

EPA, California Fight Advocates' Bid For Retroactive Stricter PM2.5 Limits

By Stuart Parker

Inside EPA, Friday, July 31, 2015

EPA and California officials are fighting environmentalists' suit aiming to force retroactive application of stricter fine particulate matter (PM2.5) emissions control requirements, saying in final briefs that taking the approach sought by advocates would be unlawful under the Clean Air Act and would also be unnecessary for some areas.

The suit, *WildEarth Guardians, et al. v. EPA*, pending in the U.S. Court of Appeals for the District of Columbia Circuit, is an important test for how the agency should implement its PM2.5 national ambient air quality standards (NAAQS), which the agency last updated in 2012. The fight centers on when EPA must require strict air law "subpart 4" PM2.5 controls rather than weaker "subpart 1" controls that it previously required.

Environmentalists want the court to vacate a June 2014 EPA rule imposing subpart 4 controls for PM2.5 NAAQS implementation prospectively but not retroactively. The agency issued the rule in response to a 2013 D.C. Circuit ruling in *Natural Resources Defense Council (NRDC) v. EPA* that said EPA wrongly implemented its PM2.5 standards under the less stringent subpart 1 requirements that apply generally to all six NAAQS. After the ruling, advocates urged EPA to apply the tougher measures in areas that had earlier been deemed in nonattainment with the PM2.5 NAAQS.

But the 2014 rule rejected those calls, and EPA said it was making the revised rule prospective because the court did not vacate a separate rule requiring states to submit plans solely under the subpart 1 requirements -- something that advocates argue will mean insufficiently stringent pollution controls for attaining the PM2.5 standards.

EPA set the 1997 PM2.5 NAAQS at 65 micrograms per cubic meter (ug/m3) over 24 hours, and then in 2006 revised and tightened the limit to 35 ug/m3 over 24 hours. EPA has, however, also issued tougher PM2.5 standards in 2012 which states are now moving to implement under subpart 4. The 2012 NAAQS rule tightened the annual limit for PM2.5 from 15 ug/m3 -- the level in both the 1997 and 2006 NAAQS rules -- to 12 ug/m3.

Environmentalists in briefing have argued that EPA's 2014 "classifications" rule for the 1997 and 2006 NAAQS did not apply the tougher subpart 4 provisions on the correct timetable dictated by the air law, which would see some areas in nonattainment with the PM2.5 NAAQS reclassified from "moderate" to "serious" nonattainment. The worsened status carries with it tougher pollution control requirements, but also more time to attain the NAAQS.

EPA and two California jurisdictions -- which could face stricter PM2.5 controls if advocates win -- counter that what environmentalists seek amounts to unlawful retroactive rulemaking by EPA, that would run counter to legal precedent and punish states for following EPA's implementation requirements previous to NRDC.

EPA's Defense

The agency and the two state districts reject environmentalists' argument that in fact sticking to the air law timetable would be lawful "prospective" action, and also environmentalists' assertion that the statutory deadlines apply automatically "by operation of law," without any further need for EPA regulation.

In its July 13 final brief, the Department of Justice (DOJ) on behalf of EPA notes that the D.C. Circuit in NRDC "remanded but did not vacate EPA's earlier implementation rules, thus leaving those rules in place pending EPA's further action in response to the decision."

DOJ says that environmentalists inaccurately suggest that "no EPA administrative action at all was ever needed in order for reclassification 'by operation of law' of 'moderate' nonattainment areas to 'serious' status."

Environmentalists "ignore, however, that under the plain language of the Act, such reclassification occurs only "if the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date," DOJ says, adding that the administrator never made such a finding.

If the court vacates the classifications rule, DOJ warns, the effect would be to actually leave in place old regulations for implementing the PM2.5 NAAQS under subpart 1 rules, because the court in NRDC remanded, but never vacated, those rules.

Also, DOJ says that the two California regions concerned by the rule are already doing everything within their power to attain the NAAQS, and that the litigation will not speed their attainment.

Therefore the case is moot and the environmentalists lack standing to sue, DOJ argues, adding that, "granting the petition for review would not result in earlier attainment or implementation in any of the nonattainment areas for the 1997 or 2006 PM2.5 NAAQS."

