

Air-quality changes bring mixed reviews

By Mark Grossi, staff writer

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The Valley's summertime air is dangerous at times -- 91 ozone violations and counting this year. And you're paying a \$29 million annual fine for failing to clean it up faster.

So are you any better off now than you were 10 years ago?

Yes, say government watchdog agencies. Not really, say environmentalists, health advocates and community activist groups.

More than 40% of a key ozone-making gas -- NOx -- is gone now. Also gone are terrible years like 2002 when smog sieges created a lung-searing 158 violations.

In 2002, environmental lawsuits were making headlines and building a fever for change. That year, The Fresno Bee published a 24-page section, "Last Gasp," focused on air quality.

Now as this ozone season winds down, the air here still is not healthy.

Fresno and Bakersfield continue to appear in the American Lung Association national rankings among the five cities most polluted by ozone. This year, those two cities, Clovis, Parlier and Arvin all had more than 40 violations. The goal is zero.

The Valley has a long way to go, says Kerry Drake, associate director of the U.S. Environmental Protection Agency's air division in San Francisco. Still, he sees hope to meet the cleanup deadline of late 2023 for the eight-hour ozone standard -- an average of ozone readings over eight-hour periods.

"I know it seems hard to believe that we could make it," he said. "But technology, pollution reduction and public awareness have come so far in the last 10 years. It is definitely better now in the Valley."

Unfortunately, the 25,000-square-mile Valley is a friend to ozone, more so than almost anywhere in the country.

The recipe for creating ozone reads like a Valley profile: You need heat, sunlight, stagnant air, NOx (oxides of nitrogen) from cars and trucks, and pollutants coming from dairies, gasoline and other sources. And since the Valley is a gigantic bowl, it often traps ozone for days.

The South Coast Air Basin creates 60% more ozone-making gas than the Valley, according to California Air Resources Board emission records. Yet the Valley has averaged more ozone violations over the past 10 years.

The best reasons to clean it up: The corrosive gas triggers asthma and other lung illnesses. Sometimes, it kills people before their time.

The San Joaquin Valley Air Pollution Control District has passed many of the toughest rules in the nation, among them the pioneering control of pollution coming from agriculture, said Seyed Sadredin, executive director.

"Despite significant reductions in emissions and even with the toughest air regulations, our challenges are tougher than any other region in the nation," he said.

Activists agree about the challenge, but they say the groundbreaking rules for agriculture and other pollution sources were forced by environmental lawsuits.

And even so, the district wrote rules that are not so tough, says Kevin Hall, executive director of the Central Valley Air Quality Coalition, representing dozens of groups.

For instance, activists five years ago suggested banning the use of old, polluting trucks, cars, boats and commercial equipment on the smoggiest summer days. The district rejected the idea, saying it would be too harsh on business.

"There are too many times when the district board says we can't get something done," Hall said. "We need leadership that says it can be done."

Politics have become a central feature of ozone cleanup over the last decade. One example is the furor over moving the air monitor at the Kern County city of Arvin, which a few years ago was the biggest smog trap in the country.

The state Air Resources Board lost the lease for the location of the monitor two years ago, so a new one was set up at a school two miles away.

Suddenly, Arvin no longer was a national leader in ozone violations. Activists still are incensed.

Tom Franz, a Kern County resident who is part of the advocacy group Association of Irrigated Residents, says he thinks Arvin would have 77 violations this year if the old site still was used. The new monitor shows 45 violations.

District leader Sadredin replies the new monitor is at a more appropriate place where children play outdoors. The old monitor was at an irrigation district office.

There also is friction between the district and the federal government over the \$29 million annual ozone fine -- most of which is paid by registered vehicle owners.

The fine was triggered when the Valley missed the 2010 cleanup deadline for the federal one-hour ozone standard.

Though the standard was abolished seven years ago, federal law still requires attainment. Sadredin says more than 90% of one-hour violations have been eliminated.

Said Sadredin: "We think it's unreasonable to make the Valley pay \$29 million for a few hours of readings over the standard."

Air-quality concerns delay new facility

Union, environmental group wrangle with the city of Visalia over 500,000-square-foot distribution center

By Mark Peinado, staff writer

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The lawsuit aiming to halt the development of a medical supply distribution center in Visalia will move forward — but city officials say they're not panicking.

This week the 5th District Court of Appeal in Fresno overturned a lower court ruling that allowed development of the proposed 500,000-square-foot VWR distribution center to continue despite concerns about air quality, truck traffic and the center's environmental impact.

The center is expected to hire 100 people.

VWR International is a global laboratory and chemical-supply company based in Radnor, Pa., that distributes laboratory supplies and services (beakers, mugs, furniture) to the scientific community so their labs are operational. It's shutting down plants in Brisbane in the Bay Area and San Dimas in Southern

California, but the one in Aurora, Colo., will remain open. VWR is doing so in order to have one distributing facility on the West Coast, which would be in Visalia. The company has begun hiring workers and is scheduled to open in the fall.

“We have other options,” Visalia City Attorney Alex Peltzer said. “It’s clear that the plaintiffs are the labor union employees in Brisbane where the VWR plant is closing. It has nothing to do with the environment and everything to do with the union. They’re unhappy that the company is moving its operations.

“To us, it’s very frustrating because they are using environmental law and costing everyone a lot of money.”

Peltzer said that unless the court itself mandates that VWR not open the facility, it’s free to continue with its plans because it has a valid building permit.

