

Westley tire pile owner hasn't paid up

By SUSAN HERENDEEN, BEE STAFF

Fri., Jan. 30, Modesto Bee

After 22 hearings in Stanislaus County Superior Court, a special environmental prosecution unit hasn't been able to get Mark Kirkland to pay restitution to a former business partner or a \$10,000 fine.

Kirkland, who now lives in Sandy, Utah, owned the Westley tire pile that ignited after a lightning strike in September 1999, sending a black blanket of smoke across the valley and into the foothills.

The fire burned for 34 days and led to a \$9 million settlement with West Side residents who said the dirty air gave them chronic headaches, constant coughing and skin irritations.

Several lawsuits led to payments for state and federal cleanup efforts, but a fine levied against Kirkland for a pile of tires that did not burn remains unpaid. Kirkland declined to discuss the details.

"I'd love to talk to you, but I've got to be careful," Kirkland said. "I haven't been as careful as I should have been in the past."

The California District Attorney Association's environmental circuit prosecution project filed charges against Kirkland on behalf of the California Integrated Waste Management Board, which levied the fine.

On Aug. 24, 2000, Kirkland pleaded no contest to two misdemeanor charges of operating Omega Tires, a waste tire storage facility, without a permit. Omega was downhill from Oxford Tire Recycling of Northern California, the mountain of tires that ignited.

Kirkland was ordered to pay the \$10,000 fine and perform 120 hours of community service and was placed on informal probation for three years.

He also was ordered to pay restitution to Filbin Land & Cattle Co. Inc., which cleaned up the tires at the Omega site.

Kirkland leased the Omega land from Ed Filbin, who now lives in Texas. He also bought the tire pile that ignited from Filbin, who retained ownership of the land.

In previous interviews, Kirkland said he could not remove the tires because he could not get onto the property. He said a Filbin employee locked the gates to force him to pay back rent.

In four years of court hearings, Kirkland never has been formally sentenced. But he did complete his community service by supervising youth sports programs at a Church of Jesus Christ of Latter-day Saints in Salt Lake City.

The county Probation Department in July 2002 determined that Kirkland should pay Filbin \$108,709, but Kirkland contested the amount.

In March, the Probation Department reduced the restitution to \$89,125. Kirkland contested the amount again and in May a judge reduced the restitution to \$57,125.

In a brief hearing earlier this month, attorney Michael Chastain of Sacramento said Kirkland now is thinking about changing his plea. The case returns to court Wednesday.

The Omega fine is small potatoes compared with multimillion-dollar settlements various businesses agreed to pay to state and federal agencies that fought the fire and cleaned up the mess.

CMS Generation Co., which formerly owned Oxford Tire Recycling, paid \$5.5 million to settle a federal lawsuit. CMS also paid \$9 million to settle a class-action lawsuit brought by 11,000 West Side residents.

The Modesto Energy Limited Partnership, which operated a tires-to-energy generation plant on the site, paid \$4.1 million to settle with the federal government.

A lawsuit filed by state Attorney General Bill Lockyer yielded more than \$8 million in settlements from various defendants. Negotiations are ongoing.

Dorothy Arnaud, president of the Filbin Land & Cattle Co. Inc. of Manteca and Filbin's sister, provided information for the court years ago about the cleanup costs at the Omega tire pile. But she is not surprised the matter has dragged on so long.

She said the fire led to a sea of lawsuits and lots of lingering animosity. "He ought to just pay me," Arnaud said.

Air pollution plan gets tentative OK

By Craig Johnson

Sentinel Relief Desk Editor

Hanford Sentinel, Jan. 29, 2004

A plan to reduce San Joaquin Valley air pollution caused by small dust particles - known as particulate matter or PM10 - appears to have a preliminary thumbs-up from the U.S. Environmental Protection Agency.

The EPA announced on Wednesday it would propose approval of the San Joaquin Valley Air Pollution Control District's PM10 plan.

