

## **S.J. joins effort to ease tough Valley ozone rules**

By Zachary K. Johnson

Stockton Record, Wednesday, Oct. 5, 2011

STOCKTON - San Joaquin County officials voted Tuesday to support federal legislation that would ease regulations on ozone levels in the San Joaquin Valley and eliminate a \$29 million fine Valley drivers have started paying through higher licensing fees.

The county Board of Supervisors unanimously approved a letter supporting the legislation that describes penalties for not meeting requirements for ozone levels as "unfair and unjustified."

Air quality has been improving, and seven other counties in the region already have gotten behind the legislation that would protect jobs and give the Valley relief from imposed penalties, Supervisor Leroy Ornellas said, who also is a member of the San Joaquin Valley Air Pollution Control District governing board.

"This gives us breathing room," he said. "We need to protect jobs and clean the air. We can do both."

But air pollution hurts the economy, too, with the benefits of healthier air able to save the Valley about \$6 billion a year in reduced health care costs, fewer missed workdays and fewer premature deaths, said Kevin Hall, director of the Central Valley Air Quality Coalition. He said the proposed legislation is not the right move for a valley that has poor air quality, "The problem is that it sends the wrong signal."

Hall said the bill would add up to five years to a time line for new ozone standards.

Introduced by Rep. Kevin McCarthy, R-Bakersfield, the bill also would create a local advisory committee that would have as long as five years to report on the new standards. Dubbed the Common Sense Ozone Regulation Act, the bill has been referred to the House Committee on Energy and Commerce.

The eight-county Valley incurred the \$29 million fine when it failed to meet the standards last year, which was the first year penalties would be levied. A combination of hot weather and back-to-school traffic that put more pollution-spewing cars on the road was blamed for the missed target. The Valley Air District tapped drivers for the cost of the penalty by adding \$12 per year for each vehicle registered in the Valley.

The ozone standard the Valley missed was replaced in 2005, but courts ruled penalties for not meeting the old standard still applied, said Seyed Sadredin, executive director of the Valley Air District. He requested the letter of support for the McCarthy bill from the supervisors.

## **High court declines to hear case against Valley air district**

By Sentinel Staff

Hanford Sentinel, Tuesday, Oct. 4, 2011

The San Joaquin Valley Air Pollution Control District is celebrating the U.S. Supreme Court's refusal on Monday to hear a case that challenged impact fees the district charges local developers to offset the increased vehicle traffic that comes with new developments.

"While we are very pleased with the resolution of this suit, the air district wants to emphasize the appreciation we have for the Valley's builders and the support they have always demonstrated for this important regulation," said Seyed Sadredin, district executive director. "Their partnership is critical in achieving our clean-air goals."

The challenge, brought by the National Association of Home Builders, alleged that the district didn't have the authority to regulate emissions from construction vehicles.

A separate lawsuit brought against the district by the California Building Industry Association was rejected by a lower court in 2008 and again by an appeals court in 2009.

Developers pay fines based on how much pollution they add to Valley air. They can reduce the penalty by incorporating air-friendly measures such as better access to shopping, bike lanes and energy-efficient appliances.

The regulation, known as the Indirect Source Rule (ISR), was adopted by the San Joaquin Valley Unified Air Pollution Control District in December 2005 and took effect in March 2006. The National Association of Home Builders filed a challenge in federal district court in 2007 seeking to invalidate the rule, but the court rejected the challenges.

The NAHB appealed the decision to the Ninth Circuit Court of Appeals, which rejected the appeal last December. The NAHB petitioned the Supreme Court for review in June.

Environmental groups praised the court's action.

"We were glad to stand with the San Joaquin Air District to defend this rule," said Paul Cort, an attorney for Earthjustice. "No special interest should have a free ride in a region where schools and parents are frequently warned to keep children indoors on bad air days."

## **Environmental groups, state regulators win major smog case over home developers**

By Paul Rogers, staff writer

San Jose Mercury News, Tuesday, Oct. 4, 2011

In an environmental case that is expected to have implications across the Bay Area and California, the U.S. Supreme Court on Monday refused to take up a lawsuit from the National Association of Home Builders that challenged whether air pollution officials in California can charge developers fees to offset the smog that is caused from new subdivisions and other housing developments.

Traditionally, government agencies have required developers to pay for the impacts their projects cause on schools, parks, sewer systems and roads. But in 2005, the San Joaquin Valley Air Pollution Control District, based in Fresno, passed a new rule requiring developers to pay to offset the air pollution caused by their construction equipment, and also for the new traffic generated by their projects.

The National Association of Home Builders sued, and first lost at the district level and again in December at the 9th U.S. Circuit Court of Appeals.

The news Monday that the U.S. Supreme Court declined to take the case hands a victory to air pollution regulators and environmental groups. It also means that Bay Area air regulators, who had been watching the case with interest, are likely to adopt a similar rule in the next few years.

"Developers have been able to largely avoid the same regulations that apply to a smokestack," said Paul Cort, an Oakland attorney who represented the Sierra Club and Environmental Defense Fund in the case. "But these projects do create pollution by adding to the vehicle miles traveled."

### **Unhappy developers**

Building industry officials, unhappy about the outcome, say the current economy is the worst time to put such additional costs in place. They estimate the San Joaquin air district rules add roughly \$500 to the price of a new home. The money collected in fees by the air district goes to pay for programs to do such things as help farmers or businesses buy new diesel tractors or irrigation equipment that puts out less soot than old equipment. It could also be used in the Bay Area for such programs as funding bike lanes, electric car charging stations or employee shuttle programs.

"Why is the homebuilder stuck with that fee?" said Tom Ward, an attorney with the National Association of Home Builders in Washington, D.C. "If you want to charge people for every mile they drive they could do that. But politically that's not tenable, so they stick it on the homebuilder."

