

Tallow plant faces suit

Air district has had it with stinky rule breaker

By Todd Milbourn, Staff Writer

Modesto Bee, Tues., Aug. 9, 2005

San Joaquin Valley air quality officials said Monday they plan to take legal action against Modesto Tallow Co. that would force the rendering plant to clean up its act or face possible closure.

The lawsuit signals that the San Joaquin Valley Air Pollution Control District is taking a tougher line against Modesto Tallow, which for decades has emitted a putrid stench across southwest Modesto and parts of Ceres.

"It's the same song and dance," said Catherine Tognazzini, an air district attorney in Fresno, referring to the plant's promises over the years to reduce odors. "We need to bring them into compliance."

Over the past decade, Modesto Tallow has violated air pollution rules far more often than any other business in the Northern San Joaquin Valley, according to air district records. The plant's 124-plus violations include creating a public nuisance, having malfunctioning equipment and failing to process carcasses within 24 hours.

Company officials also have refused to pay at least \$765,000 in fines dating back to 2002, according to the air district.

Executives of Pascal Enterprises, the Dallas-based firm that owns Modesto Tallow, did not return calls seeking comment.

Plant manager John Olson said Modesto Tallow is drafting a plan that he said would assure the air district of the company's commitment to being a better neighbor.

"I believe there's work to be done," said Olson, who joined the company about a month ago. "But one thing I want to do is bring home to our people how important the community is to us. We want to do a good job."

Tognazzini said the district still is working on the particulars of its lawsuit. But any case, she said, would "first and foremost" seek to bring the tallow plant into compliance with the air district's public nuisance rules and the conditions of its permit. For years, Modesto Tallow has argued that public nuisance rules don't apply to rendering plants.

Tognazzini said the district also would request an injunction, which could lay the groundwork for closing the plant if it doesn't comply with air district standards.

Tognazzini said district officials would meet today with Modesto Tallow to discuss the situation. Barring a "drastic development," the district would file its case by the end of the week in Stanislaus County Superior Court, she said.

Those who have battled Modesto Tallow's odors over the years greeted Monday's news with skepticism.

"Finally, they do something," said Miguel Donoso, an activist who often spars with Modesto Tallow and those who regulate the company. "They've known about these violations for years and done nothing. I've lost faith in these guys. I'll believe it when I see it."

Anti-tallow plant rally planned

To draw attention to the issue, Donoso said he and other local leaders are planning a rally against Modesto Tallow scheduled to begin at 9 a.m. today in front of Modesto Centre Plaza. The rally will coincide with a town hall meeting on environmental issues sponsored by the California Environmental Protection Agency.

Built in 1917, Modesto Tallow processes 10,000 tons of animal carcasses, feathers and restaurant grease every month, turning much of the material into food for pets and livestock.

The plant's stench penetrates homes and businesses throughout southwest Modesto, but is most concentrated in the low-income area near Shackelford Elementary School.

Families in the neighborhood say the smell is so bad they can't eat, they feel nauseous and they don't invite friends to the neighborhood. Some residents say the odor contributes to south Modesto's struggle to develop economically.

Authorities have threatened to shutter Modesto Tallow on several occasions, most recently in 1997 when the Stanislaus County Board of Supervisors asked the district attorney to file a public nuisance lawsuit. But that lawsuit never was filed, in large part because the state's dairy and animal feed industries lobbied state lawmakers to provide rendering plants with the same exemption to public nuisance lawsuits that agricultural producers have.

Over the years, federal, state, county and city governments have all investigated Modesto Tallow, which looms over southwest Modesto from its position along the south bank of the Tuolumne River.

But the stench has continued.

In July, district officials asked Modesto Tallow to submit a detailed plan showing how it would reduce odors and settle its outstanding violations. District officials said they reviewed that plan last week and weren't satisfied.

Tognazzini said the company has followed through on most promises to install odor reducing equipment over the years.

"I think the problem lies in that after they install it, they either aren't maintaining it properly or training their people how to use it," she said.

Rose Libriola, a secretary at Shackelford, said she was heartened to hear authorities appeared to be taking a tougher line. She said the smell frequently enters the school's front office and classrooms - and life would be much better without it.

"It's horrendous and it's been this way for years," Libriola said. "It's about time they start doing something."

Local air worse than L.A.'s

By CHRISTINE BEDELL, Californian staff writer
[Bakersfield Californian, Tuesday, Aug. 9, 2005](#)

Kern County has cleaned up its air quite a bit, but not nearly as dramatically as Los Angeles has, experts said.