"It's good news for us in that we proposed, they accepted," said Kings County Supervisor Tony Barba, who also serves on the San Joaquin Valley Air Pollution Control District's board. "Had they not accepted, we would have had to go back to the drawing board."

The San Joaquin Valley has the third worst PM10 air pollution in the country, according to the EPA. Only Los Angeles and Phoenix, Ariz. have it worse. PM10 particles can accumulate in a person's respiratory system, lodge deeply in the lungs and can lead to problems such as asthma and decreased lung function, according to the EPA.

"This plan is a step toward reducing pollution and improving Valley air quality," Wayne Nastri, the EPA's regional administrator for the Pacific Southwest Region, said in a statement. "The plan ensures everyone will contribute to the solution. In particular, the agricultural community stepped up to help develop practices for decreasing on-field emissions."

The air district's plan includes new regulations such as:

€ Residential fireplace restrictions that include the new rule preventing the use of fireplaces in homes on certain days.

€ A requirement for farm operations aimed at reducing dust.

A 30-day public comment period on the plan will begin after it is published in the federal register. That will likely happen within the next seven days.

The EPA will take into account any public comments when considering final approval.

"Barring any unforeseen comments we hadn't considered when we reviewed the plan, we would hopefully proceed with finalizing the action," EPA spokeswoman Lisa Fasano said.

The present plan was submitted to the EPA last year. The air district had earlier submitted a plan in 1997, but withdrew it from consideration after it appeared the EPA would disapprove of it.

Dave Mitchell, planning manager for the air district, said the first plan had been submitted in 1997, but the EPA hadn't acted on it until 2001.

Issues with the first plan included not addressing agriculture among other things, Mitchell said. The proposed rule for ag in the new plan would require farmers to choose from a laundry list of dust-preventing practices from each of five categories including:

- € Unpaved roads.
- € Unpaved vehicle/equipment traffic areas.
- € Land preparation.
- € Harvest.
- € Other - including wind-blown PM10 from open areas and agricultural burning.

According to the plan, an example of an activity to reduce air pollution could be combining pieces of farm equipment to perform several tasks in one pass over farm land with a tractor, instead of going over the same land several times. Only one pass would mean less soil disruption and less dust released into the air.

Mitchell said the district hopes to adopt the new ag rule in May and implement it in July. The rule, as presently proposed, would not affect farm operations under 100 acres, Mitchell said.

Under the air district's plan to clean up PM10, the last site in the Valley will come into attainment with federal rules for PM10 by 2010.

The PM10 level in the Valley has had its ups and downs. In 2000, the air district recorded no instances of when PM10 levels exceeded federal guidelines, Mitchell said. However, there were 12 instances in 2001.

Burning alternatives hard to find

By JENNIFER M. FITZENBERGER, THE FRESNO BEE
Published Fri., Jan. 30, in the Modesto Bee

SACRAMENTO -- Faced with the phaseout of open-field agricultural burning, officials from several industries this week swapped tales of hardship and ways to affordably dispose of prunings and uprooted orchards.

But every solution has a downside, leaving more questions than answers after the two-hour meeting called by Assemblyman Dave Cogdill, R-Modesto.

"Now I have an even better appreciation for the size of the problem," Cogdill told about 20 agriculture, air and biomass industry representatives Tuesday. "It is in everybody's best interest to find a solution."

The law to phase out field burning is part of a series of fiercely debated clean-air measures by state Sen. Dean Florez, a Shafter Democrat, that were signed into law last year.

Senate Bill 705 phases out the burning over five years, ending in June 2010 with old vineyards and almond, walnut and pecan tree prunings. That will be no small task in the valley.

In 2002, valley farmers burned about 1.1 million tons of agricultural waste, most of it wood in the form of prunings or old trees.

Cogdill sponsored legislation that would have given farmers a financial incentive to haul their waste to biomass plants, but the measure died this month in an Assembly committee.

