

## **Court nixes Valley air-quality lawsuit**

### **Regulators have until 2010 to meet new smog standards**

By Josh Richman, staff writer

[Tri-Valley Herald, Wednesday, Sept. 7, 2005](#)

San Joaquin Valley air quality regulators will have until 2010 to meet new smog standards, a federal appeals court ruled Tuesday in dismissing environmental groups plea for a tighter deadline.

The Association of Irrigated Residents, or AIR, the Latino Issues Forum, Medical Advocates for Healthy Air and the Sierra Club had sued the U.S. Environmental Protection Agency and several of its officials, claiming they had unlawfully approved the 2010 deadline to meet PM-10 pollutant standards.

PM-10 pollutants are airborne particles less than 10 micrometers across -- that's ten-thousandths of a millimeter, or about one-seventh the thickness of a human hair -- and small enough to be inhaled into the lungs deepest areas.

They're responsible for much of the haze thought of as smog, and their sources include cars, wood-burning stoves and fireplaces, dust from construction, landfills, and agriculture, wildfires and brush or waste burning, industrial sources, and wind-blown dust from open lands. They can increase asthma attacks number and severity, cause or aggravate bronchitis and other lung diseases, and reduce the body's infection-fighting ability.

In the San Joaquin Valley, the particles come mostly from agricultural operations and dust kicked up on roads. The EPA in 1993 found the San Joaquin Valley couldn't meet the Clean Air Act's end-of-1994 deadline for attaining PM-10 standards, and so reclassified the area from moderate to serious so its new deadline would be 2001's end.

California submitted a plan for the area in 1997 but the EPA rejected it in 2002 and found the region had missed its 2001 deadline. This forced the state to submit revised plans in 2003, setting a 2010 deadline to meet the standards; the EPA approved this plan last year.

The lawsuit claimed the EPA's approval was bogus because the Clean Air Act set 2006 as an absolute, outside deadline for reaching the standards.

But the 9th U.S. Circuit Court of Appeals issued a ruling Tuesday saying the law authorizes later deadlines once a region has missed its initial target.

## **Clean-air activists lose court suit**

### **Group criticized delay of Valley cleanup plan**

By Mark Grossi

[Fresno Bee, Wednesday, Sept. 7, 2005](#)

A federal appeals court Tuesday handed activists a rare defeat in their legal campaign for clean air, rejecting their challenge to the San Joaquin Valley cleanup plan for tiny specks of dust, soot and chemical particles.

The decision, which came from the 9th Circuit Court of Appeal in San Francisco, denied all activist claims, including the allegation that authorities had illegally extended the cleanup deadline four years.

Activists had not yet seen the ruling, but one of their lawyers expressed disappointment. "The court deferred to EPA's interpretation," said Brent Newell, representing the community group called Association of Irrigated Residents.

Activists had maintained the federal government approved a plan that wrongly gave the San Joaquin Valley Air Pollution Control District until 2010 to clean up the air. They said the deadline should have been 2006.

The court said the plan followed the structure and purpose of the Clean Air Act. Particle pollution comes from unpaved roads, farming operations, burning and many other sources. It has been linked with heart disease and asthma attacks.

More than 1,000 Valley residents die annually from such pollution, according to a state study. The local air district produced a cleanup plan in 2003 to address the problems in one of the country's dirtiest air basins. The U.S. Environmental Protection Agency later approved the plan. The Association of Irrigated Residents filed suit over various issues. So did the Sierra Club, Latino Issues Forum and Medical Advocates for Healthy Air.

In the past five years, the four groups have been largely successful in challenging authorities on missed deadlines, inadequate plans and other issues.

In this lawsuit, besides the deadline extension, the groups disputed the way the district was accounting for its pollution reductions. Officials were counting previous reductions in later years to achieve goals.

The federal court said EPA correctly interpreted the law in approving the practice. Newell said his clients still could ask for another hearing before the appeals court or petition the U.S. Supreme Court. No decision has been made.

## **SAN JOAQUIN VALLEY**

### **Clean-air deadline extension allowed**

#### **Region has until 2010 to meet soot limits**

Bob Egelko, Chronicle Staff Writer

[San Francisco Chronicle, Wednesday, Sept. 7, 2005](#)

Advocates for clean air in the San Joaquin Valley suffered a setback Tuesday when a federal appeals court approved regulators' plans to give California's smoggiest region until 2010 to meet national limits on minute particles of airborne soot, a major contributor to pollution.

The pollutant is called particulate matter and is caused largely by farming operations and dust from roads. It can damage lung tissue and cause chronic illness, sometimes fatal.

Particulate matter is one element of the valley's air pollution, which is the worst in the state and among the worst in the nation. From 1999 through 2004, the valley's eight counties failed to meet federal standards for healthy air 38 percent of the time. About 12 percent of the school-age children who live there have asthma.

