure and charging capacity exists.

12 66. The ZEF Regulation will have other environmental impacts, not addressed by
13 CARB, resulting from the need to build out electricity generation and transmission infrastructure.
14 This intensive project will require additional mining of minerals used in zero-emission vehicle
15 technology, will increase short-term air quality and GHG impacts (often concentrated in low-
16 income and minority communities), and will strain California's electric grid until enough electrical
17 generation is achieved.

18 67. CARB's EIA fails to model potential health impacts from air quality affected by
19 operation of LSI forklifts or as a result of construction-related emissions needed to build electrical
20 grid infrastructure necessary to attempt to implement the Regulation.

21 68. Instead, CARB states that if there is insufficient electrical grid capacity to support
22 operation of a fleet of ZEFs in an area, operators may generate electricity using generators powered
23 by propane, natural gas, or diesel fuel. But the EIA does not analyze the magnitude of the air quality
24 impacts from that electricity generation or whether using generators creates more GHG emission
25 than the use of renewable propane in LSI forklifts. The public is simply left to wonder whether
26 CARB expects electrical power generation needed to charge ZEF batteries will cause air pollution
27 above background level.
28

1 69. CARB does acknowledge that the ZEF Regulation will result in increased demand
2 on California’s electric grid, and it assumes that the State’s grid will expand and evolve—somehow,
3 the details are missing—to accommodate this increased demand. The EIA does not quantify the
4 increased energy demand or the construction of infrastructure necessary to meet that demand.

5 70. And even if CARB had offered some analysis on this point, that analysis would have
6 been irreparably flawed because CARB underestimated the number of affected LSI forklifts and
7 the corresponding need for replacement ZEFs by hundreds of thousands of vehicles.

8 71. Without an analysis of the increased energy demand resulting from the Regulation,
9 the public does not know whether areas may be subject to electricity blackouts in the future or
10 increased air quality concerns resulting from new electricity generation needed to charge ZEFs’
11 batteries.

12 72. Although the EIA acknowledges that increased demand for electric batteries will
13 require increased mining of lead, lithium, nickel, and cobalt, it does not address the environmental
14 impacts of that increased mining. This is true despite the fact that lead acid batteries are currently
15 the most inexpensive way for operators to comply with the Regulation, so lead mining activities in
16 particular will likely increase, and there will be geologic and soil impacts from that increased
17 mining.

18 73. CARB assumed that infrastructure development projects will be completed within
19 6 months at each site, but provided no factual support for that conclusion. To the contrary, that
20 conclusion ignores nuanced and inherently local issues of land development in California.

21 74. CARB also failed to analyze the health and other environmental risks associated
22 with lead mining, which will necessarily increase as a result of the implementation of the
23 Regulation.

24 75. CARB failed to assess the environmental impacts of scrapping thousands of phased-
25 out LSI forklifts that are not exported to another State.

26 **D. CARB failed to meaningfully consider a reasonable range of alternatives.**

27 76. Government Code 11346.2(b)(4)(A) requires CARB to consider performance
28 standards as an alternative when proposing a regulation mandating the use of specific technology

1 or equipment.

2 77. CARB, however, did not consider or analyze performance approach alternatives that
3 could be used to achieve similar emission reductions that it proposes to realize through phase out
4 of LSI forklifts.

5 78. The use of renewable fuels in combustion engines would achieve comparable
6 emission reductions without the Regulation's exorbitant operational costs.

7 **E. CARB failed to adopt mitigation measures.**

8 79. CARB's EIA included mitigation measures, but those measures were not adopted
9 into a mitigation monitoring program in the Regulation and are therefore unenforceable.

10 **F. CARB's responses to comments were inadequate.**

11 80. CARB avoiding analyzing impacts raised in comments by stating that impacts will
12 be studied later at a local, project level. But the Regulation is statewide and thus requires a statewide
13 impact analysis.