“We’re absolutely on track to meet our goal of being fully operational this fall,” Valerie Collado, VWR’s director of corporate communications, said. “Ultimately, we want to make sure we’re fully operational and ready to meet our customers’ needs and provide them with the service they [have] come to expect.”

There are five plaintiffs in the lawsuit (Coalition for Clean Air, Center for Environmental Health, Association of Irrigated Residents, Kevin Long and Teamsters Joint Council 7). It was filed on Dec. 28, 2010, and states that the city violated the California Environmental Quality Act and its own municipal code in allowing VWR to relocate to Visalia.

The lawsuit was originally dismissed in May 2011 in a Tulare County courtroom because the plaintiffs lacked legal standing. But now that the appeals court has ruled in the plaintiffs’ favor, there’s a possibility that the plant might have to go through the process of having a CEQA review as well as an indirect source review.

“Obviously, we’re very pleased,” said Oakland Attorney Richard Drury, who represented the plaintiffs. “It’s a resounding victory. The city of Visalia bent or broke every law and regulation. The VWR facility violated numerous environmental laws. There’s no question that the area is zoned for industrial use, but even industrial facilities have to comply with the law.”

Speculation has been that the lawsuit was brought forth because of disenchanted union workers from the Brisbane plant. The workers at the facility in Visalia will be non-union.

“We think it’s wrong and that they should be union workers,” said Adam Ochoa, principal officer of Teamsters Local Union 948. “It’s very disappointing. [VWR] wants to get out of paying better wages, health and welfare union workers enjoy.”

Ochoa said the idea of approaching the workers at the VWR about unionizing hasn’t been addressed but that it is a possibility.

And while Drury doesn’t dispute that the employees are disappointed they will be losing their jobs, it wasn’t the principal reason for bringing the lawsuit against the city.

“They are not coming back to Brisbane,” Drury said. “Our clients, the teamsters, are certainly unhappy with them leaving, but so are environmental groups. Laws were broken and VWR shouldn’t get special treatment in Visalia. Also, the amount of truck traffic is significant. There’s the air pollution and how it will affect residents close by. There are violations of CEQA and the Clean Air Act.”

Those violations have yet to be seen because the city gave a ministerial approval of the facility, meaning the land had been pre-approved for this kind of project — a CEQA and indirect source review wouldn’t apply in this case, said Arnaud Marjollet, a permit services manager for the San Joaquin Valley Air Pollution Control District.

"If the decision is reversed, then we will be involved," Marjollet said. "Unless this happens, there's not much I can tell you when it comes to the impact of [truck and car] traffic. There will be some impact, but I cannot quantify the significance of the emissions. I don't have the data.

"Along the same lines, if the agency were to re-analyze the project, the first step would be at the CEQA level. They would have to have cleaner fleet trucks and enter into a contract with the district to mitigate emissions, and that would be subject to the CEQA determination and the indirect source review."

Another item brought up by the plaintiffs in their complaint against the city and VWR was the sum of \$1.5 million. The plaintiffs are claiming that the city gave VWR incentives in order to house its West Coast distribution center in the Central Valley.

It's a claim that the city and VWR refute.

"As a matter of policy, VWR doesn't comment on pending litigation," Collado said. "We did a comprehensive analysis and we felt that the Central Valley was the right place to operate our western U.S. distribution center. Visalia was a centralized location and it offered next-day delivery. It was an ideal location for us."

Visalia City Manager Steve Salomon said that they didn't try to entice VWR and nothing inappropriate was done.

"We didn't give them money," Salomon said. "We treated them the way we would treat anybody else in the industrial park. That area is zoned for these types of companies."

The facility would be located at Riggin Avenue and Shirk Street. Salomon said that for Riggin to become an arterial roadway, it needed to be widened with improvements to the street (middle lane), curb gutters and sidewalks. He said VWR did the widening only on the south side from Shirk to Plaza Drive.

"We said we'd reimburse them for the improvements out of the fees we receive from everybody, including them," Salomon said. "We do it all of the time. I think they're hoping to establish somehow that Visalia was trying to entice them away from Brisbane. We don't pick and choose who is going to locate to a particular place. They met all of the city's requirements.

"This is a case theoretically and depending on what happens [based on] more than local stature. It's not a question about Visalia but California. It's one more thing among many things that make it more difficult [for companies]."

The city must now decide what it will do next.

It has 45 days from the time of the ruling to decide whether to petition for another hearing with the appellate court or seek a review with the California Supreme Court. If those aren't granted, Peltzer said, the case would go back to Tulare County Superior Court.

"We will decide in the next couple of weeks," Peltzer said. "The truth is there is case law to support us. We're confident that we will get past this lawsuit. The original decision was based on a statute of limitations and there are other statutes of limitations to this defense. The facts are we correctly filed a notice of determination.

"I'm pretty sure in the end that there will be no additional requirement for CEQA and no impact on the plant's opening."

Drury contends that if the city had just done a CEQA review in the first place, this all could have been avoided.

"[The city] wanted it fast-tracked," Drury said. "If they had complied with the environmental laws from the beginning instead of resisting so hard, [VWR] would be up and running by now. We want them to comply with CEQA, the Clean Air Act and the municipal code. The city illegally gave \$1.5 million in incentive money. We want to get that back and we'll also argue that the facility not operate until it complies with environmental laws.

"I don't know what the city is going to do — that's a crystal ball question and mine just broke."