Causes include the topographic bowl that traps pollutants; traffic on north-south highways; a dairy industry that historically has been exempt from clean-air regulation; and, in the view of clean-air advocates, a regulatory board that has been too lax with polluters.

"It's DOA -- development, oil and agriculture -- that are the primary economic drivers in the valley," said Susan Britton, lawyer for Medical Advocates for Healthy Air, the Latino Issues Forum and the Sierra Club. "To really impose the kind of regulations that are required on those industries is politically insurmountable."

Brent Newell, who represents another group of plaintiffs called the Association of Irrigated Residents in the southern part of the valley, says the problem is lethal.

Federal studies have confirmed that "people are dying in the San Joaquin Valley from particulate matter," Newell said. The plan by the valley's Air Pollution Control District, approved by the U.S. Environmental Protection Agency, "is not going to address this public health crisis," he said.

District spokeswoman Kelly Hogan Malay said compliance with national standards by 2006, the timetable sought in the lawsuit, wasn't feasible.

"We couldn't find enough emission reductions within the local air district's authority to meet that deadline," she said. "The local district does not have authority to regulate all sources of air pollution in the valley."

The district's initial deadline for meeting national standards for particulate matter was the end of 1994. It was first extended by seven years, then by another nine years, until December 2010, in a plan that was approved by the EPA in May 2004.

Plaintiffs in the case argued that federal law set an ironclad deadline of 2006. But the Ninth U.S. Circuit Court of Appeals in San Francisco said the law allowed the EPA to extend the deadline when an area had not met the standard.

In the 3-0 ruling, Chief Judge Mary Schroeder said the current plan had some teeth. It subjects the state to possible financial penalties, including a loss of federal highway funding, if valley pollution is not cut by 5 percent a year through 2010.

But plaintiffs' attorney Newell argued that the 5 percent figure was misleading because it included reductions the district achieved from regulating farm-related pollution starting in 2003, six years later than the law required. The court said the calculations were within the EPA's authority and observed, "Late implementation is better than none."

### **Court sets deadline to clean up San Joaquin Valley's air**

By JULIANA BARBASSA, Associated Press Writer

[in the S.F. Chronicle, Bakersfield Californian and Stockton Record, Wednesday, Sept. 7, 2005](#)

FRESNO, Calif. (AP) - A federal appeals court upheld a judge's decision giving San Joaquin Valley air regulators until 2010 to clean up soot and other particles that help make the area one of the nation's most polluted air basins.

Environmental groups had sued the U.S. Environmental Protection Agency, arguing that to comply with the federal Clean Air Act, the EPA had to require the local air district to bring the region's air into compliance with the federal standards by 2006.

The 9th U.S. Circuit Court of Appeals ruled Tuesday the San Joaquin Valley Air Pollution Control District's new deadline fell within the guidelines established by the Act, contrary to allegations by the Sierra Club, the Association of Irrigated Residents, Latino Issues Forum, and Medical Advocates for Healthy Air.

"The local air district doesn't have the authority to adopt all of the measures necessary to control particulate pollution by 2006," air district spokeswoman Kelly Malay said.

The suit dealt with microscopic particles of dust, soot, or chemicals that can be build up within the lungs over time and lead to premature deaths, heart attacks, strokes and asthma, according to research.

Several of the largest generators of the tiny particles of pollution -- cars, trucks and agriculture -- cannot be regulated by the district, Malay said.

The plan the district adopted last year "aggressively pursues the measures we have authority to adopt," Malay said.

EPA officials were not able to comment in detail because they hadn't yet reviewed the decision, but spokeswoman Lisa Fasano said the agency was pleased with the ruling.

"This decision supports the EPA's plan approval for addressing particulate matter in the Central Valley," she said.

But the clean air advocates who brought the suit said the decision allowed a delay that will directly impact the health of the valley's residents.

"Particulate matter pollution kills people," said Brent Newell, attorney with the Association of Irrigated Residents. "We're a long way from cleaning up this problem."

According to a study by the California Department of Health Services in 1999, particle pollution contributes to or causes about 9,340 deaths annually in the state.

The U.S. EPA approved the San Joaquin Valley's current plan to clean up particle pollution in 2004, after the region went years without a workable plan to cut down the airborne particles.

The air district has missed or rescheduled deadlines in the past, and submitted plans that didn't meet federal guidelines, and the EPA failed to impose penalties.

Now, many of the current plan's provisions are being implemented, and together with other clean-air measures required by the state Legislature, they're improving air quality, air officials said.

Airborne particles are monitored during the winter, and on days when officials expect a high level of particle matter to be in the air, residents are asked to keep from burning wood in their fireplaces.

Agriculture, long exempted from the air pollution regulations that applied to industry and municipalities, now has to comply with laws that require farmers to adopt techniques that reduce dust and other airborne particles.

But activists like Newell were unconvinced, and said decisions like Tuesday's show the importance of reforming the air district body so it'll create "more effective policy from the beginning rather than trying to correct policy through the courts."

"Time is something we can't afford to lose," Newell said.