The two areas are very different. Los Angeles has spent years battling bad air, and residents there are willing to take drastic action, according to researchers and regulators. The San Joaquin Valley can make the same strides as the South Coast, they said, if it's willing to do the work.

"It just depends on how radical people want to be, what they're willing to accept for air quality," said Gennet Paauwe, spokeswoman for the California Air Resources Board.

The Los Angeles area was home to 90 smog days in 2004 -- less than half what it had in 1980. The number of smog days in the San Joaquin Valley has hovered around 100, surpassing the number of bad air days in Los Angeles in recent years.

These figures are based on the new, more stringent federal smog standard. The San Joaquin Valley had made progress under the old standard, which went out of use in June.

Both Los Angeles and the San Joaquin Valley are battling particulate matter, the other major air scourge that causes lung damage. In 2004, the San Joaquin Valley spent about a third of the year busting the state limit for one type of particulates, known as PM10. That's down from as many as 292 days in 1990, and another spike in 2002. Under the less-strict federal standard, valley air monitors picked up three offending days in 2004.

Los Angeles has also made strides with particulates. In 1989, more than 300 days were dirty with particulate matter, according to state standards. In 2003, the air basin was down to 201 days. Like the San Joaquin Valley, Los Angeles barely breaks the federal standard.

Of course, other regulations loom. In a few years, extra-miniscule particulate matter, known as PM2.5, will be a factor in air quality compliance.

The South Coast air district has made greater strides cleaning up ozone, or smog, partly because it's had many more years of experience doing it, Paauwe said. Los Angeles residents remember when they couldn't see across the street, she said, and that's made them more forceful in demanding action on air quality.

That's just beginning to happen in the San Joaquin Valley, she said.

The valley's population explosion is really fouling the air, Paauwe said. More people means more services and more driving, she said, which means more pollution.

The valley is also home to major industry -- oil and gas production and agriculture chief among them. Ag has been exempt from most air quality regulation until recently, while most of Los Angeles' industry has gone elsewhere, said University of California, Davis scientist Peter Green.

In Los Angeles, traffic is the chief source of air pollution, Green said. Cars are pretty clean these days, and with little else to sully the air, air quality has improved there.

The San Joaquin Valley Air Pollution Control District regulates "stationary" sources of pollution, particularly the oil industry. The state regulates vehicles, the other behemoth polluter here.

Through some 500 rules, the valley air district has cut stationary emissions by 47 percent, officials say. It will continue regulating those sources, but the big gains have already been realized.

Valley officials are now looking elsewhere for big pollution reductions, eyeing cows, wineries and new shopping centers for their air quality impacts. The first attempt to regulate regular folks was through the fireplace this past winter, and Bakersfield-area residents howled in protest the loudest.

But most people know they need to make changes to improve air quality, Turner said.

"Ten years ago, most people in the valley didn't think we had an air problem," she said. "Now they're starting to see the problem and asking what they can do about it."

-- Staff writer Sarah Ruby contributed to this report

Kern faulted over district grants Supervisor calls to give Fresno run for its money on air quality funds

By Sarah Ruby, Californian staff writer

[Bakersfield Californian, Tues., Aug. 9, 2005](#)

Locals have let millions of regional air quality grant dollars flow to counties other than Kern.

We don't seek San Joaquin Valley Air Pollution Control District funding as regularly as our Fresno-area counterparts, who secured more than twice as much money for heavy-duty equipment replacements as Kern agencies and businesses did in 2004.

"They've got their act together. They're the first ones in line," said Supervisor Michael Rubio, who met with local leaders Monday to discuss ways to coordinate grant-seeking efforts between the county, cities, school districts and other public agencies.

The 2004 grant breakdown isn't an anomaly, said Kelly Malay, a spokeswoman for the air district. The district's first-come, first-serve money is open to businesses and agencies across the valley. The district has never turned away an applicant for lack of funds, she said, but the northern and southern ends of the valley haven't muscled their way into line as effectively as the Fresno area.

The city of Fresno is nationally recognized for its air quality efforts, and was given the 2005 city fleet of the year award from the U.S. Department of Energy.

It's time to give Fresno a run for its money, Rubio said, and to do it he's trying to establish a Clean Fleet Task Force to share grant information, lobby for funding and coordinate fuel types so local agencies can share the costs of new infrastructure.

"It just seems to me we don't have any synergy going," Rubio said. "My biggest gripe is the political rhetoric you hear during campaigns. Talking about doing something about air quality and really rolling your sleeves up and doing something about it is a totally different thing."

The fledgling task force discussed the relative merits of natural gas and alternative diesel technologies, and agreed to submit information about their fleets to the air district, which will compute how many tons of emissions can be saved from which fleets.

