

## **Southland Agency Mismanaged Smog Credit Program, Suit Alleges**

Environmentalists accuse the AQMD of allowing pollution levels to rise because of poor oversight and record-keeping.

By Gary Polakovic, Los Angeles Times Staff Writer, September 30, 2003

Air quality officials are mismanaging one of Southern California's key anti-smog programs, resulting in excessive emissions that contribute to smog, two environmental groups charge in a lawsuit.

The lawsuit, which was filed Monday in U.S. District Court in Los Angeles, targets a landmark program launched 10 years ago as a flexible way to cut emissions from about 350 facilities, including power plants and factories. Named the Regional Clean Air Incentives Market, the plan allows companies to buy and sell pollution credits to reduce emissions at less cost with less government red tape.

But the lawsuit alleges lax oversight of the program by the South Coast Air Quality Management District. Specifically, the lawsuit alleges, shoddy record-keeping and a failure to carefully monitor the exchange of pollution credits have compromised the program.

As much as 1 million pounds of excess smog-forming gases have been released to the environment as a result, said Scott Kuhn, attorney for Oakland-based Communities for a Better Environment.

"The air district is allowing companies to manipulate the pollution trading rules, thereby increasing smog," Kuhn said.

The allegation comes at a sensitive time in the war on smog, after Los Angeles has suffered through its worst summer ozone season in six years. There have been 63 days when ozone, the main ingredient in smog, reached unhealthful levels this year. In July, for the first time in five years, a local community, Lake Arrowhead, experienced a first-stage ozone alert, which signified that smog was very unhealthful for all residents.

"The South Coast air basin is one of the dirtiest places in the country," said Tiffany Schauer, executive director of Our Children's Earth, a San Francisco-based environmental group and a plaintiff in the lawsuit. "The air district, which is supposed to be in charge of cleaning it up, is instead turning a blind eye on the problem and allowing big polluters to game the system."

Specifically, the lawsuit alleges that the AQMD has been neglecting a requirement in the program's regulations that requires polluters to reconcile their actual emissions and pollution credits in a timely manner.

Under the program, a company that reduces more emissions than required can earn credits representing the extra emissions. Those credits can be banked and reused in the future, sold on the open market at a profit or sold to another company that emitted more than its allocated amount.

The AQMD must monitor the trades and ensure that the quantities of emissions and credits match.

But, Kuhn said, the air district failed to do this properly. The regulation requires a quarterly reconciliation of pollution-trading accounts; Kuhn said the air district waited until the end of the year to reconcile accounts. The delay allowed companies to release extra emissions throughout the year, he said.

In addition, the lawsuit alleges that shoddy record-keeping makes it almost impossible to keep track of the pollution trades and to determine which companies are in compliance and which are not.

The environmental groups allege that the problems in the program occurred between 1998-2002, resulting in the release of an additional 926,878 pounds of nitrogen oxide gas, a precursor to ozone and haze.

"It's really impossible to tell how this program is working. It's like a maze, trying to sort through all the pollution trades. It's not working as it was originally planned," Kuhn said.

Officials at the South Coast Air Quality Management District could not be reached for comment.

The program was launched in 1993 with the aim of cutting 13,000 tons of emissions, a 70% reduction, from major businesses, oil refineries and power plants.

It was the nation's first market-based program aimed at reducing urban air pollution. Among the companies participating in the market are Walt Disney Corp., Northrop Grumman Corp. and Exxon Mobil Corp.

## **LA clean-air agency sued over pollution trading program**

The Associated Press

In the Bakersfield Californian

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LOS ANGELES (AP) - Two environmental groups sued the Los Angeles region clean-air agency on Monday, claiming it mismanaged a pollution trading program aimed at capping smog-forming emissions.

The suit alleges the South Coast Air Quality Management District violated the federal Clean Air Act by allowing refineries, factories and other facilities to release excessive amounts of smog-forming emissions under the regional clean air incentive market, or "Reclaim," program.

"The Reclaim program is not working and smog is getting worse," said Scott Kuhn, legal director for Communities for a Better Environment, which filed the suit with Our Children's Earth. The agency disputed the claims outlined in the suit and questioned the accounting methods used by the two groups.

"We think they are trying to use this to discredit the program," said Barbara Baird, district counsel for the Air Quality Management District.

Under the decade-old Reclaim program, major polluters in the region, the nation's smoggiest, are allocated a steadily declining number of pollution credits. Polluters can buy and sell those credits, providing a financial incentive for them to cut emissions.

The agency made it difficult for outside parties to determine if facilities are in compliance, the suit further alleges.