SIP Requirements

In a separate July 13 final brief, the South Coast Air Quality Management District, representing metropolitan Los Angeles, and the San Joaquin Valley Unified Air Pollution Control District -- which manages air quality in much of California's Central Valley -- agree with EPA's arguments.

They claim that the measures already in place for the two areas under California's state implementation plan (SIP) are already meeting the standards required by subpart 4. SIPs are air quality blueprints written by states outlining the emissions reduction measures they will adopt in order to cut pollution and attain the NAAQS.

"San Joaquin has requested reclassification to Serious [nonattainment] for both the 1997 and 2006 PM2.5 standards, and has already fulfilled all SIP requirements necessary for both standards. EPA has proposed approval of San Joaquin's reclassification request and SIP for the 2006 PM2.5 standard," the districts say in their joint brief.

The brief adds that, "Short of inventing a time machine to go back and rewrite history, there is nothing more that San Joaquin can do to align itself with Subpart 4 requirements or otherwise hasten attainment."

The South Coast air district meanwhile "has attained the 1997 PM2.5 standard, and has not yet missed its Moderate area attainment deadline for the 2006 standard. If it does not attain the 2006 24-hour standard by the Moderate deadline of 2015, it will be reclassified as Serious. South Coast has already fulfilled all obligations to submit SIPs that are currently required for both standards," according to the filing.

Therefore, "There is nothing for Petitioners to gain from this case. Since Petitioners' claimed injury cannot be redressed by a favorable ruling," they lack standing, the air districts say.

Oral arguments in the case have not yet been scheduled.

Health warning issued for wildfires

The Business Journal, Friday, July 31, 2015

Local air officials have issued a health warning as a result of the two wildfires currently burning in the Central Valley.

The Willow Fire broke out in Madera County last week while the Cabin Fire in Tulare County has been burning near Sequoia National Forest since July 18.

The San Joaquin Valley Air Pollution Control District predicts smoke from the fires to impact the eight-county air basin as the fires continue to burn. Currently, the smoke is concentrated in the mountain and foothill regions.

Smoke produces fine-particulate matter, that can cause serious health problems including lung disease, asthma attacks and increased risk of heart attack and stroke. People with existing respiratory conditions, young children and the elderly are considered especially susceptible and should avoid prolonged exposure or heavy exertion, depending on their local conditions.

Residents can check the district's wildfire page for more information about current conditions.

Willow fire grows, but so does containment; fire chief reports good progress

By Rory Appleton

Fresno Bee, Saturday, Aug. 1, 2015

A week after a teen boy allegedly lit pine branches with a lighter and sparked a raging wildfire, fire officials reported that the Willow fire could be mostly under control by Monday.

The biggest risk for the fire spreading is to the southeast, toward the Cascadel Woods subdivision where some residents have refused to obey evacuation orders.

As of Sunday morning, the fire had grown to 5,656 acres. More than 2,000 firefighters have the blaze 60% contained, and the firefighting costs swelled from \$8.2 million on Friday to \$10.5 million Saturday, Cal Fire said.

Air quality in North Fork, Oakhurst and Prather is expected to be moderate Sunday and good Monday, according to a report issued Sunday morning. Air quality is expected to be moderate Tuesday in North Fork and good in the other regions.

Willow Fire containment operations on Saturday increased smoke and emission production in the forecast area and the San Joaquin Valley, the report said. With those operations complete, smoke production is expected to decrease, bringing relief to the foothills and some Valley areas.

Mandatory evacuations are still in place for the Central Camp area, Douglas Ranger Station Road and the Cascadel Woods community. Evacuees were directed to an American Red Cross shelter at the Oakhurst Community Center, 39800 Road 425 B. Willow Canyon Road, Central Camp Road, Autumn Ridge Road and Douglas Ranger Station Road remain closed.

At a community meeting at the North Fork Town Hall on Saturday afternoon, incident commander David Cooper said residents would be allowed to return to their homes once the fire is deemed under control.

That was good news for the many people who have been living with friends, relatives or at the shelter in the past week.

The fire is mostly contained on its eastern and western borders. It is spreading most towards the southeast, where crews are working to burn trees and other fuel in its path. If it breaks the southeastern containment lines, it will hit homes in Cascadel Woods.

Cal Fire spokesman Bennet Milloy said that a few Cascadel Woods residents chose to ignore the mandatory evacuation order.

