

Judge uphold novel air rule imposing emissions fees on developers

By Dawn Reeves

Inside EPA.com, Thursday, March 6, 2008

A California Supreme Court judge has upheld a first-time local air rule requiring developers to pay fees to mitigate the costs of emissions from construction equipment and increased traffic from new building activities, allowing the rule to serve as a model that can now be replicated elsewhere in California and the nation, sources familiar with the decision say.

The San Joaquin Valley Air Pollution Control District adopted its so-called indirect source rule in 2005. The rule assesses a fee on residential and commercial developers based on the size of their projects, and addresses both the emissions caused by construction activities as well as the increased traffic the new development will prompt. The district can reduce the fee if developers undertake measures to reduce emissions, such as incorporating sidewalks and green space into their projects. The district is so far the only one in the nation to impose such a rule.

The new rule was adopted in December 2005 and serves as a new component in the district's state implementation plan (SIP) to attain federal ambient air quality standards. However, the building industry filed suit against the rule in 2006, arguing that it amounted to an unfair tax.

Judge Donald Black in a Feb. 21 ruling in California Building Industry Association, et. al v. San Joaquin Valley Air Pollution Control District, et. al, disagreed with industry's claim, saying the indirect source regulations "are necessary to address the Valley's serious air pollution problem. Despite the adoption by the district of over 500 rules and amendments since 1992, the district still exceeds state and federal air quality standards for ozone and particulate matter, primarily because of increases in population and vehicle miles traveled [VMTs] in the Valley." The decision is available on InsideEPA.com.

Black noted that the increases in population and VMTs has paralleled new construction, and the majority of projected increases in VMTs is due to future development.

The judge also rejected industry's argument that the fees were essentially taxes, ruling that the district developed a "fairly sophisticated formula for determining the amount of emissions that will be generated by any new development, based on the number of houses, the anticipated number of vehicles that will be associated with the development, and hence, the additional emissions of harmful particles and gases caused by the development."

One environmentalist says state law requires every California air district to consider adopting a similar requirement in their SIPs, and that the court ruling adds legitimacy to widespread consideration of the indirect source rule.

Prior to the court ruling at least two air districts -- Sacramento and the South Coast, which covers the Los Angeles area -- were considering adopting the rule, the source says. Black's decision upholding the innovative rule may help other air districts overcome their reluctance to adopt it, the source adds.

Additionally, other states could consider pursuing the measure, which the source describes as "a smart approach" that "provides an opportunity for developers to be part of the solution but doesn't stand in the way of providing new housing and commercial space. It encourages developers to think about environmental costs, and reduce and mitigate those costs."

Environmental groups intervened in the case on behalf of the San Joaquin air district in part because they wanted the rule to be upheld so it could serve as a model for other districts and states.

The San Joaquin air district is also heralding the ruling, noting in a statement that it could serve as a model for other areas.

A California Building Industry Association spokesman says the group is still reviewing Black's decision and plans to consider "all of our options, including appeal."

Power plant location opposed

Residents of Parlier, Selma tell energy panel staff their objections.

By Marc Benjamin

The Fresno Bee, Friday, March 7, 2008

The minds of many residents in the Selma and Parlier areas are not changing when it comes to the location of a 565-megawatt gas-fired power plant.

They're against it.

Residents told California Energy Commission staff Thursday that they remain opposed to the pollution, noise and visual blight they believe such a plant would create between Selma and Parlier.

The Kings River Conservation District would use the plant to generate electricity for Kings County and 11 Valley cities that have agreed to participate in the district's program.

During a public meeting at the University of California Extension Kearney Research Center outside Parlier, Energy Commission staff questioned district representatives about everything from archaeological resources and endangered species to pollution. Then residents had a chance to comment.

Air quality in Parlier, considered to be among the worst in the Valley, was the major issue.

The plant will emit about 137 tons of nitrogen oxides, 35 tons of volatile organic compounds and 91.7 tons of particulate matter, district officials say.

To decrease the effects of pollution, the district will buy emission reduction credits in the vicinity of Parlier.

"Their air [in Parlier] is considered terrible right now without the plant," said Selma City Council Member Dennis Lujan, who once served on the San Joaquin Valley Air Pollution Control District board. "I know they are going to buy [pollution] offsets, but that won't help the city of Parlier one iota."

Others critical of the plan emphasized the proximity to Indianola Elementary School near Selma, which would be about a half-mile from the plant.