Baird said the data were available in a timely manner, although not always in a format that's to the liking of the environmental groups.

"It's probably not as convenient as they would like, but it is available," Baird said.

## **Bitter feud over air bills comes to an end**

By Valerie Gibbons, The Business Journal (Fresno), September 24, 2003

The Valley's largest fight of the year is over.

Gov. Gray Davis has signed the landmark package of air quality bills that will end agriculture's historic exemption from air quality regulations.

"Cleaner air in the Valley will better protect the health of the more than \$3 million people living there," Davis said. "Especially the children who have some of the nation's highest asthma rates."

The package of six bills is part of a renewed focus on the part of local lawmakers to clean up the Valley's air as the threat of federal sanctions looms in the not-so-distant future.

Collectively the bills fulfill a court order to end the ag exemption, mandates the California Department of Energy to provide \$6 million incentives to biomass facilities to burn more ag waste, and requires the phasing out of agricultural burning in the Valley.

The bills also authorize counties to set up smoking vehicle check points, increase fines for second and third time offenders, and requires that the Valley's largest fleets use some alternative vehicles.

Davis also signed a bill that would keep California's air quality standards at current levels, despite a loosening of federal restrictions by the Bush Administration.

"This package of legislation has passed because the people of the San Joaquin Valley are sick of air that's easier to see than breathe," Davis said. "The change begins today." It's been a long road.

Despite the EPA mandate to end the agricultural exemptions, the bill's sponsor, state Senator Dean Florez (D-Fresno) found himself in the middle of a firestorm of protests from Valley growers who said the bills go too far.

Three San Joaquin Counties, Fresno, Kings and Tulare, have already voted to oppose the measures in resolutions drafted by the Fresno County Farm Bureau.

Last month, Florez publicly criticized the heir to his Assembly seat, Nicole Parra (D-Hanford), for allegedly rallying her Democratic colleagues to stall the bills in committee. Parra wholeheartedly denies the accusations.

But the largest opposition comes from the growers themselves who say that the restrictions on burning agricultural waste, and mandatory upgrades on stationary sources of pollution such as pumps, will add a steep pricetag to farming operations.

"California is already in an economic turmoil," said Assemblyman Steve Samualien, (R-Clovis) "and now the legislature is going to hit the state's largest industry with this unnecessary bill."

## **Air quality study finds laws well worth it**

White House report says the benefits of regulations exceed economic cost

Eric Pianin, Washington Post, published in the San Francisco Chronicle, September 27, 2003

Washington -- A new White House study concludes that environmental regulations are well worth the costs they impose on industry and consumers, resulting in significant public health improvements and other benefits to society. The findings overturn a previous report that officials now say was defective.

The report, issued this month by the Office of Management and Budget, concludes that the health and social benefits of enforcing tough new clean-air regulations during the past decade were five to seven times greater in economic terms than were the costs of compliance. The value of reductions in hospitalization and emergency room visits, premature deaths and lost workdays resulting from improved air quality were estimated between \$120 billion and \$193 billion from October 1992 to September 2002.

By comparison, industry, states and municipalities spent an estimated \$23 billion to \$26 billion to retrofit plants and facilities and make other changes to comply with new clean-air standards, which are designed to sharply reduce sulfur dioxide, fine particle emissions and other health-threatening pollutants.

The report provides the most comprehensive federal study ever of the cost and benefits of regulatory decision-making. It has pleasantly surprised some environmentalists, who doubted the Bush administration would champion the benefits of government regulations, and fueled arguments that the White House should continue pushing clean-air standards rather than trying to weaken some.

"I'm sure the true believers in the Bush administration will brand this report as true heresy because it defies the stereotype of burdensome, worthless regulations," Sen. Richard Durbin, D-Ill., said Friday. "They clearly don't understand that the government regulations are there to protect you -- and they work."

John Graham, director of OMB's Office of Information and Regulatory Affairs,

which produced the study, said: "Our role at OMB is to report the best available estimates of benefits and costs, regardless of whether the information favors one advocacy group or another."

But an industry official said the report may have greatly understated the costs associated with environmental regulations. Jeffrey Marks, a clean air policy expert with the National Association of Manufacturers, said of the Environmental Protection Agency: "The tendency to choose benefit numbers to correspond to favorable policy choices is strong within the agency."

The findings are even more startling because a similar OMB report last year concluded that the cost of compliance with a given set of regulations was roughly comparable to the public benefits. OMB now says it had erred last year by vastly understating the benefits of EPA's rules establishing national ambient air quality standards for ozone and for particulate matter -- a major factor in upper respiratory, heart and lung disorders. Also, last year's report covered only the previous six years and didn't account for the beneficial effects of the 1990 amendments to the Clean Air Act that reduced the problem of acid rain.

