

Air cleanup penalty \$29M, but who pays?

By Mark Grossi / The Fresno Bee
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Businesses from Stockton to Bakersfield are on the hook for a penalty that will start at \$29 million a year because the Valley missed an air-pollution cleanup deadline.

The penalty will begin in 2012, unless the Valley manages to achieve the unlikely goal of just a few ozone violations over the next three years. Deciding how to pay it will be the biggest issue of the year for the San Joaquin Valley Air Pollution Control District, officials say.

Businesses say the penalty — which would be spent on air cleanup measures in the Valley — is unfair because they have invested billions of dollars over the last two decades to reduce their emissions.

So the air district is considering a plan to pass 80% of the tab to motorists instead — in an extra \$10 vehicle registration fee. Vehicles create 80% of the Valley's ozone problem, officials said.

"It's a question of fairness," said district executive director Seyed Sadredin. "We don't want to further penalize the businesses, especially in this economic climate."

Environmentalists, however, say the penalty should be pointed at businesses because it is structured in a way that it provides an air-cleanup incentive. The more businesses reduce pollution, the lower the penalty becomes.

The air district will schedule public meetings in the next few months to discuss the options. A decision is expected in the next year.

Ironically, the penalty is coming because the Valley missed a deadline to achieve a standard that is now obsolete.

The Valley is among the country's worst offenders for ozone pollution, a corrosive gas that forms in warm weather when exhaust from vehicles combines with fumes from paint, gasoline or dairy waste. It can trigger lung problems, such as asthma.

Each air basin is judged on an eight-hour average of ozone readings; a standard set for one-hour readings was abolished in 2005. But because the U.S. Clean Air Act forbids backsliding on any abolished standard, the Valley faces penalties for missing the cleanup deadline this year.

The Valley never has achieved the one-hour standard, but violations have decreased in the last 20 years. There are fewer than five violations each year, compared to an average of 50 in the early 1990s, officials say.

The region still can escape the \$29 million penalty by having no more than one violation in each of the next three years. But district officials consider it unlikely.

If the air district's governing board doesn't come up with an approach to pay the money by 2011, there will be federal sanctions on top of the \$29 million penalty.

The sanctions would include freezing billions of dollars in federal road-building funds and raising costs for new and expanding businesses. In addition, penalty money would be collected and kept by the federal government, instead of being spent locally to clean the air.

What would the penalty mean to businesses? They would have to pay about \$8,000 for each ton of ozone-making emissions above a threshold set by law. That would amount to an estimated \$29 million in the first year, but would decline as businesses reduce their emissions.

Some companies would benefit from the penalty. The district would spend the money helping businesses replace diesel trucks, buses and off-road vehicles, such as tractors, Sadredin said.

But many feel the penalty is unfair. Guardian Industries, which operates a glass plant in Kingsburg, for example, has been among the country's cleanest-operating facilities for many years, said Phil Newell, a company engineer.

In 2007, Guardian invested \$10 million in pollution control, trimming ozone-causing emissions by more than half. Now he faces more than \$500,000 in annual penalties starting in 2012.

"This is how we are rewarded for building the cleanest glass plant in America," he said.

Under the alternative plan the district is considering, businesses like Guardian that have aggressively pursued cleanup measures wouldn't pay any penalty. Other businesses, however, would share the penalty along with motorists.

Here's how it would work: The air district, which has the authority to levy an extra fee on vehicle registration, would get about \$23 million of the penalty from motorists. The remaining \$6 million would come from businesses that still need to improve their pollution control.

Environmentalists say that some businesses are not doing as much as possible to reduce pollution. They say the law was intended to make all businesses as efficient as possible in reducing pollution.

Lawyer Paul Cort of the legal watchdog Earthjustice, based in Oakland, said that giving businesses such as Guardian a credit on previous work would undermine the collective incentive for all businesses to reduce pollution.

"Instead of looking for ways to give businesses a break, the district should focus on keeping those incentives in place and adding more for mobile sources," like vehicles, Cort said.

[Bakersfield Californian commentary, Thursday, March 11, 2010:](#)

Pesticide regulators working to help air quality in the San Joaquin Valley

The California Department of Pesticide Regulation is pleased to announce that volatile organic compound pesticide emissions that contribute to smog in California dropped significantly in 2008, the first year restrictions on agricultural fumigant applications specifically targeting air quality were in effect.

VOC pesticide emissions declined by an impressive 30 percent from 1990 levels in the area of the San Joaquin Valley that does not meet federal air quality standards -- all of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare counties and the valley portion of Kern.

VOCs combine with nitrogen oxides in sunlight to form ozone, a major air pollutant. While the reduction is impressive, it is a snapshot and does not yet establish a trend. Weather and pest infestations change from year to year.

DPR's Draft Annual Report on Volatile Organic Chemical Emissions from Pesticides for 1990-2008, released last month, found that 14.5 tons of VOC pesticide emissions were released per day in 2008 in the San Joaquin Valley from May through October, the peak ozone season in California. This compares with 20.6 tons during the same period in 1990.

The regulations are based on 1990 emission levels because that is the year when the federal Clean Air Act first required states to track and reduce air pollution.

We credit the reduction in VOC pesticide emissions to farmers' adoption of low-emission application methods for fumigants, including tarps and application through drip irrigation systems. Typically, these gaseous pesticides are used before planting to control disease, weeds and other

pests in the soil. Pesticide applications to almond-growing sites showed the most significant decrease in emissions -- 26 percent.

California is the first state in the nation to identify pesticides that contribute most to air quality problems and take steps to reduce those emissions. DPR initially targeted fumigants because it was the fastest, most efficient way to reduce overall VOC pesticide emissions in the areas that do not meet federal air quality standards.

Only seven fumigants, all designated as restricted materials, are registered for use in California. Using a restricted material requires a permit issued by a county agricultural commissioner who evaluates under what conditions the product can be used and can impose restrictions developed by DPR to ensure the safety of farmworkers, the public and the environment.

In contrast, there are hundreds of nonfumigants registered in the state. Most do not require a permit to use, making them more challenging to regulate than fumigants.

In the San Joaquin Valley in 2008, 77 percent of VOC pesticide emissions were from nonfumigants. DPR's goal is to implement restrictions by 2014 to reduce VOC nonfumigant emissions.

The DPR remains committed to more reductions in VOC emissions through reformulation of nonfumigants, more efficient application technologies and strategies less reliant on pesticides.

We have formed strategic partnerships with industry and are working with agricultural organizations to develop pesticide alternatives. For example, the California Fresh Carrot Advisory Board is developing alternative fumigation methods and nematode-resistant varieties of carrots. The Strawberry Commission is researching alternatives to the fumigant methyl bromide that is being phased out by an international treaty.

DPR is also working with the U.S. Department of Agriculture, University of California and U.S. Environmental Protection Agency on a project to reduce VOCs from valley peach, almond and walnut orchards. We're working with USDA's Environmental Quality Incentives Program to help farmers apply and receive financial support for using precision application technology or other practices that reduce VOC emissions.

We award grants to commodity groups to develop innovative solutions to VOC emissions and pesticide drift. DPR has a web-based VOC emission calculator for fumigants that enables farmers to enter product information and the application rates for products and obtain potential emissions for an application scenario. We are developing a similar calculator for nonfumigants.

Public comments on the Draft Annual Report on Volatile Organic Chemical Emissions from Pesticides: Emissions for 1990-2008 will be accepted until March 19. The report and information on how to submit comments are posted at: www.cdpr.ca.gov.

Mary-Ann Warmerdam is director of the California Department of Pesticide Regulation. She grew up on a San Joaquin Valley dairy farm.