

Court upholds valley air district rule Home builders ordered to pay fees on emissions

By The Associated Press

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A federal appeals court ruled this week that air quality regulators in the smog-laden San Joaquin Valley have the right to charge home builders a fee to control their pollution emissions.

A three-judge panel of the U.S. 9th Circuit Court of Appeals in San Francisco upheld the local air district's rule requiring developers to reduce emissions from new housing projects by building features such as bicycle lanes and energy-efficient cooling systems. If they don't do enough to preserve air quality, they must pay fees that have averaged about \$500 per house.

Stretching 240 miles from Stockton to Bakersfield, the valley is one of the dirtiest air basins in the nation for emissions that create ozone, the main ingredient of smog.

The Fresno-based district was the first in California to impose such a rule in 2005, and other regions still look to it as a model to control pollution from construction equipment and suburban sprawl.

"This a long-awaited, welcome decision by the court, and I'm hoping that this will be the end of it," said Seyed Sadredin, executive director of the San Joaquin Valley Air Pollution Control District. "We are eager to continue working with valley developers to clean up our air."

The rule allows construction companies to reduce emissions through a variety of means, including using cleaner bulldozers and backhoes or building near public transit, Sadredin said.

Modesto groups joined lawsuit

In 2007, when the construction industry was still building plenty of new subdivisions, the National Association of Home Builders challenged the rule in federal court, saying vehicles were the problem, not new homes and businesses. The national federation claimed the air district lacked the authority to regulate tailpipe emissions and claimed it was the responsibility of the U.S. Environmental Protection Agency.

The Modesto Chamber of Commerce and the California Building Industry Association also were party to the lawsuit.

A Fresno federal court ruled in favor of the air district in 2008, and the 9th Circuit upheld that ruling Tuesday.

Amy Chay, senior counsel for the home builders association, said the organization remained concerned about the rule's impact on the local industry, which has suffered heavily in the economic downturn in the foreclosure-ridden valley. Officials have not ruled out an appeal to the Supreme Court, she said.

"We filed this suit four years ago, and sadly a lot of our members are no longer in business," Chay said. "We are disappointed."

Sadredin said the collapse in the construction industry meant the air district collected far less in fees than it had originally projected before the recession began — just \$16 million over the past five years, as opposed to the initial estimate of up to \$30 million per year.

Clean air activists — including the environmental law group Earth justice, which has opposed local regulators in the past but intervened in the air district's favor in this case — said they were pleased by Tuesday's ruling.

[Bakersfield Californian, Editorial, Saturday, Dec. 11, 2010:](#)

CARB singing a new diesel emissions tune

A leading California policy-enforcement agency is backing away from strict limits on diesel exhaust emissions, apparently in acknowledgment of a prevailing argument that we can't have environmental regulations and a functioning economy at the same time.

The California Air Resources Board, which holds that diesel exhaust causes cancer, serious lung ailments and as many as 9,200 deaths a year – a disputed statistic – has revealed a proposal to ease restrictions on emissions from diesel-powered trucks, buses, construction vehicles and other equipment. The goal, CARB says, is to "extend relief to businesses, particularly the construction industry, which is really suffering."

CARB also wants to drop a mandate to retrofit some 250,000 diesel-powered off-road engines with emissions-reducing filters, saying its pollution estimates were far too high.

This policy shift's implications for Kern County's brown skies could be grievous. We're captive to topography that traps air pollution, and we're a major crossroads for some of the West's most heavily traveled highways and rail lines. Don't be surprised if we see a spike in "unhealthy air" days this summer. And it will be painfully ironic if CARB's actions help saddle the valley with new noncompliance fines, like the one imposed this year by the San Joaquin Valley Air Pollution Control District.

In this economy, business needs help; we get that. But we question whether this is the healthiest way to go about it.