## **Machado trying to shake up pollution board**

### **Bill would add two members to air quality group**

Hank Shaw - Capitol Bureau Chief

[Stockton Record, Tuesday, Sept. 6, 2005](#)

SACRAMENTO -- While much of the year's significant environmental legislation has foundered, at least one major bill remains: a proposal to shake up the San Joaquin Regional Air Quality Control Board by adding a scientist and a doctor to the club of politicians who now control the body.

The San Joaquin Valley has some of the most-horrendous air quality in the United States. The asthma rate among Valley children is twice that of the rest of California. Foul air keeps thousands of residents indoors during Spare the Air days and contributes to the deaths of hundreds of residents each year.

Cars and trucks are to blame. So are agriculture and the petroleum companies based around Bakersfield. The air board regulates these polluters, imposing restrictions on how much gunk they can release into the giant bowl that is the Valley.

This is the third time state Sen. Michael Machado, D-Linden, has sponsored the legislation.

Supporters say adding public members with expertise in health would keep the politicians honest and could prevent them from acting secretly, as has happened in the past. They say the politicians on the air board kowtow to the industries that employ their constituents.

As an example of this, Machado points to reports last week of a formerly secret deal between the air board and the dairy industry to delay enforcing stricter air-pollution rules at the industry's behest.

Board officials say the deal is an act of good faith intended to prevent litigation and foster cooperation with the nation's largest dairy industry. Milk is San Joaquin County's top agricultural product, having brought in \$324 million in 2004.

No Republican is expected to vote for the measure.

Assemblyman Greg Aghazarian, R-Stockton, said the air board doesn't need reforming and said adding members will only increase its expenses.

"How many bureaucrats does it take to clean the air?" Aghazarian asked. "It's like adding sand to the beach. Let's just let the board do its job."

Machado's proposal faces opposition even from some of his fellow Valley Democrats.

Assemblywoman Barbara Matthews, D-Tracy, said she doesn't want anyone on the board who isn't an elected official -- members are all now either city council or county board members -- because they are more accountable to the public than appointees.

Assemblyman Juan Arambula, D-Fresno, disagrees. Like Machado, he said public members on the board will help shake the board's image as being too industry-friendly.

"The decisions of the board would have greater credibility and respect if there were public members," he said.

But Arambula said he doubts the Assembly will accept Machado's bill without some kind of compromise. Arambula said he's working toward that before the session ends this week. Whether Machado will accept a compromise bill isn't clear.

"To be blunt about it, he seems to want to have it his way," Arambula said.

Machado pointed out that his bill will not change the air board's balance of power. All it would do is add expertise.

"You kind of wonder: What is it are they afraid of?" he asked.

Details of Machado's bill, SB999, are available at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

## **Visalia bus pass prices cut in half**

### **Air board gives grant to help first-time riders**

Staff reports

[Visalia Times-Delta, Wednesday, Sept. 7, 2005](#)

For those who are unable or unwilling to spend \$3 a gallon for gasoline, a \$14 bus pass might be just the ticket.

That's what Visalia City Coach officials are hoping anyway. The city received an \$18,400 grant from the San Joaquin Valley Air Pollution Control District to try to get more people out of their cars and onto city buses.

The grant money is being used to reduce the price of a monthly bus pass, which includes unlimited rides during the month, from \$28 to \$14.

"We've found that once people experience the convenience, savings and efficiency of Visalia City Coach, they often become regular riders," said Monty Cox, transit manager for the city of Visalia.

The grant, intended to help first-time riders get acquainted with the bus system, should help more than 1,300 riders if everyone buys just one pass. But riders can buy up to six passes in the coming year if they find they like being a rider.

Discount passes can be purchased at the transit office at 425 E. Oak Ave. on the first floor of the downtown transit center. An application and identification are required, but for the most part, drivers will certify for themselves that they have not ridden on a pass in the previous 12 months.

### **Air district**

But the goal of the air district is a much broader attempt to reduce air pollution in the San Joaquin Valley, an area that has been identified as having some of the dirtiest air in the nation.

Mary Gonzalez, air quality specialist with the air district, said the grant program is part of the district's REMOVE II program, now in its second year.

She said the goal of the program is to remove measurable amounts of pollutants from the air through a number of programs.

In the case of the transit center's discount pass program, calculations are based on the number of vehicle trips reduced because of riding the bus. The potential emission reduction is 3,944 pounds a year, or 1.97 tons a year.

"Our primary goal is to get people out of their cars and give them some time to be able to try [bus service] out for their lifestyle and see if it works with their daily schedule," she said.

The grant program provides incentives for specific projects that cities can implement, including the use of public transportation, which the city of Visalia chose.

Other projects cities could choose include:

- Electronic mobility, video teleconferencing, Internet transactions, distance learning centers and others
- Purchase of alternative fuel vehicles, primarily for fleets
- Alternative fuel mechanics training programs
- Bicycle infrastructure, building or striping lanes.