Biomass plants turn wood waste into electricity. The process is much cleaner than open-field burning, making it the preferred option.

Transporting waste too expensive

But getting the waste to plants is expensive. In many cases, it costs more to ship the waste than the electricity it produces is worth.

Plus, biomass operators get a better deal on urban waste from construction and demolition sites, so they accept a limited amount of agricultural waste.

That leaves farmers with a problem: how to affordably get rid of the waste that they no longer will be able to burn, beginning in 2005. For health and safety reasons, letting the waste pile up is not an option.

At Tuesday's meeting, a few officials suggested raising a surcharge on electricity to subsidize the biomass industry.

Increasing the public goods charge, which accounts for about 1 percent of all customers' utility bills, by just one-tenth of a cent could generate millions of dollars, said

Robert Hoffman, an attorney and lobbyist who represents biomass plants in the central San Joaquin Valley.

A similar proposal by Florez in different legislation received frowns from lawmakers who do not want to increase utility bills. Cogdill said he will look into that option, but prefers to find a market-based solution to the problem.

Others suggested that the federal government could come to California farmers' aid with tax incentives -- another idea Cogdill said he will explore.

"The problem is we need money, and it can't come from the state," said Cynthia Cory, director of environmental affairs for the California Farm Bureau Federation, referring to the state's dismal budget situation.

Louie Brown, an agriculture lobbyist, said the issue needs to be addressed crop by crop. He said growers are nervous about the pending burning ban.

"The task is daunting," Brown said. "I hope that through this brainstorming session, we can do something about it."

County renews more wind farm permits

Environmental group plans appeal

By Matt Carter, STAFF WRITER

Tri-Valley Herald - Friday, January 30, 2004 - 3:44:27 AM PST

DUBLIN -- Alameda County officials renewed the operating permits Thursday for 2,106 wind turbines in the Altamont Pass, over the objections of an environmental group that claims wind farm operators have been slow to address the problem of bird deaths.

Meeting in Dublin, the East County Board of Zoning Adjustments voted unanimously to renew 20-year permits governing 15 wind farms. The three-member board noted that wind farm operators are working with county, state and federal regulators to find ways to reduce the number of bird deaths.

A recent study estimated that wind farms in the Altamont kill 500 raptors a year, including red-tailed hawks, burrowing owls and golden eagles (see related story).

Officials with the Center for Biological Diversity say they will appeal the decision to the Alameda County Board of Supervisors. The group appealed a similar decision in November by the Zoning Board to renew the permits governing 14 other wind farms with 1,350 wind turbines. Both appeals are expected to be heard together.

The California Energy Commission is preparing to publish the results of a five-year study of bird deaths in the Altamont Pass, along with specific recommendations on how to tackle the problem.

The Center for Biological Diversity urged county officials not to renew more wind farm permits until the recommendations are published, which could then be used to draft new county requirements for wind farm operators.

Assistant Planning Director Darryl Gray told the board that the county will be able to impose additional conditions on wind farms when recommendations are put forward by a working group comprised of county planners, wind farm operators, and environmental groups.

"We are always going to have teeth," agreed Zoning Board member Larry Gosselin. "We will maintain the right to revoke permits ... we take our responsibility very seriously here."

Jeff Miller, a spokesman for the Center for Biological Diversity, said the county should impose conditions before renewing the permits.

"(County officials) haven't bitten anybody in the last 20 years," Miller said of the oversight of wind farms to date. "Until they bite somebody, I'm not going to believe it."

Gray said four wind farm permits have been revoked over the years, but none because of bird deaths.

Steven Steinhour, vice president of permitting and project development for SeaWest WindPower, said the county isn't the only agency expecting results.

Steinhour said wind farm operators met Wednesday in Sacramento with officials from the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the California Energy Commission.

At the meeting, the Fish and Wildlife Service's new chief of enforcement "made it very clear that he considers improvement in the Altamont one of the top priorities on his watch," Steinhour said.