14 81. CARB's responses to comments raising lack of energy infrastructure and grid
15 readiness relied on unsupported assumptions about electrical distribution upgrades and grid
16 expansion and failed to address the environmental impacts from that assumed electrical grid
17 expansion.

18 82. CARB's responses to comments raising questions about recycling used electrical
19 batteries lacked any support for the conclusion that there will be adequate recycling facilities, nor
20 did CARB analyze the environmental impact of such recycling.

21 83. CARB failed to provide adequate responses to comments regarding the potential
22 impacts of building new infrastructure for ZEFs, stating only in a conclusory manner that its draft
23 EIA considered those impacts without offering any detail as to what its analysis concluded.

24 84. CARB's responses to comments also improperly rested on hypothetical speculation
25 (regarding transfer of decommissioned LSI forklifts out of state).

26 **G. The ZEF Regulation relies on blatantly incorrect figures.**

27 85. CARB misrepresented the magnitude of conversion to ZEF by stating that the
28 increase in energy demand will be 1.1 Gigawatts, instead of 1.1 Terawatts. Similarly, CARB stated

1 that the increased demand for gridded electricity is 1,065 Megawatt-hours when it is 1,065
2 Gigawatt-hours.

3
4 **FIRST CAUSE OF ACTION**

5 **(Violations of CEQA, Cal. Pub. Res. Code § 21000 et seq., and the CEQA Guidelines, Cal.
6 Code Regs., tit. 14, § 15000 et seq., against all Respondents)**

7 86. WPGA realleges and incorporates by reference the allegations in paragraphs 1
8 through 85.

9 87. Respondents violated CEQA and its implementing regulations and guidelines by
10 certifying a deficient environmental analysis.

11 88. CEQA compliance is a fundamental requirement for public agency actions such as
12 the ZEF rulemaking. CEQA imposes clear and substantive responsibilities on agencies and is not
13 merely a procedural statute.

14 89. CEQA generally requires that public agencies not approve projects that harm the
15 environment unless and until all feasible mitigation measures are employed to minimize that harm.
16 Cal. Pub. Res. Code §§ 21002, 21002.1(b).

17 90. CEQA requires that agencies not undertake actions that could have a significant
18 adverse effect on the environment, or limit the choice of alternatives or mitigation measures before
19 complying with CEQA. CEQA Guidelines, Cal. Code Regs., tit. 14, § 15004(b)(2).

20 91. CARB has a regulatory program certified under Public Resources Code Section
21 21080.5, and pursuant to this program CARB conducts environmental analyses to meet the
22 requirements of CEQA. *See* CEQA Guidelines, Cal. Code Regs., tit. 14, § 15250.

23 92. The CEQA Guidelines define a project as “the whole of an action, which has a
24 potential for resulting in either a direct physical change in the environment, or a reasonably
25 foreseeable indirect physical change in the environment[.]” CEQA Guidelines, Cal. Code Regs.,
26 tit. 14, § 15378(a).

27 93. In promulgating the ZEF Regulation, CARB prepared an EIA purporting to comply
28 with CEQA requirements.

1 94. The preparation, public review, and final agency approval of an EIA or its functional
2 equivalent, is central to the accomplishment of CEQA’s objectives. The heart of an EIA is the
3 agency’s analysis of the possible impacts of the action the agency is considering, the agency’s
4 analysis of alternatives, and the agency’s response to public comments. CEQA review and
5 application of CEQA procedures must be followed at all stages of project consideration.

6 95. CARB’s regulatory program requires the agency to consider regulatory alternatives
7 consistent with CEQA Guidelines.

8 96. Specifically, CARB must assess “a reasonable range of alternatives to the proposed
9 project, which could feasibly attain most of the project objectives but could avoid or substantially
10 lessen any of the identified significant impacts[.]” Cal. Code Regs., tit 17, 60004.2.

11 97. CARB must also consider any cumulative or growth-inducing impacts of a proposed
12 regulation. Id., Cal. Code Regs., tit. 14, § 15130.