Many environmentalists had initially expressed fears that Graham, founder of a Harvard University-based risk analysis institute, would lead a Bush administration assault on regulatory safeguards. But Graham has sided with environmentalists on several key issues, including new rules to sharply reduce diesel engine emissions and the fine airborne particles that contribute to asthma and other serious respiratory ailments. The activists were quick to embrace this month's report.

"The bottom line is that the (social) benefits from major environmental rules over the past 10 years were up to eight times greater than the costs," said Kevin Curtis of the National Environmental Trust. "And that's a number that can't be ignored, even by an administration that has blamed 'excessive' environmental regulations for everything from the California energy crisis to last month's blackout to job losses to the failing economy."

Environmental groups and some lawmakers assert that the administration has begun to chip away at clean air regulations and safeguards just when the country is beginning to see the fruits of decades of tough enforcement efforts.

Earlier this month, the EPA issued its annual air trends report showing that, since 1970, emissions of the six principal air pollutants have declined by 48 percent. At the same time, EPA officials put the finishing touches on a "New Source Review" rule change that will enable older, dirtier power plants to extend the life of their plants without installing new air pollution control equipment.

But White House officials and Republicans say the administration deserves credit for some of the improvement. They noted that the EPA has approved the new diesel emission standards affecting trucks, buses and off-road machines in the coming years.

## Schwarzenegger pays a visit

By CHRISTINE BEDELL

The Bakersfield Californian

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Movie star-turned-gubernatorial candidate Arnold Schwarzenegger made Bakersfield his latest campaign backdrop Monday, speaking at a \$1,000-a-plate luncheon and then mingling with admirers.

Schwarzenegger, the leading Republican candidate to replace Gov. Gray Davis if he's recalled, spoke at a private luncheon at Seven Oaks Country Club before talking to reporters and posing for pictures with a few fans.

Not everyone was thrilled to see him, though. Two protesters with signs calling Schwarzenegger a sexist and the Oct. 7 election a waste of money were thrown off club property.

"We're opposed to the state spending \$17 million on a circus recall," anti-recaller Camila Chavez said while walking through the club parking lot.

Outside the earshot of reporters, Schwarzenegger promised 150 to 200 contributors that with their help, he can "make California the way it used to be," several attendees said.

He spoke of improving the state's business climate and not spending beyond California's means.

"He was really genuine in what he had to say," said bank worker Nichole Farmer, who said the talk solidified her support for the "Terminator" star. "He wants to take California back."

Dressed in khakis, a white shirt and bluish blazer, Schwarzenegger then fielded Central Valley-centered questions from *The Californian* and *The Fresno Bee*.

Schwarzenegger said he doesn't know much about the air quality bills just signed by Davis, the most far-reaching of which ended agriculture's exemption from pollution controls.

But he said he's well aware the Central Valley could lose billions of federal transportation dollars if its air doesn't improve. Schwarzenegger called for a balance between Sacramento "dictating down" mandates and farmers policing themselves.

"We have to get farmers together, environmentalists together and the political leaders together," he said. "We have to come up with a way of setting a goal for ourselves together."

On immigration, the Austrian-born former body builder said he supports legislation by U.S. Sen. John McCain, R-Ariz., letting foreigners and illegal immigrants with a job and no criminal record apply for temporary working visas. That's fairer to people who wait years to legally immigrate here, Schwarzenegger said.

"Let the signal go out to the world that we treat people similarly," he said.

Schwarzenegger has repeatedly whacked rivals Cruz Bustamante, California's Democratic lieutenant governor, and state Sen. Tom McClintock, R-Thousand Oaks, for taking "special interest" money, especially from Indian casino owners.

Asked how that differs from him accepting large contributions from developers, he said a governor is far more likely to negotiate deals with gaming operators than with individual business owners.

"I can go to Sacramento without being beholden to anybody," he said.

He said he supports expanding Indian gaming as long as the state gets about a quarter of the profits.

Schwarzenegger, who munched on cookies during the chat, said he doesn't know much about the still-to-open University of California at Merced but generally supports building new public universities as long as the money for them reaches the classroom.

Most passionately, Schwarzenegger said California needs a visionary who thinks big then calls on a wide range of individuals to do the follow-through.

"We have all the basics," he said, referring to people and resources. "It's leadership that's missing."

At Monday's luncheon, sponsorships cost \$21,000, co-sponsorships went for \$10,000 and individual seats were sold for \$1,000. Organizers did not immediately know how much they raised.