"We knocked on all the doors and told people to leave," Milloy said. "We can keep people from entering once they have left, but we can't physically remove them from their homes."

"You have the right to stay in your home and die."

Those who stayed behind could cause problems for firefighters should the fire actually make it to Cascadel Woods, Milloy said. Only one road leads into the area, and anyone trying to flee the fire will cause delays for fire trucks trying to enter or leave the community.

Incident management spokesman Raj Singh said those who disobeyed the evacuation order have also forfeited their right to emergency services. Should they call 911, first responders are not legally compelled to respond.

"We're firefighters, though," Singh said. "We are here to help people. We will try to help if they need it, but it puts a strain on resources that would otherwise be used to fight the fire."

Cooper expects containment to climb to 90% or 95% by the end of next week. At that point, most of the firefighters will be allowed to leave the area, and the local forest service will handle the final mopping-up.

Although 450 structures are threatened, none has been damaged. Cooper said he does not expect any to be damaged.

At the North Fork town meeting, the crowd of around 100 cheered when Cooper mentioned the lack of damage so far. Although many there were wearing the same outfit they left home in a few days ago, the mood was generally bright. Some asked questions, but most spent time thanking the firefighters for their efforts.

Jenny Roope, who moved to North Fork in 1941, sat on her walker in the front row.

"I am overcome by the love and the care of my friends and neighbors," Roope, 79, said later.

Roope evacuated her home on Douglas Ranger Station Road, where she lives alone, shortly after the fire broke out on July 25.

"I knew I had to get out before I became a detriment," said Roope, who uses the walker because of Lyme disease complications.

"I had been letting a younger couple I know use my van to go to the doctor's office," she continued. "So I had no way out. But when I called, this young man rushed over and got me out of there."

Roope said she only had time to pack one extra outfit, an extra pair of socks and her pajamas before she left. She's been staying with her daughter in Oakhurst while the fire rages.

Roope, who graduated from Sierra High School in 1954, said she's been through dozens of wildfire evacuations over the years — most of them much worse than this one.

"It's horrible every time — just the destruction of it all," she said. "In 1987, we had a series of lightning fires. Those actually made it to the town. I was one of the last to leave, and I remember bursting into tears as I saw the firefighters preparing to fight the flames in front of our local church."

However, decades of natural disaster aren't enough to break Roope's faith in the strength of her community.

"We deal with it, and we move on," Roope said. "We grieve — I still cry every time. But we have to go on."

Right now, the streets of North Fork are nearly empty, and most of the offices and local shops are closed.

North Fork Supermarket remains open. Employees say the rush of residents purchasing supplies and the wave of firefighters and other relief workers — whose numbers are comparable to the 3,000 or so people living in the town — have kept them extremely busy.

Although few people are out and about, signs of support for firefighters are everywhere. These range from the elaborate, like the 10-foot banner hanging from the tribal offices of the North Fork Rancheria of Mono Indians, to the dozens of small signs hand-painted on scrap wood and placed at the dirt-road entrances to many homes.

Six firefighters have been injured during the battle: Four suffered dehydration, while two others are being treated for minor burns, Cal Fire said.

More than 1 million gallons of water — much of it from Bass Lake — has been used to fight the flames. Crews have also used more than 600,000 gallons of fire retardant during the battle.

Cal Fire's Rick Dowell, who has been a firefighter since 1986, was at University Square Hotel in Fresno with 18 other firefighters for some down time before getting up at 4 a.m. Sunday to go back to the Willow fire at 6 a.m. In addition to resting, he said, he was doing laundry and checking in with the family.

There were several fire rigs parked in the hotel parking lot and the adjacent lot at Marie Callender's at Cedar and Shaw avenues.

He said they are making progress on the fire, but there are still a lot of hot spots on the interior of the fire.

"This fire is a bit more extreme than normal because of four years of the drought, and a lot of dead trees," he said.

"Fighting the fire is difficult because it's steep, hot and (the temperatures) are as miserable as they've been here," he said, even with the fire's higher elevation.

Two wildland fires burn in Tulare County

By David Castellon

Visalia Times-Delta, Friday, July 31, 2015

As rain allowed fire crews gain some ground on a fire that has burned more than 1,900 acres over nearly two weeks in the Sequoia National Forest, a second wildland fire broke out Thursday five miles north of Three Rivers.

