



Mobility Matters Quarterly Mobile Source Emissions & Vehicle Safety Update

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Nine Months Later: Personal Jurisdiction Since *Ford*

The United States Supreme Court issued its decision in *Ford Motor Company v. Montana Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017 (2021) on March 25, 2021, deciding in a consolidated appeal of two product liability lawsuits that jurisdiction over Ford was appropriate in a forum where the accident occurred and the plaintiff was a resident even though Ford did not design, manufacture, or originally sell the vehicle into that forum (a subsequent owner took the vehicle to the forum). In deciding the scope of the requirement that a claim must “arise out of or relate to” the defendant’s contacts in the forum, the Court held that even where the manufacturer did not place the subject vehicle into the forum, if it otherwise extensively served the forum market, including for the make and model of vehicle at issue, it had sufficient suit-related contacts with the forum to justify the exercise of personal jurisdiction. In the nine months since, state courts and lower federal courts have

applied the decision in interesting ways. The following is a quick summary of some cases evaluating personal jurisdiction and deciding in favor of defendants:

- *Wallace v. Yamaha Motors Corp.*, No. 19-2459, 2022 U.S. App. LEXIS 447 (4th Cir. Jan. 6, 2022): Affirming dismissal of foreign corporation for lack of personal jurisdiction. The plaintiff, a South Carolina resident, was driving a borrowed motorcycle in Florida when she was struck and injured, allegedly because of the motorcycle’s design. The manufacturer designed and manufactured the motorcycle in Japan and then sold the motorcycle to the defendant, its U.S. entity located in California, which then sold it in Kansas. There was no dispute the defendant had minimum contacts with and purposefully availed itself of South Carolina’s market. Distinguishing *Ford*, the court concluded that the plaintiff could not establish her claim arose out of or related to the defendant’s contacts in South Carolina, where the accident giving rise to the claim occurred in Florida and the plaintiff’s residence was the only connection to South Carolina.
- *Patterson v. Chiappa Firearms USA, Ltd.*, No. 20-cv-01430, 2021 U.S. Dist. LEXIS 179619 (S.D. Ind. Sept. 21, 2021): The plaintiff, an Indiana resident, bought his firearm from a dealer in Kentucky, which shipped it to him in Indiana, where it allegedly exploded in his hand. The court granted the Italian gun manufacturer’s motion to dismiss because it had only sporadic and isolated contacts with Indiana. Having a website identifying Indiana gun dealers where its products can be purchased is not enough to demonstrate the claim arose out of or related to the defendant’s contacts,

especially where the plaintiff did not use the website for his purchase.

- *Simmons v. Cardinal Health, Inc.*, No. 20-2174, 2021 U.S. Dist. LEXIS 77149 (E.D. La. April 22, 2021): A foreign medical device manufacturer lacked minimum contacts with Louisiana and therefore was dismissed for lack of personal jurisdiction. The manufacturer contracted with a U.S. company to distribute its products in the United States, and one of the products was inserted into the plaintiff's knee in Texas. The plaintiff then moved to Louisiana, where the device allegedly failed. Because the plaintiff could not show the defendant had sufficient minimum contacts with Louisiana—the plaintiff's unilateral action of moving to Louisiana was not enough—the court concluded that the Supreme Court's analysis in the *Ford* case was immaterial. The "arising from or relating to" requirement is relevant only after the plaintiff has established requisite minimum contacts.
- *LG Chem, Ltd. v. Turner*, No. 14-19-00326-CV, 2021 Tex. App. LEXIS 4200 (Tex. App. May 27, 2021): Holding the claim did not arise out of or relate to the foreign defendant's activities in Texas, so personal jurisdiction was lacking. The plaintiff, a Texas resident, was injured in Texas when the replacement lithium battery he bought in Texas for his e-cigarette exploded. But the defendant designed and marketed the battery for use in battery packs for power tools, not for use by individuals as replacement batteries for e-cigarettes. And the battery at issue apparently had been repackaged by a different company, which then sold it into Texas. Therefore, even where the court accepted allegations about the defendant's contacts in Texas, the plaintiff's claim was not connected to those contacts, and Texas lacked jurisdiction.
- *Cox v. HP Inc.*, 492 P. 1245 (Or. 2021): Holding that Oregon lacked personal jurisdiction over a non-resident defendant company that tests various products and certifies compliance with independent industry standards. The plaintiff was injured at work when a hydrogen generator exploded. The defendant had tested and certified the series of generator at issue—with all its work happening in Connecticut and on behalf of its client based in Connecticut. But the defendant had no contact with the specific generator involved in the incident. Moreover, even though the

defendant had conducted business and evaluated other products in Oregon, its evaluation of the generator had no connection to Oregon and there was not a sufficient relationship between the defendant, the forum, and the claim to justify the court exercising jurisdiction.