13 98. As detailed above, CARB has violated CEQA and the CEQA Guidelines in a
14 number of ways:

- 15 a. CARB failed to consider reasonably feasible regulatory alternatives to its
16 ZEF program, such as the use of renewable fuels;
- 17 b. CARB failed to analyze significant environmental impacts, including
18 impacts from (1) construction of new energy infrastructure and infrastructure
19 to house and store ZEFs; (2) mining operations necessary to meet the
20 increased demand for electric batteries; (3) relocations of ZEFs between sites
21 to locations where energy is available; (4) running gasoline or diesel
22 generators to charge electric batters; (5) recycling or scrapping
23 decommissioned LSI forklifts; (6) transferring LSI forklifts out of state and
24 (7) the lifecycle emissions of ZEFs;
- 25 c. CARB failed to adequately assess the impact on energy demand by
26 dramatically undercounting the number of LSI forklifts in California and the
27 number of ZEFs that will be needed to replace them, which might be at a 3-
28 to-1 ZEF to LSI forklift ratio for many operators;

- d. CARB failed to adequately address public comments;
- e. CARB did not base its analysis on substantial evidence, including by understating the operational impacts on businesses, overstating the emissions reductions to be gained by the ZEF program, and misstating the magnitude of energy demand created by the ZEF program;
- f. CARB failed to provide sufficient or accurate information or analysis to the public to understand the true scope of direct, indirect, and cumulative environmental impacts; and
- g. CARB failed to implement enforceable mitigation measures.

99. As a result of these defects (and others) in the EIA, Respondents prejudicially abused their discretion by certifying an EIA that does not comply with CEQA and by failing to proceed in the manner required by law.

100. Failure to comply with CEQA's substantive or procedural requirements so that complete information as to a project's impacts is not developed and publicly disclosed constitutes a prejudicial abuse of discretion that requires invalidation of the public agency action regardless of whether full compliance would have produced a different result. Cal. Pub. Res. Code § 21005.

101. Petitioner objected to CARB's approval of a ZEF mandate prior to the close of final public hearings.

102. Petitioner has performed all conditions precedent to the filing of this Petition including complying with Public Resource Code Section 21167.5 by serving notice of the commencement of this action prior to filing it with this Court.

SECOND CAUSE OF ACTION

**(Violation of the APA, Cal. Gov. Code § 11340 et seq., and the Health and Safety Code,
against all Respondents)**

103. WPGA realleges and incorporates by reference the allegations in paragraphs 1 through 102.

104. Before adopting a regulatory scheme such as the ZEF Regulation, Respondents must consider the economic impacts and feasibility associated with any rulemaking proposal, and

1 consider potential impacts to California’s workers, businesses, and the greater economy. *See, e.g.*,
2 Cal. Health & Safety Code §§ 38560, 38562, 39602.5(a), 43013, 43101, 57005(a).

3 105. CARB shall consider adverse economic impacts on California business enterprises
4 and individuals. Cal. Gov’t Code § 11346.5(a)(7).

5 106. CARB must also minimize “leakage,” which is the likelihood that emission
6 reductions to be achieved under the rule will be canceled out by an increase in GHG emissions out
7 of state.

8 107. Respondents must also comply with additional statutory requirements to consider
9 the economic impacts of the Regulation because it is a “major regulation” under the California
10 Administrative Procedure Act, defined as a regulation that “will have an economic impact on
11 California business enterprises and individuals in an amount exceeding fifty million dollars.” Cal.
12 Gov’t Code § 11342.548.