They agreed to try for the \$13 million being distributed by the air district this year, plus several million more from a program being unveiled today by state Sen. Dean Florez, D-Shafter, to clean up school bus fleets. They also talked about city and county policies that could put pressure on subcontractors to restock their fleets with clean vehicles.

"(The task force) is a great start," said Don Fowler, a top administrator with Kern County Superintendent of Schools office, which operates a 93-bus fleet, 22 of which run on compressed natural gas. "We ought to be working together. It's ludicrous not to."

The San Joaquin Valley air district isn't the only path to cleaner air, and local agencies have been purchasing air-friendly vehicles on their own for years. They sometimes get a better deal from Kern Council of Governments and other agencies that distribute federal money, which covers about 80 percent of sticker price -- \$155,000 for a new compressed natural gas school bus. Air district grants generally pay the difference in cost between alternative fuel vehicles and old-fashioned diesel, which amounts to roughly \$45,000 in the school bus market.

"(Federal grants) have been more than sufficient to fund our effort," said Chester Moland, chief executive officer of Golden Empire Transit District, which has ordered replacements for its last diesel buses. The bus fleet now operates almost entirely on natural gas.

Many of Kern's clean fleet vehicles were purchased with federal grants routed through Kern Council of Governments, which typically distributes about \$4 million to public agencies each year. Federal transportation funding is tied to air quality goals, and these funds have purchased new natural gas fueling stations and cleaner vehicles.

Some agencies have found they don't qualify for some air quality grants because their fleets are too new. To others, Kern's lack of enthusiasm for regional grant money is a matter of ideology.

"We have more of an independent philosophy down here," said Ron Brummett, executive director of Kern COG. "We are probably more conservative than Fresno."

Conservative or no, there's plenty of room in Kern for a coordinated air quality effort, said Kern Supervisor Barbara Patrick, who is the San Joaquin Valley air district representative to the state air board.

"It sounds like there's an opportunity for us," she said. "You have to be persistent, you have to be ready, you have to get your act together and you have to get in line."

The San Joaquin Valley has until 2013 to reach new federal smog standards, and by 2010 it must comply with various controls on microscopic dust particles, which aggravate asthma and reduce lung function.

Where the money for heavy duty engines went in 2004* and county population count as of 2000:

- Fresno: \$4.8 million; 799,407
- Valleywide: \$2.8 million
- Kern: \$2 million; 661,645
- Tulare: \$821,000; 368,021
- San Joaquin: \$561,000; 563,598
- Madera: \$530,000; 123,109
- Stanislaus: \$409,000; 446,997
- Merced: \$262,000; 210,554
- Kings: \$259,000; 129,461

* Air district grant money comes from a combination of vehicle registration fees and state tax dollars.

Deer Creek project up in air

Firm wants to excavate sand from stream channel.

By Denny Boyles, The Fresno Bee
Tuesday, Aug. 9, 2005

A proposed surface mining operation south of Porterville faces an uncertain future today as Tulare County supervisors decide whether to give the project developers more time to prepare an environmental report.

The Schuler-Dilday Sand Project, as proposed, would have allowed the excavation of 5 feet of sand from a 20-acre area of the Deer Creek stream channel.

Earlier this year, the project was approved by the Tulare County Planning Commission with a list of necessary mitigation efforts, but without requiring a full Environmental Impact Report.

Project opponents appealed that decision to the supervisors, who also voted not to require a full EIR, but instead asked the project developer, Jaxon Enterprises and its subsidiary, the Deer Creek Rock Co. Inc., to complete a mitigated negative impact declaration, and indemnify the county against any future legal actions.

That vote was significant to the project developers, both in savings to the project's cost and in timing.

Environmental impact reports address every potential result of a project from air and water quality, to traffic impacts and possible impacts to wildlife and plants within the project area.

If required, a full EIR process can take more than six months to complete and can cost more than \$50,000. A mitigated negative declaration can cost as little as \$10,000 to complete, and can be completed in less than half the time.

George Finney, assistant director for long-range planning with the Tulare County Resource Management Agency, said the county asked for the indemnity because of the potential for future legal action.

"The threshold for requiring a full EIR is so low in this state that there is a legal risk in not requiring one to be prepared. It was just good policy for the county to ask the applicant to assume that risk. Based on their lack of response so far, apparently they don't wish to do that," Finney said.

Michael Ashby, the attorney for Jaxon Enterprises, was traveling and could not be reached to comment. Efforts to reach the Committee to Save Deer Creek also were unsuccessful.

Jim Maples, the Tulare County supervisor for the project area, said he expects the company to ask for more time to review the project.