Scott Galati, the district's lawyer, said the district has prepared studies to show that students at the school and residents in Parlier will not be adversely affected by the plant.

"Fears you have about public health impacts are not going to occur," Galati said. "The pursuit of our local offsets will take more pollution out of the [Valley] than there is now."

Dr. Obed Odoemelam, a state Energy Commission toxicologist, told residents he will review the district's health studies and asked residents to provide him with information so the best decision is made.

Shelly Abajian, who lives across the street from the proposed site, invited Energy Commission staff to come to her house and listen to how quiet it is today. That will change when a plant is built, she said.

The commission's staff will continue to meet with district officials and residents. The process, which began in December, is expected to take 12

EPA reconsidering mercury emission rules

By JOHN FLESHER , Associated Press Writer

Modesto Bee, New York Times and other papers, Friday, March 7, 2008

TRAVERSE CITY, Mich. — Responding to a lawsuit by Michigan and eight other states, the Bush administration is reconsidering its policy on mercury emissions from cement plants, which critics say allows too much air pollution.

Whether the U.S. Environmental Protection Agency changes the rules will depend on test results of technology that could reduce the emissions, spokesman Dale Kemery said Thursday.

But an environmental law firm that has battled the EPA for a decade over the matter said the agency promised in a court filing last month to set standards it previously had resisted.

"They've turned 180 degrees," said James Pew, attorney for Earthjustice, based in Washington, D.C.

Mercury comes from raw materials used to make cement - such as limestone, clay, sand and iron ore - and from fuels such as coal that fire the kilns where the ingredients are baked. Mercury is a neurotoxin linked to learning disabilities and is most dangerous to fetuses and young children, usually by eating fish contaminated through environmental exposure.

The agency in December 2006 set limits on mercury and hydrocarbon emissions from cement kilns built after Dec. 2, 2005. But for kilns built earlier, the EPA imposed lesser requirements.

The states sued in February 2007, saying the federal Clean Air Act requires mercury emission limits for all plants, not just new ones. Earthjustice, which had sued the EPA three previous times over cement kiln mercury, filed a separate case on behalf of several activist groups.

The nine states include Connecticut, Delaware, Illinois, Maryland, Massachusetts, Michigan, New York, New Jersey and Pennsylvania.

In a motion filed last month with the U.S. Court of Appeals in the District of Columbia, the EPA asked for more time to gather and analyze data from cement plants.

Peter Tsirigotis, director of the EPA division working on the standards, told the court in a written statement that he expected the agency to issue a proposed regulation by mid-September and a final version nine to 12 months afterward.

Calpine proposal outdated, critic says

'We're going backwards,' Hayward council candidate claims

By Matt O'Brien, STAFF WRITER

Tri-Valley Herald, Friday, March 7, 2008

HAYWARD — Rob Simpson tried and failed Thursday to get Bay Area air quality regulators to reconsider the authority they granted an energy company last year to construct a 600-megawatt power plant on the Hayward shoreline.

The five-member hearing board of the Bay Area Air Quality Management District dismissed Simpson's appeal, saying the matter was not up to them but instead under the jurisdiction of the California Energy Commission.

So now, Simpson, a Hayward real estate broker, is taking his case to the U.S. Environmental Protection Agency.

In the meantime, he aims to get himself elected to the Hayward City Council in June, challenging incumbents whom he says carelessly opened the city's doors to a polluting "gray industrial economy."

"We're going backwards," said Simpson, who professes to have logged more than 400 volunteer hours researching and fighting two proposed Hayward power plants. "One reason (I'm running) is to stop these power plants from coming into town. That's the main reason."

While the authority to permit large plant construction ultimately rests with state energy commissioners, Simpson criticizes top city leaders for overlooking key issues and giving San Jose-based Calpine Corp. a plot of city land on which to build its planned, massive natural gas-fired plant.

His candidacy could contribute to partially turning the local election — which so far involves three incumbents and seven challengers battling for five open seats — into a referendum on the two power plant proposals that have garnered wide public condemnation.

The Calpine plant proposal earned unanimous approval from the City Council several years ago. As mitigation for the pollution the plant would cause, the San Jose company has promised to contribute \$10 million to the Hayward Library system if the plant is built. The California Energy Commission said it took local government recommendations into account when it approved the plant late last year.

"It's one thing to get into a deal, but it's another thing to close it. The city still owns the land," Simpson said Thursday. "They haven't had hearings, they haven't had an examination of the facts. I don't think we should just be burying our head in the sand."