Attendees included state Sen. Roy Ashburn, R-Bakersfield, former Kern state Sen. Phil Wyman, Bakersfield City Councilman David Couch and business owners like Jim Burke.

Locals Gene Gregor and his 14-year-old son, Adam, showed up at the club's doors to see what they could see of Schwarzenegger.

They couldn't get inside but Schwarzenegger will still get Gregor's vote.

"I'm disappointed in the taxes increasing in the state, I'm disappointed in the deficit and I'm disappointed in the job the Democratic governor has done this far," he said.

Schwarzenegger is scheduled to return to Bakersfield for a rally Friday.

## **Attorneys argue over Tejon Ranch development plan**

By AMY HILVERS

The Bakersfield Californian

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Attorneys on Monday gave last bits of arguments in a lawsuit aimed at trying to reverse Kern County's approval of a massive industrial development project on Tejon Ranch.

In Monday's hearing, attorneys wrangled over changing the administrative record to reflect certain sets of air quality guidelines. The record is a mass of documents presented to supervisors to consider before they approved the Tejon Industrial Complex expansion.

Judge Kenneth Twisselman II shot down Tejon attorneys' request to change the records after attorneys for groups opposed to the project said those guidelines were not presented to supervisors and should not be part of the record now.

Attorneys for Tejon Ranch Co. and Tejon Industrial Corp. had argued that the guidelines were fully considered by supervisors and were referred to in the report.

The environmental groups that filed the suit say the project will have a dismal impact on air quality and wildlife.

Those environmental impacts weren't fully disclosed and considered before the county gave the go-ahead on an additional 15 million square feet for the project in January, the lawsuit claims.

But attorneys for the county and the ranch argue that supervisors were given all proper information about the impacts based on guidelines from the San Joaquin Valley Air Pollution Control District.

The Center for Biological Diversity, the Center on Race, Poverty and the Environment, the Kern Audubon Society and the Sierra Club are parties in the suit.

Judge Twisselman said he would consider the case and set another hearing to announce his intended decision on Oct. 24.

## **MTBE fixes eyed**

State makes sure measures in place

By Scott Smith, Record Staff Writer, September 30 2003

MANTECA -- The state has stepped in to ensure the owner of Frank's One Stop gas station in Manteca finishes cleaning up after leaks in underground fuel tanks contaminated the well water of 12 nearby homes more than a decade ago.

Manteca resident Frank Guinta was ordered in August to clean up the contamination caused at his station, at Yosemite Avenue and Airport Way, southeast of town.

The leaks, first suspected in 1992, contaminated nearby wells with the gasoline additive MTBE, according to a cleanup order from the California Regional Water Quality Control Board.

The state ordered Guinta and a previous owner to treat the polluted wells "until all effects of the discharge are remediated."

As a stopgap, residents drank from 1,000-gallon water tanks delivered to their homes. Today, 11 of the home wells are outfitted with three-tier water-filtration systems.

Residents Robert Mack and his wife drank bottled water for the past year. They have the three big filters attached to their well.

Mack said he and his neighbors have been healthy so far. Every six months, someone comes out to test their drinking water.

But he doesn't think his well will ever be totally free of pollution.

"What worries me is that we don't know how long we've been drinking that water," Mack said.

To remove the MTBE from the underground water supply, Guinta has been using equipment to vaporize it. MTBE, or methyl tertiary butyl ether, has been linked to cancer in animal studies. [The state required the chemical to be added to gasoline statewide in an effort to cut air pollution.](#)

Guinta said he has used nearly all the \$1.5 million from a state cleanup fund and fears the next round of treatment, which will cost \$200,000, will come out of his pocket.

"I'm financially strapped," Guinta said.

The San Joaquin County Department of Environmental Health first suspected the leaks in the gas tanks when inspectors noticed a discrepancy between the amount of gas remaining in the tank each month and the amount delivered.

Tests of up to 60 wells later showed a plume of underground contamination affecting 12 homes along the west side of Airport Way.

Until recently, the Environmental Health Department had overseen the cleanup. But Guinta continually slowed the work, so the county notified the state, said Margaret Lagorio, spokeswoman for the county's Environmental Health.

"We were preparing to send it to the state," Lagorio said, "and they stepped in and said, 'We'll take it from here.' "

Guinta said he has done everything he can to remove the contamination. From the first day, he personally delivered drinking water to neighbors of the gas station.

Guinta insists he isn't responsible for the problem and argues he wasn't contractually responsible for the gasoline storage tanks when they leaked. He even doubts they ever did.

He points back at the state for requiring the gasoline additive.

"I didn't put MTBE in the gas," Guinta said. "The state did."