Lisa Fasano, a spokeswoman for the Bay Area Air Quality Management District, based in San Francisco, said her agency already is considering a similar rule, and estimates it could raise roughly \$1.4 million a year for clean air

programs, at a cost of roughly \$15,000 per developer. Those would include the Spare-the-Air program, which urges the Bay Area's 7 million residents to drive less during hot summer days to keep smog levels low.

"Developments create pollution just like putting in a new factory or expanding a refinery creates pollution," Fasano said. "They need to offset that pollution so public health is protected."

### **Indirect sources**

The regulation at the center of the legal battle was adopted in December 2005 by the San Joaquin air district, which regulates pollution in eight counties including San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare and parts of Kern. It applies to any housing development with more than 50 units, as well as office complexes more than 39,000 square feet and most light industrial, retail and heavy industrial building.

Known as the "indirect source rule," the regulation was part of the state's broad plan to reduce smog and soot levels in the Central Valley -- among the worst in the U.S. But it created a legal debate. Generally, the federal Clean Air Act, signed by President Richard Nixon in 1970, requires states to reduce emissions from factories, power plants and other stationary sources, while regulation of motor vehicles remains with the federal government.

The homebuilders argued that fees on construction equipment use and on increased traffic were illegal state regulation of vehicles. But the lower court and the appeals court disagreed.

Supporters of the rules note that developers can reduce the fees by using newer construction equipment or building closer to mass transit, because the fees are based on emissions estimates from a computer program that looks at average pollution from cars and construction equipment statewide.

"The decisions they make on where to build and how to build do make a difference," said Cort. "Smarter development means reduced air pollution. This creates an incentive to promote infill development, to build next to existing mass transit, and to build more pedestrian friendly projects."

### **Rail company pulls out of effort to help fund track repairs**

By David Castellon

Visalia Times-Delta and Tulare Advance-Register, Wednesday, Oct. 5, 2011

RailAmerica has rescinded on claims it would cover a quarter of the estimated \$15 million cost of repairing and upgrading commercial railroad tracks between Exeter and Dinuba.

That decision has torpedoed chances of winning either of two \$10.5 million federal grants the Tulare County Association of Governments planned to apply for to cover most of the costs, said the organization's executive director, Ted Smalley.

He said he received a call Monday from Patrick Kerr, director of government affairs from Florida-based RailAmerica, which, through its subsidiary San Joaquin Valley Railroad, owns the more than 50-year-old tracks that TCAG officials say are in bad shape.

County Supervisor Allen Ishida announced the rail company's change of heart during Tuesday's Board of Supervisors meeting.

He told the audience that RailAmerica had originally offered to cover 20 percent of the project costs, "and last week they said they would share 25 percent."

Then came the unexpected news that the company had decided it wouldn't put any money into the project, Ishida said.

Smalley, who didn't attend the board meeting, said TCAG had worked with RailAmerica since January to plan out applying for a U.S. Department of Transportation grant as well as a federal air-quality grant if the first grant didn't come through.

He said RailAmerica agreed last week to increase its financial commitment because company officials didn't believe the grants would be awarded unless more matching funds were committed. Smalley said the company agreed to cover 25 percent of the costs if TCAG would use some of its federal air improvement funds to cover 5 percent.

"I told him in concept, our board would be supportive," said Smalley, adding that plans were made to begin writing a proposal for the DOT grant soon because the deadline to submit it is the end of the month.

TCAG is comprised of representatives from Tulare County's cities and all five county supervisors who coordinate, manage and seek funds for transportation projects throughout the county.

Without RailAmerica's pledge, both grants are out of reach, Smalley said.

Smalley said replacing the tracks would fix safety problems that require freight trains to travel at only 10 mph and limit the amount of train traffic. Safe, reliable lines would allow communities in the area — including Visalia, where the tracks run through — to promote development of businesses that ship and receive goods by rail.

Smalley said RailAmerica's actions were particularly surprising to him considering the months of planning the company was involved in that included sharing technical information to put in the grant applications and joining TCAG representatives to meet with San Joaquin Valley Pollution Control District officials to discuss the air quality grant.

Kerr didn't respond to phone calls Tuesday.

Smalley said he asked Kerr to have a company representative attend the next TCAG meeting on Oct. 17 to explain the decision to the governing board, but he hasn't heard back on that.

RailAmerica, through San Joaquin Valley Railroad, has another 10 miles of tracks running from Exeter to Lindsay that also need repairs, but the plan was to secure funding to fix the Exeter-to-Dinuba stretch first.

Last year, the rail company unexpectedly tore out and sold for scrap 30 miles of tracks on the east end of the county, from Lindsay to Jovista, after TCAG officials had spent three years working on trying to preserve the tracks.

Monday's phone call came before TCAG had hired a contractor to prepare the grant application, which would have cost \$15,000, Smalley said.

Based on RailAmerica's actions, Smalley said he believes the company planned all along to abandon the tracks between Dinuba and Lindsay.

He said Kerr denied that in their phone discussion, but "It's hard to draw any other conclusion.

"If you aren't planning to abandon [the tracks], it seems absolutely stupid you don't upgrade them."

## **More miles per gallon in California**

San Diego Tribune Wed., Oct. 5, 2011

The Golden State ranks in the top 20 for savings from the new federal miles-per-gallon regulations, according to an analysis by the Natural Resources Defense Council and the Union of Concerned Scientists.

The estimated savings are based on a new government fuel economy standard that requires automakers to produce a fleet fuel economy of 54.5 miles per gallon by 2025. Consumers are expected to save billions at the gas pump and the move is also expected to dramatically cut independence on oil, according to NRDC and UCS.

The final rankings will be released today along with state-by-state breakdowns of estimated savings for consumers and households.