- *Coiffard v. Ford Motor Company, et al.*, Erie County, Ohio, Court of Common Pleas, 2020-CV-0343: On July 20, 2021, an Ohio state court granted supplier Autoliv's motion to dismiss for lack of personal jurisdiction. Applying the Stream of Commerce Plus Test, the court concluded that Autoliv did not purposefully avail itself of the privilege of acting in Ohio by selling airbags to out-of-state manufacturers for use in vehicles designed and manufactured outside Ohio. Further, in analyzing the *Ford* decision, the court held that the plaintiff did not allege a specific connection between her claim and Autoliv's contacts in Ohio, and therefore did not satisfy the requirement that the claim "arise out of or relate to" the defendant's forum contacts.
- *DiFranco v. Amchem Prod.*, No. 600149/2018, 2021 NYLJ LEXIS 1132 (N.Y.S.C. Nov. 30, 2021): Dismissing claims against one defendant for lack of personal jurisdiction where the plaintiff failed to establish that his claims arose out of or related to the defendant's contacts in New York. The defendant purchased asbestos fibers from a company based in New York and allegedly used those fibers to create asbestos tiles. Plaintiff, a New York resident at the time his injury manifested, worked with the defendant's asbestos tiles in Ohio, Nebraska, Iowa, and Pennsylvania, but never in New York. Because there was no evidence of a connection between the defendant's New York contacts and the plaintiff's asbestos exposure, personal jurisdiction was lacking.

NHTSA Issues Standing General Order on ADAS and ADS Crash Reporting

On June 29, 2021, the National Highway Traffic Safety Administration (NHTSA) issued a Standing General Order (SGO), as amended on August 5, 2021, requiring manufacturers and operators of vehicles equipped with Level 2 advanced driver assistance systems (ADAS) and Levels 3-5 automated driving systems (ADS) to report crashes to NHTSA. The SGO highlights NHTSA's increased interest in ADAS and ADS technologies. NHTSA explained

that the purpose of the SGO is “to obtain timely notice of incidents that may provide information regarding potential safety defects on Level 2 ADAS, ADS, or vehicles equipped with these technologies.”

The SGO establishes two different reporting timelines for crashes, primarily depending on whether the crash resulted in death or serious injury. Specifically, crashes that meet the following criteria are subject to a one-day reporting timeline: (1) the vehicle involved in the crash was on publicly accessible roads in the United States; (2) the ADS or Level 2 ADAS was engaged for any amount of time during the period from 30 seconds immediately prior to the crash through the conclusion of the crash; and (3) the crash resulted in an individual being transported to the hospital for medical treatment, a fatality or an airbag deployment, or involved a vulnerable road user (such as a pedestrian or bicyclist). Further, crashes involving ADS but not meeting the third criteria must be reported to the agency on the 15th calendar day of the month following the calendar month in which notice of the incident was received. (NHTSA’s SGO does not require manufacturers to report Level 2 ADAS crashes that do not meet the third criteria.)

For any incident reported to NHTSA under the one-day or monthly reporting timelines, manufacturers must submit an updated incident report on the 15th calendar day of the month following any calendar month in which notice of any material new or materially different information about the incident is received. In the absence of any new or updated information, manufacturers are required to submit an incident report confirming the lack of any new/updated information to NHTSA.

Motor Vehicle Safety Provisions in the Infrastructure Investment and Jobs Act

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (Infrastructure Act), which reauthorizes surface transportation programs for five years and puts \$550 billion in new funds into transportation, broadband, and utilities. The Infrastructure Act also puts into motion changes to various National Highway Traffic Safety Administration requirements, including changes to recall campaign requirements and the early warning reporting system, and mandates certain new Federal Motor Vehicle Safety Standards (FMVSSs).