13 108. The ZEF Regulation fails to comply with the Health & Safety Code of California
14 and the California Administrative Procedure Act because these statutes require CARB to consider
15 the cost-effectiveness and technological feasibility of the proposed rule as well as the economic
16 impacts related thereto. When analyzing the ZEF Regulation, CARB failed to adequately consider
17 economic impacts relating to:

- 18 a. Decommissioning and replacing the LSI forklift population in California,
19 which CARB dramatically undercounted;
- 20 b. Construction of energy generation and distribution infrastructure and
21 storage for ZEFs;
- 22 c. The costs of relocating ZEFs to sources of available energy and
23 transporting decommissioned forklifts for recycling or out of state;
- 24 d. Increased mining as a result of heightened demand for constituent minerals
25 used to make batteries; and
- 26 e. Demands on the California electric grid.

27 109. To the extent CARB purported to consider economic impacts, its analysis was not
28 based on substantial evidence because it vastly underestimated the number of LSI forklifts in

1 California and the number of ZEFs needed to replace that fleet.

2 110. CARB also failed to perform a leakage analysis on the impact of increased GHG
3 emissions in other States as the result of the transfer of LSI forklifts out of California.

4 111. Additionally, CARB failed to sufficiently consider the ZEF Regulation's cost-
5 effectiveness compared to other feasible regulatory alternatives, such as use of renewable fuels in
6 combustion engines.

7 **THIRD CAUSE OF ACTION**

8 **(Actions outside scope of permissible delegated authority, against all Respondents)**

9 112. WPGA realleges and incorporates by reference the allegations in paragraphs 1
10 through 111.

11 113. The ZEF Regulation exceeds CARB's authority in violation of the California
12 Constitution and the California Administrative Procedure Act because CARB lacks the power to
13 legislate, or the power to issue a regulation that would fundamentally transform California's
14 economy but with no clear statutory directive from the California Legislature to do so.

15 114. "The legislative power of this State is vested in the California Legislature." Cal.
16 Const. art. IV, § 1.

17 115. The California Legislature knows how to delegate authority to CARB if it wanted
18 CARB to develop and implement broad regulatory programs with substantial statewide impacts,
19 such as in the Global Warming Solutions Act of 2006, which authorized CARB to adopt compliance
20 mechanisms to reduce harmful emissions and placed limits on the agency's development of the
21 program given its expansive economic implications.

22 116. As an executive agency, CARB has no legislative authority to compel 100 percent
23 ZEF, a target which has never been codified and that the Legislature has never adopted.

24 117. CARB's usurpation of legislative authority violates the California Constitution,
25 which deems any breach of the separation of powers principle unconstitutional. CARB's exercise
26 of legislative authority is also arbitrary and capricious, an abuse of discretion, and contrary to the
27 laws of California.

28 118. Such authorizations by the Legislature must be clearly discernible, especially if the

1 authorization would be of deep political and economic significance.

2 119. The ZEF Regulation is of deep political and economic significance because it (1)
3 seeks to phase out entire businesses that supply energy for a key part of the California economy;
4 (2) fundamentally alters logistics, supply chains, and the movement of goods in California and
5 nationally; and (3) markedly changes the demand on California’s electric grid.

6 120. CARB does not have clear legislative authority to promulgate the ZEF Regulation.

7 121. Although the Legislature gave CARB authority to adopt emissions standards for
8 vehicles, including construction equipment, the statute does not provide clear authority to
9 fundamentally alter the California economy. See Cal. Health & Safety Code. §§ 43013(b), 43018.

10 122. Weighing of the policy decisions necessary to adopt such a broad and fundamental
11 change as imposed by the ZEF Regulation is the duty of the Legislature, not an executive agency
12 such as CARB.

13 **FOURTH CAUSE OF ACTION**

14 ***(Ultra vires actions)***

15 123. WPGA realleges and incorporates by reference the allegations in paragraphs 1
16 through 122.

17 124. Under Government Code § 11342.2, “no regulation adopted is valid or effective
18 unless consistent and not in conflict with the statute and reasonably necessary to effectuate the
19 purpose of the statute.”

20 125. Administrative action not authorized by an act of the Legislature is void.

21 126. As alleged throughout this Petition, the ZEF Regulation is fraught with numerous
22 procedural defects, including violations of CEQA and the Health & Safety Code.

