County Sanitation District No. 2 of Los Angeles County v. County of Kern (2005) 127 Cal.App.4th 1544
Kern County adopted an ordinance banning the application of Class A and Class B biosolids to land under its jurisdiction (Exceptional Quality biosolids were exempted), and a biosolids impact fee, imposed on biosolids by the ton for the purpose of recovering the cost of repairing roads due to the incremental increase in truck traffic carrying biosolids within the County. At the same time, it adopted a mitigated negative declaration.

The Court overturned the mitigated negative declaration on the basis of substantial evidence in the record indicating that the ordinance may result in in-county and out-of-county impacts on air quality (from transportation and increased treatment), energy consumption (from increased treatment), and landfill capacity. However, it allowed the ordinance to remain in place while the County prepared an EIR. The following summarizes some of the courts' most important pronouncements concerning fair argument:

- The *fair argument* test is a question of law to be determined by the appellate court without regard to the decision of the lower court
- The *fair argument* test establishes a low threshold that reflects a preference in favor of environmental review (e.g. an EIR)
- If there is *substantial evidence* that supports a *fair argument*, then contrary evidence is not adequate to support a decision to dispense with an EIR
- Refuting the credibility of *substantial evidence* must be done with particularity, mere assertions of insufficiency are not adequate
- In determining the potential for significant *effects*, a lead agency must consider the changes in the environment in all geographic areas in which impacts may occur (e.g. *impact area)*, not just the area in which the project occurs (e.g. *project area*)
- An indirect environmental impact may *be reasonably foreseeable*, even if there are alternative possibilities as to what will occur in the future, when the producer of that impact indicates that they will undertake particular actions leading to it
- Predictions of potential future impacts may be *reasonably foreseeable* even if they are neither specific nor particularized
- A Lead agency has an affirmative duty to investigate whether potential impacts may have a significant effect on the environment (citing *Sundstrom v. County of Mendocino*)
- Deficiencies in the administrative record enlarges the scope of the *fair argument* standard by lending logical plausibility to a wider range of inferences (citing *Sundstrom v. County of Mendocino*)
- Deferral of required environmental analysis to the future is never permissible when the agency decides to rely on a Negative Declaration

The Court invalidated the road impact fee, finding that it conflicted with California Streets and Highways Code Section 9400.8 which prohibits a local agency from imposing

"a tax, permit fee, or other charge for the privilege of using its streets or highways, other than a permit fee for extra legal loads…" The road impact fee was based on a study linking truck traffic and weight to the cost of road maintenance. The Court held that "a road maintenance or impact fee is simply one type of fee for the privilege of using a road," so the limitations of Section 9400.8 applied to preempt the County's ability to impose this fee. The Court invalidated those portions of the biosolids impact fee that violated Section 9400.8 and remanded to the superior court consideration of whether there are valid portions of the fee that may be upheld.

The Court also considered the County's cross claim that several sanitation districts that produce biosolids for application in Kern County had not prepared CEQA analyses for those operations. In some cases, the Court found the contracts with applicators had expired and the claim was moot. However, where valid contracts still existed, the Court ordered the superior court to examine whether a writ of mandate should be issued requiring those districts to undertake CEQA review.