Among other things, the Infrastructure Act’s motor vehicle safety provisions:

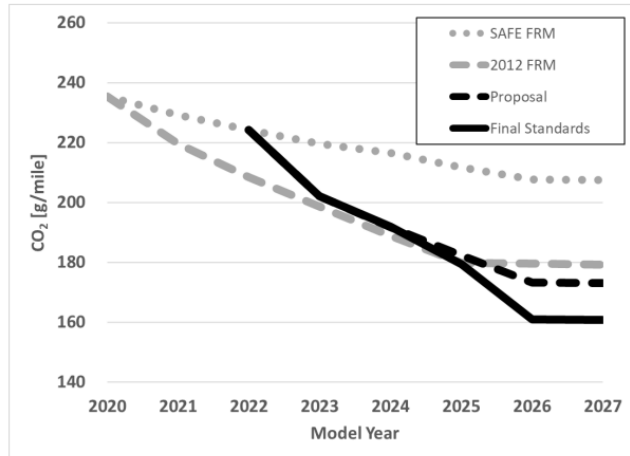
- expand the current requirement that each motor vehicle manufacturer conducting a recall submit quarterly reports to NHTSA, extending the required number of reports from six to eight, and add a new requirement for NHTSA to publish an annual list of recall completion rates issued by each manufacturer (Section 24202);
- require NHTSA to conduct a study to identify improvements to the early warning reporting system; and
- mandate NHTSA to conduct a slew of new rulemakings for FMVSSs concerning certain advanced driver assistance systems (ADAS), including forward collision warning and automatic emergency braking systems, lane departure warning and lane-keeping assist systems, as well as new requirements for automatic emergency braking, automatic shutoff, rear-seat reminder and seatbacks, and headlamps.

EPA Issues More Stringent Light-Duty Vehicle Greenhouse Gas Emissions Standards for Model Years 2023-2026

At the tail end of December 2021, U.S. EPA [issued its revised greenhouse gas \(GHG\) emissions standards](#) for passenger cars and light trucks for model years 2023 to 2026. 86 Fed. Reg. 74434. The “Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards” rescinds the Trump administration’s “Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks,” setting forth much more stringent emissions standards.

EPA touts the revised GHG standards as the strongest vehicle emissions standards ever established for light-duty vehicles in the United States. The standards increase in stringency from 2023 to 2026, accelerating at a rate of between 5% and 10% each year. In comparison, the prior standards under the SAFE Vehicles Rule increased at a rate of roughly 1.5% per year. The figure below depicts EPA’s revised standards compared to prior proposed and final standards.

EPA's Revised Standards as Average Fleetwide GHG Emissions Targets (Cars and Trucks Combined) Projected Through MY 2026 and Compared to the 2012 GHG Rule and the SAFE Vehicles Rule



Source: "Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis," December 2021, U.S. EPA

EPA expects that the revised GHG standards will result in an average fuel economy label value of 40 miles per gallon (mpg). EPA also anticipates the rule will force automakers to implement "clean" technologies and produce more electric vehicles, and EPA is offering a number of program flexibilities and incentives to assist auto manufacturers in complying with the revised standards, such as:

- A limited extension allowing credits generated from overcompliance with MYs 2017 and 2018 to be carried forward to MYs 2023 and 2024.
- Advanced technology vehicle multiplier credits for MYs 2023 and 2024 with a cumulative credit cap of 10 grams CO₂ per mile.
- Full-size pickup truck incentives for strong hybrids or similar performance-based credit for MYs 2023 and 2024.
- "Off-cycle" credits of up to 15 gallons/mile for technologies that provide real-world emissions reductions but that are not captured on EPA's tailpipe emissions compliance tests.

The revised GHG standards final rule [is set to go into effect on February 28, 2022](#), although it may yet be challenged in the D.C. Circuit Court of Appeals.

California Bans Gas-Powered Small Off-Road Engines

On December 9, 2021, the California Air Resources Board (CARB) [approved regulations](#) banning the purchase of new gas-powered small off-road engines that produce less than 25 gross horsepower. This rule impacts gas-powered engines found in lawn equipment like leaf blowers, lawn mowers, pressure washers, and portable generators. The ban goes into effect for all lawn equipment except pressure washers and portable generators in 2024, with the pressure washer and portable generator ban effective in 2028. It does not prohibit the use of gas-powered equipment acquired before the ban takes effect, nor the purchase of gas-powered equipment already on store shelves when the ban takes effect.