Simpson traveled to San Francisco on Thursday to call the air district hearing board's attention to what he thinks is the district's faulty reliance on pollution-trading credits to reduce Bay Area pollution.

"They claimed they didn't have jurisdiction over their own permit," Simpson said.

Although the district did grant authority to construct the Calpine plant last year, the hearing board dismissed Simpson's appeal because the California Energy Commission is still the lead agency for reviewing and permitting power plants, said Karen Schkolnick, a spokeswoman for the district.

"Because it's a larger plant, it falls under the jurisdiction of the CEC," Schkolnick said. "It wasn't that they denied it on the merits of the appeal."

Simpson said the air district could have forced Calpine to use better technology that gets engines starting faster and pollutes less, but instead it encouraged the company to buy banked emission reduction credits, a measure that earns the air district more money but hurts Hayward.

"We shouldn't be getting old technology," Simpson said. "If we're going to be getting all these plants, which I don't think we need, they should at least be a modern facility."

Simpson points to the air district's announcement last month that it plans to charge power plants, refineries and other big Bay Area polluters a "global warming fee" that would raise an estimated \$1.1 million a year for the air district.

"The way it's licensed, they'll collect an extra \$50,000 a year because this thing pollutes more," Simpson said.

The fee would cost polluting Bay Area businesses 4.2 cents for every metric ton of carbon dioxide produced each year.

After refineries, the biggest greenhouse polluters in the Bay Area tend to be power plants and landfills, according to air district figures. Schkolnick said the district has not calculated how much Calpine's proposed combined-cycle Hayward plant, to be known as the Russell City Energy Center, would generate in pollution fees.

But in comparison, the Calpine-owned Los Medanos Energy Center, a 500-megawatt combined-cycle plant in Pittsburg, produces about 1.4 million metric tons of carbon dioxide a year and would generate about \$58,337 to the air district in fees, according to air district records.

The Los Medanos plant was completed at the beginning of the decade and is the sixth-largest emitter of greenhouse gases in the Bay Area, according to the records.

Bill Raising Air Pollution Fees Advances

Lisa Rein, Annapolis Digest

In the Washington Post, Friday, March 7, 2008

The Senate gave final approval yesterday to a bill that would raise fees on power plants and other industries whose air pollution is monitored, despite warnings from some lawmakers that the higher payments could force some companies out of business.

Gov. Martin O'Malley (D) supports the increases, which would allow the state's environmental agency to fill vacant inspector positions.

The annual fees for permits to release air pollution would jump to \$50 per ton of pollutants from \$42. Environmental officials say they lack sufficient workers to enforce and monitor air pollution laws. Critics said the higher fees would hurt companies already struggling to comply with stricter pollution controls.

The measure moves to the House of Delegates.

Mayor signs law for low-emission cabs

Wyatt Buchanan

S.F. Chronicle, Friday, March 7, 2008

Mayor Gavin Newsom signed into law Thursday a measure that he said will guarantee San Francisco's taxi fleet is converted to low-emission vehicles by 2011.

The law also raises the fee that taxi drivers must pay to use their cars by \$5 each shift, to \$96.50, plus an additional \$7.50 for low-emissions vehicles. Cab companies are to use the money to invest in converting their fleets.

Newsom said drivers would save enough money on fuel to offset the fee increase.

Valley air clean-up target date is too distant, activists say

By the Associated Press

Modesto Bee, Sacramento Bee, Contra Costa Times and other papers, Thursday, March 6, 2008

FRESNO, Calif. — Clean air activists say a resolution to clean up the San Joaquin Valley's air of tiny specks of pollution by 2014 is too little, too late.

The San Joaquin Valley Air Pollution Control District says its plan for cleaning up tiny particles of polluting chemicals and soot is the most aggressive approach possible.

But activists say the target date of 2014 fits the regional officials' pattern of foot-dragging on an important health issue.

The cleanup plan is scheduled to go before the district board in April for a vote.

Allegheny Cty. sets aside \$500,000 for faster air quality permits

The Associated Press

In the Contra Costa Times, Friday, March 7, 2008

PITTSBURGH-The Allegheny County Board of Health will spend \$500,000 to speed up the process of issuing permits for an air quality program.

The health board has been criticized for taking a long time to issue permits to area businesses.

The money set aside on Wednesday will be used to hire private contractors, a move meant to reduce the board's backlog.

Allegheny County Chief Executive Dan Onorato has considered disbanding the local air quality program because of the backlogs. He may hand air pollution control issues over to the state.