The two Tulare County fires are among 18 such fires burning in California, with about 8,000 firefighters involved in battling them.

So far, the "Advance Fire" has burned only about 200 acres, but it was less than half contained Friday, Cal Fire officials reported.

About 12:40 p.m., the department received a call from a lookout in the Sequoia National Park who reported seeing smoke coming from the wilderness near Three Rivers.

"It was amazing she could see so far away," and accurately estimate the fire's location, said Cal Fire's Toni Davis, a fire prevention specialist for the agency.

The first fire crews to arrive estimated the fire had burned 30 to 40 acres, and it grew overnight, despite efforts to contain it.

"Access was difficult and it was very steep terrain," and even though firefighters managed to get a hose line to the area, they didn't have much water to work with, Davis said.

That forced them to mostly flight flames and create fire breaks by hand, she said.

Tanker planes also dropped fire retardant around the fire in hopes of limiting its spread.

No homes or other structures were threatened by the flames, and Davis reported that 150 firefighters — a combination of Cal Fire crews, firefighting prison inmate and crews from communities in Southern California brought in to help — were battling the blaze.

Davis reported Friday that the Advance Fire was 40 percent contained.

That wasn't the case in the south, where no containment was reported for the larger "Cabin Fire" in the Golden Trout Wilderness, northeast of Springville.

That lightning-caused fire started some time during the weekend of July 18 and was spotted by helicopter.

U.S. Forest Service officials thought they had nearly contained the fire after it had burned just a couple of acres, but it jumped the containment line on the 22nd and began an aggressive expansion that covered more than 1,900 acres as of Friday.

More than 200 firefighters from around the county are involved in fighting the blaze, which could threaten about 1,000 homes in the areas of Camp Nelson and Sequoia Crest, said Denise Alonzo, a Forest Service spokeswoman.

"They are six miles southwest of the fire, and it is burning northwest," but fires can shift direction, she noted.

Fighting this fire has been tough, because it's burning on steep, rough terrain.

"The edge of the fire is accessible on foot, rather than vehicle," and winds have made the flames move erratically, Alonzo said.

As such, fire crews couldn't attack the fire directly and were creating fire breaks using hand tools on Friday, while helicopters dropped water on the flames, she said.

Crews also are concerned that stormy conditions in the foothills could touch off additional fire, and they are having to get out of open areas with lightning starts to flash to avoid being hit.

But the stormy weather also worked to the firefighters' advantage Friday, as the storm dropped rain on the wilderness, allowing the crews to dig fire lines ahead of the fire's anticipated path, Alonzo reported late in the day.

A secondary line was constructed along the Summit Trail, south of the fire, and the Forest Service was calling for additional crews to help fight the Cabin Fire.

Farmersville Fire Chief John Crivello said that despite the distance, he could see the massive plumes of smoke from the Cabin Fire rise into the sky.

And as he left work early Thursday evening, he discovered ash — probably from that fire — had dropped on the windshield of his car, and he said he heard reports of ash falling in other parts of his city, as well as in Visalia.

The Forest Service reports that smoke is becoming a bigger problem for the areas of Lake Isabella and Kernville, the latter of which is about 50 miles south of the fire.

Officials have urged people in those communities to stay indoors with their windows closed and to avoid outdoor activity, especially young children, elder adults and people with breathing problems.

Besides the ash, light winds blowing east were carrying smoke from the fires down to the Valley floor, making air quality unhealthy for sensitive groups, which include people with breathing problems and allergies.

But that should change this morning, as the wind direction is expected to shift into an easterly direction, said Scott Borgioli, a meteorologist and owner of WeatherAg.com, a Visalia-based forecasting service for the agricultural industry.

He said smoke from other fires in the Valley, including the Willow Fire to the north, which has burned more than 3,300 acres, isn't blowing into Tulare County.

Wilderness closed

Areas of the Golden Trout Wilderness in the Sequoia National Forest are closed due to a major fire burning there.

A map of the closed areas and additional fire information are available online at the Inciweb website, <http://inciweb.nwcg.gov/incident/4423>. Information on closed areas of the wilderness also is available by calling the Western Divide Ranger District at 539-2607.