"They have already altered the project based on environmental concerns, and I think what they are doing now is deciding how to move forward. If they have to do an EIR, I would expect them to start over and return to their original request, which was for a deeper and larger project," Maples said.

Maples said everyone involved understands the need for building materials, and the sensitive nature of taking those materials from a riverbed.

"I think the company just wants some more time to decide which way to go," Maples said.

New law won't zap ethanol Irk some rule is gone, but state will still use some.

By Dale Kasler, Bee Staff Writer
Sacramento Bee, Tues., Aug. 9, 2005

The national energy bill signed Monday by President Bush removes a long-standing rule that forced ethanol into California's gasoline tanks and irked state officials to no end.

But it won't spell the demise of the controversial fuel additive in California.

Mike Scheible of the California Air Resources Board said the state's ethanol consumption, now tops in the nation, might drop by 20 percent.

Ethanol backers disagreed, saying the legislation could mean even more ethanol, not less, will get blended into California's gas. That's because the new law requires the nation's oil refiners to double the amount of ethanol they currently use by 2012, which virtually guarantees some ethanol consumption in California.

"It translates into more ethanol use in California," said Neil Koehler, chief executive of a company that's building a \$52 million ethanol-production plant in Madera.

The new law erases a federal mandate, enforced by the U.S. Environmental Protection Agency, requiring the gas sold in most of the state to contain 5.7 percent ethanol.

California officials said the U.S. rule put refiners in a bind, limiting their ability to blend gas less expensively. Industry consultants said the rule was adding as much as a dime a gallon to the cost of California gas.

The EPA has said that ethanol cleans the air, but state officials contend that ethanol's chemical properties can actually worsen air quality during hot weather.

With gas prices in California averaging \$2.64 a gallon, just a fraction of a penny below the all-time high, state officials were pleased with the end of the U.S. rule, which they have long believed was the result of lobbying by Midwestern agribusiness interests.

Gov. Arnold Schwarzenegger, reacting to Bush's bill-signing, said the removal of the ethanol requirement is one of "many victories for California" contained in the new law. He also praised the law's support for alternative energy sources.

State officials for years have been fighting the ethanol requirement, which applied to areas of the country with worse-than-usual air pollution. The EPA consistently turned back California's requests for an exemption, most recently on June 2.

The new law calls for nationwide use of ethanol to nearly double, to 7.5 billion gallons a year, by 2012.

"It locks in ethanol as an important piece of the national fuel supply," said Matt Schmitt of Calgren Renewable Fuels, a company building an ethanol plant in Pixley this fall. "What it means for California is a little trickier."

California is expected to consume 1 billion gallons of ethanol this year. Because the state is such a heavy ethanol user - sopping up one-fourth of the nation's supply - it's certain that the state will take up a big portion of the 7.5 billion gallons.

Currently, ethanol use is mainly confined to California, New York and a few Midwestern states. Under the new law, the ethanol use could spread to all 50 states.

Scheible, the Air Resources Board's deputy executive officer, said California uses about 11 percent of the nation's gasoline. If, under the new law, it uses 11 percent of the nation's ethanol, that would translate to about 825 million gallons a year - or 20 percent below this year's consumption.

State officials say reduced ethanol use won't increase pollution because they say California refiners can meet federal clean-air standards without the additive.

In addition, the new law could give California refiners leeway as to when they want to use ethanol. The EPA had required its use year-round.

"Refiners will now have the flexibility ... of using ethanol when it makes economic sense," said Joe Sparano of the Western States Petroleum Association, which represents California refineries. "That could be more often or it could be less often."

Ethanol backers in California see the energy bill as a boon to their young industry. A group in Goshen is nearing completion on the first large-scale ethanol plant, while the Pixley and Madera plants are about to start construction.

"We should be pouring cement this week," said Koehler, chief executive of Pacific Ethanol Inc., the company behind the Madera plant.

The ethanol debate in California started when a 1990 federal law required that gasoline sold in highly polluted regions be blended with one of a family of additives called oxygenates. California picked an oxygenate known as MTBE but banned it after it was found to contaminate groundwater. MTBE was replaced with ethanol.

Bill Drops Requirement for Gas Additives

By John Heilprin, Associated Press Writer
in the S.F. Chronicle, Tues., August 9, 2005

WASHINGTON (AP) -- Additives in about a third of the nation's gasoline - aimed at reducing smog in urban areas with the worst air pollution - will no longer be required under the energy policy that President Bush just signed into law.

Virtually everyone says the requirement that gasoline be formulated to contain at least 2 percent oxygen by weight isn't needed anymore. Some say it never was.