23 127. Additionally, the ZEF Regulation exceeds the permissible scope of the CARB’s
24 authority because it is a legislative act.

25 **FIFTH CAUSE OF ACTION**

26 ***(Ultra vires actions)***

27 128. WPGA realleges and incorporates by reference the allegations in paragraphs 1
28 through 127.

1 4. That the Court enjoin Respondents from approving any activities related to the ZEF
2 Regulation, or taking any actions to implement the ZEF Regulations, until Respondents fully
3 comply with CEQ, the APA, the Health and Safety Code, and the California Constitution.

4 5. That the Court grant WPGA its cost of suit and its reasonable attorneys' fees
5 including out-of-pocket disbursements.

6 6. That the Court grant such other and further relief as is just and proper.

7 Dated: August 23, 2024

MAYER BROWN LLP

8

/s/ Dario J. Frommer

9

Dario J. Frommer (SBN 161248)

10

dfrommer@mayerbrown.com

11

C. Mitchell Hendy (SBN 282036)

12

mhendy@mayerbrown.com

13

333 South Grand Avenue, 47th Floor

Los Angeles, California 90071

Telephone: (213) 229-9500

Facsimile: (213) 625-0248

14

Attorneys for Petitioner and Plaintiff

Western Propane Gas Association

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

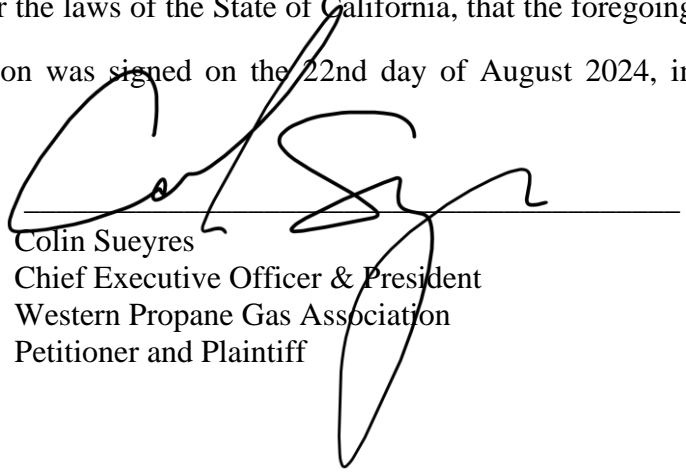
VERIFICATION

I, Colin Sueyres, declare:

I am Chief Executive Officer and President of Western Propane Gas Association, a California non-profit trade association organized and existing under the laws of California. Western Propane Gas Association is Petitioner and Plaintiff in the above-entitled action, and I have been authorized to make this verification on its behalf.

I have read the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know the contents thereof, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this verification was signed on the 22nd day of August 2024, in Sacramento, California.



Colin Sueyres
Chief Executive Officer & President
Western Propane Gas Association
Petitioner and Plaintiff

EXHIBIT A

August 22, 2024

BY E-MAIL (SCLIFF@ARB.CA.GOV) & UPS

Hon. Steven S. Cliff, Ph.D.
Executive Officer
California Air Resources Board
1001 "I" Street,
Sacramento, CA 95814

C. Mitchell Hendy
Counsel
T: +1 213 229 5142
mhendy@mayerbrown.com

Re: **Notice of Intent to Sue**
Zero-Emission Forklift Regulation

Dear Members of the Board:

PLEASE TAKE NOTICE under Public Resources Code Section 21167.5, that on August 23, 2024, Petitioner Western Propane Gas Association plans to file a petition for writ of mandate and complaint for declaratory and injunctive relief in Fresno County Superior Court challenging the actions of Respondents the California Air Resources Board ("CARB") and Steven S. Cliff, in his official capacity as Executive Officer of CARB, pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code Section 2100 et seq., and other applicable laws as discussed more fully in the Project's administrative and environmental review proceedings.

