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Air District prevails in development lawsuit appeal

(Fresno) – An appeals court has validated the San Joaquin Valley Air Pollution Control District's pioneering regulation requiring that new developments in the Valley air basin contain air-quality mitigation measures.

Tuesday the Fifth District Court of Appeals in Fresno affirmed a landmark 2008 decision by the Fresno County Superior Court which ruled in favor of the District in a challenge by developers to the District's Rule 9510. Also called Indirect Source Review, the rule was adopted in December 2005 and establishes development fees for air-pollution mitigation.

The lawsuit claimed that the District had no authority to regulate development and impose fees, and amounted to a tax under Proposition 13. It was filed in June 2006 by the California Building Industry Association.

"We hope the state Building Industry Association will now join the many Valley developers who have taken this rule to heart and designed their projects to reduce air-quality impacts," said Seyed Sadredin, the District's Executive Director and Air Pollution Control Officer. "We are asking all businesses to do their part to help clean up the air and hope the association will get on board as well."

"We were confident from the start that we would prevail in the case and are very pleased with the decision," said Philip Jay, the District's legal counsel. "It's extremely satisfying for the court to uphold the District's innovative rule."

Rule 9510 holds developers accountable for air-quality impacts that result from building activity and also for air-quality impacts that result from the development's use. Developers have options for offsetting pollution through a variety of mitigation measures – for example, including bike paths, increasing energy efficiency or building new housing developments close to transit stops.

Fees are assessed for pollution that exceeds thresholds established by the Air District. The Air District uses these fees to achieve off-site emission reductions on behalf of the developer by funding clean-air projects such as retiring polluting vehicles and paving unpaved roads. The Air District was the first in the state to put such a rule into place and other areas are looking to it as a model for their own potential regulation.

The Valley Air District covers eight counties including San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and the Valley air basin portion of Kern. Visit www.valleyair.org to learn more.

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