The ban is part of California's zero-emission strategy and impacts not only manufacturers, but also private homeowners and commercial landscapers. In order to assist small businesses impacted by the ban, California made \$30 million in funds available to purchase new zero-emission equipment through its Clean Off-Road Equipment Voucher Incentive Project (CORE). Meanwhile, financial analysts [estimate](#) that battery-powered lawn equipment will be a \$14.1 billion industry by the end of 2024. Recent reports indicate that other states including New York and Illinois are considering implementing similar bans.

California Lithium-Ion Car Battery Recycling Advisory Group Submits Draft Recommendations for Regulations

On December 13, 2021, after 14 meetings that commenced in 2019, the California Lithium-Ion Car Battery Recycling Advisory Group (Advisory Group) submitted its "[Draft Report](#)" regarding lithium-ion car battery recycling for public comment. As more electric vehicles (EVs) enter the market and eventually retire from service, California began to evaluate what should be done with these batteries once they reach their end of life. As discussed in the previous [Mobility Matters Quarterly newsletter](#), California law AB2832 (2018) requires the Advisory Group to issue policy recommendations based on this Draft Report to help resolve this issue. The Draft Report will eventually be used to promulgate California regulations on lithium-ion recycling, with the United States EPA and other states

potentially following suit. Public comment on the Draft Report is open through February 16, 2022.

As provided in the Draft Report, the Advisory Group's recommended policies focused on two main areas: (1) defining responsibility for the coordination and payment of recycling in cases where the cost presents a burden on the vehicle owner and the battery is unwanted, and (2) mitigating the barriers that may currently inhibit the reuse, repurposing, and recycling of the vehicle battery. The most supported Advisory Group proposal was the "core exchange and vehicle backstop" policy, which builds on already existing industry standards and policies. In summary, this policy defines the responsibility for out-of-warranty batteries under three different possible scenarios: (1) EVs still in service, (2) EVs reaching end-of-life where a dismantler takes ownership of the vehicle, and (3) EVs reaching end-of-life where the vehicle has an OEM-certified battery and is not acquired and removed by a licensed dismantler.

1. For EVs still in service and where a battery is replaced before its end-of-life, a core exchange program detailed by the supplier would be used. The entity removing the battery would then be responsible for reusing, recycling, or repurposing the battery and ensuring the core exchange program is used to track that the used battery has been properly managed.
2. For EVs reaching end-of-life where a dismantler takes ownership, the dismantler of the vehicle is responsible for ensuring the battery is properly reused, repurposed, refurbished, or recycled. If the battery is reused in another vehicle with no alterations, then the first scenario shall apply. If refurbished or repurposed, the responsibility transfers to that refurbisher or repurposer.
3. If the EV has reached its end-of-life and is not acquired and removed by a licensed dismantler, the vehicle manufacturer is responsible for ensuring it is properly dismantled and that the battery is properly reused, recycled, or refurbished.

The second most popular Advisory Group proposal was the "producer take-back" policy, which states that the auto manufacturer is responsible for ensuring proper repurposing, reuse, and recycling of its batteries at a licensed facility with no cost to the consumer as long as the

batteries are no longer wanted by the owner and no other entity has taken possession of the batteries. Both policies require further consideration to define what constitutes "proper recycling" and how it should be verified.

In support of these policies, the Draft Report also included proposals to address specific concerns in EV battery reuse and recycling to ensure whatever processes are chosen are safe and environmentally responsible. Most of these policies surround labeling and digital identifier requirements, supporting the development of recycling facilities through incentive packages and a guaranteed permitting timeline, supporting the enforcement of unlicensed dismantling laws, and training programs to ensure that the people who handle end-of-life vehicles have the skills needed to safely work with the vehicles and assist with navigating regulatory requirements.

While the Draft Report provides only recommended policies at this time, it provides a glimpse into the potential direction and focus that California and possibly U.S. EPA and other states may take regarding regulation of EV battery recycling. The final report is expected to be submitted to California EPA by late March/April 2022.

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