The most commonly used substances for adding oxygen to gasoline are methyl tertiary butyl ether, known as MTBE, and ethanol derived from corn. Several states, including California and New York, have banned MTBE after it seeped into local water supplies, and other states are phasing it out.

Congress in 1990 rewrote the Clean Air Act to establish the oxygen standard after experts said it was the best and quickest way to cut pollution from automobiles and trucks. With it, gasoline burns more efficiently, removing pollutants like carbon monoxide from incomplete combustion.

Since then, refiners have developed different blends of gasoline without the oxygen that burn just as cleanly.

"It is clear that people have learned a lot in the last 15 years about how to get that 2 percent benefit another way," said Jeff Holmstead, the Environmental Protection Agency's top air quality official.

The change in law takes immediate effect in California, from Sacramento to San Diego. It goes into effect nine months later in the East Coast, from Boston to Norfolk, Va.; in Chicago, St. Louis and other Midwest cities; and around Dallas, Houston and Atlanta.

Health advocates, oil industry representatives and government officials dispute how much the oxygenates were ever needed. But they agree that dropping it will help reduce the problem of groundwater pollution caused by widespread use of MTBE.

"It's sort of a success story. ... We anticipate we'll get approximately the same air quality benefits and not have the MTBE problem," said A. Blakeman Early, an environmental consultant to the American Lung Association. "It shows the adaptability of the refining industry. You can say we want cleaner gasoline, and they'll produce it."

Early said ethanol and MTBE could effectively be replaced with other additives such as alkylates - synthetic oils - and isooctanes - high-octane gasolines.

Oil industry representatives also cite better engines from the auto industry. Oxygen sensors used in vehicles built since 1994, a year before the oxygenate requirement went into effect, can effectively adjust the air-to-fuel ratio to achieve the same cleaner burn, they said.

The energy bill Bush signed Monday still calls for refiners to double their annual use of ethanol to 7.5 billion gallons by 2012, but the case for that is more political - nurturing a new market for Midwestern corn growers - than environmental.

"The environmental rationale has been eliminated," Ed Murphy of the American Petroleum Institute said of the oxygenate requirement. "It's outlived its usefulness and no longer needs to exist, and is causing difficulty in the fuels market."

States where the change will occur after 270 days, according to the EPA, are Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Maryland, New Jersey, New York, Pennsylvania, Texas, Virginia and Wisconsin. The change also will take place in the District of Columbia.

States that had voluntarily turned to oxygenated gasoline in the belief it would also help reduce their pollution include Kentucky, Massachusetts, Missouri, New Hampshire and Rhode Island.

On the Net: EPA:

<http://www.epa.gov/otaq/rfg.htm> www.epa.gov/otaq/rfg.htm <http://www.epa.gov/otaq/rfg.htm>

[Fresno Bee editorial, Tues., August 9, 2005:](#)

Fair rules

Don't cut air fee deals with developers on case-by-case basis.

It's a good idea: Charge developers in the Valley a fee for the homes and other structures they build to offset the amount of increased air pollution generated by those projects. In fact, the Valley air district is required by the state to do just that.

But signing individual contracts with developers on a case-by-case basis - even as the air district works to establish Valleywide rules for such fees - is problematical. The practice raises questions of both equity and effectiveness.

The concerns surfaced last week at an air quality hearing in Fresno, where two contracts with developers of large Kern County projects came in for praise and criticism.

Kern County has seen a number of lawsuits filed against large projects in recent years, often settled with developers agreeing to pay mitigation fees on a per-house basis, or, in the case of commercial and industrial projects, on the entire development.

Tejon Ranch Corp. and Castle & Cooke California Inc., each with a major project in the works, went to the San Joaquin Valley Air Pollution Control District last year in an effort to finesse all the

fuss and pay a negotiated fee up front. It was a praiseworthy move on the part of the developers, who also served their own interests by avoiding costly litigation.

But any such fees should be calculated broadly, on a regional basis, and applied that way as well.

The building industry is chary of mitigation fees in general, arguing in particular that they may drive the cost of homes beyond the reach of some prospective buyers.

They may do just that in some cases, and that would be too bad. But it's those homeowners - and the commercial and business interests that occupy those types of buildings - who will create the added pollution burden we all must bear, from traffic and other activities. They ought to pay their share, as we all should.

The best solution here is for the air district to finish the job of creating a coherent and fair set of rules for developer fees to cover the entire eight-county area. The legislation that mandated such rules was passed in 2003. The sooner those fees are in place, the sooner we can begin to mitigate some of the added damage sure to be done to our air quality by all the growth expected in the Valley over the next few years.