[Opinion, Modesto Bee, Fri., Jan. 30](#)

Burning wood is better for environment

By JOHN A. PAOLUCCIO

If all wood burning were stopped, our air quality would get worse, not better.

Burning wood is natural and good for our environment and is an important part of the cycle of life on Earth. The article ("Burning deadline puts ag in bind," front page, Jan. 19) reported that farm burning of 1.1 million tons of ag wood in the valley accounts for 10 tons of particle pollution daily and about 12 tons of smog-making gases.

The main gas of concern is methane. In the presence of sunlight, it forms smog.

In this case, the percentage of methane produced by burning wood is roughly 0.4 percent by weight. The particle pollution is insignificant compared with other sources.

It is universally agreed that if this renewable wood resource were burned in a biomass plant under ideal conditions, only a very small amount of pollutants would be emitted. We would derive substantial energy and reduce our dependence on fossil fuels. A win-win situation.

However, we do not have the technology or a practical way of preparing and transporting the wood to power plants in an economic way. That is a big stumbling block.

Do the anti-wood-burning advocates know what would happen if farmers did not burn this wood? Apparently not. If the prunings and wood products are not burned and simply left to decompose, large quantities of methane gas are released into the atmosphere, producing smog.

Decomposition of wood by termites, ants and microorganisms results in significant generation of methane and other gases. The resulting methane would be many times greater, probably 10 times or more, than from burned wood, thereby causing an even greater air pollution problem.

The breakdown of wood products in forests, swamps, wetlands, soil and landfills are the main producers of methane gas in our atmosphere. The pollution from farm burning of hard-to-handle orchard prunings is insignificant in comparison.

Lawmakers passed a bill without considering both sides of the wood-burning issue. The decision was apparently based on negative information from special-interest groups and not on sound science.

This law hurts farmers and taxpayers, and the air pollution problem will become worse, not better. It is in the best interest of the state that these anti-wood-burning laws be delayed, modified or rescinded until a practical method is worked out to transfer ag waste prunings to biomass facilities.

Throughout the United States, attempts are being made to collect methane gas from landfills, sludge, animal waste and other biomass sources and convert it into useful energy instead of allowing it to enter the atmosphere.

This is a renewable source of energy that would not add carbon in the form of greenhouse gases such as carbon dioxide, carbon monoxide and methane to our environment.

California has hundreds of millions of tons of biomass available for future energy use.

In comparison, gas, oil and coal are considered nonrenewable energy sources. Burning them contributes greenhouse gases to global warming without removing any from the atmosphere, as plants do during their growth process.

Let's ask our lawmakers to revisit the ag-burning issue and require that any new law cause more good than harm.

Paoluccio, of Salida, is a consulting mechanical, agricultural and environmental engineer and an almond farmer.

[Opinion, Fresno Bee, Jan. 24](#)

'Plan is a disgrace'

By Jerry Doyel

Kerman

Valley farmers need to be aware of another scheme by the San Joaquin Valley Air Pollution Control District to make farming even more difficult than it already is. The district wants to add 18 more agents to police farmers for so-called pollution infractions, at a cost of \$1.6 million. The money will be collected from farmers by inventing new and clever ways to require farmers to purchase various permits.

These permits, for example, would be for diesel engines on ag pumps. Most farmers didn't want to convert from electricity in the first place, but could not afford the outrageous electricity bills. Future phony permits may eventually be required for driving a tractor in the field or making dust.

I have no argument over how dirty our air is in the Valley and the effects it is having on our health and even our crops. However, the San Joaquin Valley Air Pollution Control District, the Sierra Club and state Sen. Dean Florez need to have the courage to confront the main sources of our air pollution: the over-population of our state and our automobiles. Even though farmers may be an easy and deep pocket to get money, this new permit plan is a disgrace and should be protested by every farmer in the Valley.