Petitioner alleges that in connection with the consideration and approval of the proposed Zero-Emission Forklift Regulation, Respondents violated California law, including but not limited to CEQA, the California Constitution, the California Health & Safety Code, and the California Administrative Procedure Act. The exact nature of the allegations and relief sought is described in a petition and complaint that Petitioner plans to file on **August 23, 2024**.

Sincerely,



C. Mitchell Hendy
Counsel

1 **PROOF OF SERVICE**

2 I, C. Mitchell Hendy, declare:

3 I am employed in Los Angeles County, California. I am over the age of eighteen years
4 and not a party to the within-entitled action. My business address is Mayer Brown LLP, 333
5 South Grand Avenue, 47th Floor, Los Angeles, California 90071-1503. On August 22, 2024, I
6 served a copy of the within document(s):

7 **LETTER TO CARB SACRAMENTO HEADQUARTERS RE NOTICE OF**
8 **INTENT TO SUE**

- 9 by placing the document(s) listed above in a sealed UPS envelope and affixing a
10 pre-paid air bill, and causing the envelope to be delivered to a UPS agent for
11 delivery.
12 by transmitting via e-mail or electronic transmission the document(s) listed above
13 to the person(s) at the e-mail address(es) set forth below. My e-service address is
14 *mhendy@mayerbrown.com*.

15 California Air Resources Board
16 c/o Hon. Steven S. Cliff, Ph.D.
17 Executive Officer
18 1001 "T" Street,
19 Sacramento, CA 95814
20 Email: *scliff@arb.ca.gov*

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct.

23 Executed on August 22, 2024, at Los Angeles, California.

24 

25 _____
26 C. Mitchell Hendy

EXHIBIT B

1 **MAYER BROWN LLP**
Dario J. Frommer (SBN 161248)
2 dfrommer@mayerbrown.com
C. Mitchell Hendy (SBN 282036)
3 mhendy@mayerbrown.com
333 South Grand Avenue, 47th Floor
4 Los Angeles, California 90071
Telephone: (213) 229-9500
5 Facsimile: (213) 625-0248

6 *Attorneys for Petitioner and Plaintiff*
7 *Western Propane Gas Association*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**

10 WESTERN PROPANE GAS ASSOCIATION,

11 Plaintiff and Petitioner,

12 v.

13
14 CALIFORNIA AIR RESOURCES
BOARD; STEVEN S. CLIFF, in his
15 official capacity as Executive Officer of
the California Air Resources Board; and
16 DOES 1 through 50, inclusive,

17 Respondents and
18 Defendants.

Case No.

**PETITIONER'S NOTICE
REQUESTING PREPARATION OF
THE RECORD OF PROCEEDINGS
(CEQA CLAIM)**

(California Environmental Quality Act;
California Health and Safety Code;
California Administrative Procedure Act;
California Constitution; fundamental vested
rights)

Judge:

Action Filed:

1 Under Public Resources Code §21167.6, Plaintiff and Petitioner, Western Propane Gas
2 Association (“WPGA”), requests that Respondent and Defendant California Air Resources Board
3 (“CARB”), prepare the record of proceedings relating to and concerning CARB’s June 27, 2024,
4 approval of the Zero-Emission Forklift Regulation.

5 WPGA requests that CARB include in the record all documents and materials identified in
6 Public Resources Code §21167.6(e), and any other documents or records relating to CARB’s
7 determinations and actions relating to the Zero-Emission Forklift Regulation.

8 WPGA will pay the reasonable cost of preparation of the record on notice of the estimated
9 cost of payment, provided that an agreement for cost-sharing might be arranged.

10
11 DATED: August 23, 2024

MAYER BROWN LLP

12
13 By: /s/ Dario J. Frommer
Dario J. Frommer

14 Attorneys for Petitioner and Plaintiff
15 Western Propane Gas Association
16
17
18
19
20
21
22
23
24
25
26
27
28