California taking alternative fuels fight to the masses

Government funding helps more stations sell biofuels

By Elizabeth Douglass, Los Angeles Times

Tri-Valley Herald, Friday, March 7, 2008

LOS ANGELES — Ben LeBeau pulled up to the Conserv Fuel station on the city's west side on a recent Friday and started filling the tank of his black Chevy Tahoe with a liquid rarely found in California — E85, an "alternative fuel" made of 85 percent ethanol and 15 percent gasoline.

LeBeau's Chevy, a so-called flexible-fuel vehicle, can run on gasoline, E85 or any combination of the two, and that's one reason he bought it.

"Unless I have to, I don't use regular gas anymore," said LeBeau, 34, of suburban Agoura Hills. He doesn't mind that his mileage per gallon is lower with E85, which is usually made from corn. The fuel is easier on the environment than gasoline, LeBeau said. "It's what you can do today."

For LeBeau and other E85 converts, there's just one problem: Although California leads the nation in adopting alternative fuels, there are only seven places to get E85 in the state, and only three are open to the public. New government funding and a greater sense of environmental urgency is starting to improve the outlook, though.

In 2007, California had 835 alternative fuel stations. Most dispense electricity, liquefied petroleum gas or compressed natural gas, according to figures compiled by the U.S. Department of Energy. Sites offering liquefied natural gas, hydrogen, biodiesel or E85 were far down the list.

The disparity is largely a reflection of the state's longtime emphasis on converting large fleets used by governments, school districts and private industry to alternative fuels, rather than changing the vehicle choices and habits of the masses. It's also a manifestation of California's small role in growing corn and soy beans, the primary crops used to produce E85 and biodiesel.

Now, however, California has adopted ambitious goals for alternative fuels and cutting greenhouse gas emissions — and it no longer can afford to leave the public out of the mix.

For starters, the state is going to increase the use of ethanol as a fuel additive to all gasoline sold here. For years, California's gasoline has contained

5.7 percent ethanol to boost octane and comply with federal emissions rules; starting in 2010, that will rise to 10 percent ethanol. For a state that consumes about 43 million gallons of gas each day, that change alone represents a huge jump in ethanol consumption.

Meanwhile, biodiesel backers have helped build a statewide roster of more than 50 sites, with many selling to the public and offering blends ranging from B10 (10 percent biodiesel and 90 percent petroleum diesel) to B99, a nearly pure biodiesel fuel. New state and federal grants will help add E85 sites.

In May, the state air board set aside millions to help set up 34 public E85 stations. Most are planned for the Sacramento area. Separate grants will fund E85 sites elsewhere later this year.

A look at the oil giant's U.S. retail network is telling: Out of 9,600 U.S. stations selling Chevron or Texaco fuel, 26 offer biofuels. In an industry that has sold the same basic products for more than a century, change doesn't come easily.

Sometimes it takes prodding from a younger generation. Family-owned Redwood Oil Co., based in Rohnert Park, operates 19 Chevron stations. In May the company started selling 99 percent biodiesel at one and added B20 at another a few months ago.

The hurdles have been high.

In 2006, when Kristopher Moller persuaded his father to offer biodiesel at some of the family's USA gas stations in Southern California, he thought the timing couldn't have been better.

After all, high gas prices were infuriating drivers, the government was pushing alternative energy sources and more and more people were becoming convinced that petroleum-based fuels were making global warming worse.

But in early 2007, just weeks after Moller finished outfitting the fifth USA station with biodiesel pumps, his father, John Moller, agreed to sell the USA chain to Tesoro Corp.

A few months ago, Tesoro stopped offering 99 percent biodiesel. It was back to the drawing board. Kristopher Moller took control of a USA station in Los Angeles that was not included in the Tesoro deal and in April started selling nearly pure biodiesel made from cooking and vegetable oils. The station was renamed Conserv Fuel and hosted a visit from Democratic presidential candidate Barack Obama.

In December, the station became just the second outlet in the state offering E85 to the public. The move should have been a triumph for Moller, but he was in no mood to celebrate. Permitting delays and other glitches had sapped his finances.

"I was struggling and fighting," said Moller, a 32-year-old Malibu resident, "but I didn't have the pocketbook to weather the storm."

So he handed control back to his father, who plans to give the station one year to improve its financial performance. If it doesn't, the elder Moller intends to convert it back into a standard gasoline station with a big oil company brand on the pumps.

"His heart is into the biofuels ... and he really wants to see it succeed," John Moller said of his son. But his own view, Moller explained, is "show me the money."

The younger Moller is pinning his hopes on customers such as James Courtney, who on a recent Friday drove to Moller's station to pump the 99 percent blend of biodiesel into his buttercup-colored 1976 Mercedes Benz 300D, a car that's been in his family for decades. He paid \$3.799 a gallon, more than he would have for standard diesel, but Courtney didn't mind.

"It's expensive, but it's worth it," he said. "I believe in supporting the people who have the courage and the foresight to do this."

To sell the highest blend of biodiesel, stations such as Conserv Fuel must secure a variance from the state Division of Measurement Standards, which regulates biodiesel as an additive and not a fuel. In addition, anyone selling biodiesel blends higher than B20 must limit sales to customers who join a free, loosely defined "users group," and to submit monthly reports to the measurement division — a requirement not existing in any other state, Moller said.

The market is another uncertainty. Many drivers are unaware that their vehicle can run on E85, and it's unclear how many will make the switch, given the fuel's higher cost per mile.

Despite the obstacles, groups backing E85 are planning sites in Los Angeles, Ventura and other areas. Even the elder Moller is warming to the trend.

He plans to add biodiesel to stations he owns in Santa Barbara and in San Luis Obispo, and he's backing the construction of an ethanol plant in Pixley.

"It's hard for me, but I'm realizing more and more that it's the way of the future, and we have to get into it," John Moller said. "It's just like it's hard for an old man to start using a BlackBerry."

[Letter to the Fresno Bee, Friday, March 7, 2008:](#)

Even 'little things' move us closer to clean air

For four years, I have participated in the Fresno Asthmatic Children's Environmental Study, a research project conducted by the University of California to investigate the impact of environmental conditions, including air pollution caused by vehicle emissions, on young people like me who have asthma.

Everyone knows our air quality is terrible, yet every time I pass a fast-food restaurant, there are three or four cars at the drive-up window. Since we live in an area where from 600 to 1,300 people die annually from pollution-related respiratory conditions, why aren't we doing everything we can to improve our air quality? Even little things, like parking and walking inside to get that quarter pounder can make a difference.

I don't want to live in a town described by the Sierra Club as an area "where breathing is like smoking without filters." I want to live where people can and do make a difference because they care about the health of young people. Pull into that parking place, turn off your car, walk inside, take a deep breath and realize your choice does make a difference. And ask why a city with air troubles like Fresno's continues to approve even more drive-through lanes!

Katherine Abston, Age 15

Bullard High School, Fresno

[Contra Costa Times Editorial, Friday, March 7, 2008:](#)

Redirect air money

A BAY AREA AIR POLLUTION BOARD public outreach committee has concluded that it's time to curb free rides on Spare the Air days.

The committee is recommending to the two partners in this free-ride venture, the Bay Area Air Quality Management District and the Metropolitan Transportation Commission, that free transit rides should be scaled back from four to two smoggy days this summer due to dwindling federal funding.

In fact, the commission says we should look at the bigger picture, with one member of the board saying, "It's Spare the Earth," the focus being a campaign to battle global warming. Attacking the

threat of global warming makes more sense, but what this really says is that Spare the Air free rides have not been a good sell.

While we don't see this as a white flag on Spare the Air free ride days, it's clear that some officials agree with what we've said in the past: This venture is ultimately a waste of funds.

Perhaps there were fewer cars on the highways during these days, but it was also clear that traffic is usually down during summer months in the Bay Area due to vacations and school breaks. Transit ridership rose on Spare the Air days, but who was really taking advantage? Tourists and children, groups that generally are not on our highways daily.

Even a scaled-down model of the Spare the Air program will cost agencies \$5.2 million. Thankfully, another \$1.5 million will go toward incentives, messages and measures to reduce emissions. That's a better way to go.

If transit officials are serious about reducing car traffic in the Bay Area, they need to take the bold step of dropping fares. If they're willing to blow millions on free rides, why not scrap the free rides, keep the funds in the general budget and lower the overall cost to daily commuters who face spiraling gas costs?

What an opportunity. For instance, even if gas reaches \$4 a gallon, it's still cheaper to drive to and from Pleasant Hill and the Dublin/Pleasanton area than it is to pay the \$10.10 round-trip fee on BART. If BART lowers fees, commuters may have second thoughts about driving, and agencies could make more money in the long run.

Spare the Air free rides are now reduced to a two-day Band-Aid. It's time to stop this silly promotion of public transit and help clean the air with aggressive, reasonable solutions.