

Pollution permits to be required

By Mike Jensen <<mailto:mjensen@mercedsun-star.com>>, Merced Sun-Star, Monday, March 24, 2003



Photo by Marci Stenberg

A farmer tills some acreage off Gurr and Roduner roads in preparation of the next planting of a crop.



Photo by Marci Stenberg

A farmer discs his land in preparation of spring planting off of Sandy Mush Road.

Large farm operators throughout the San Joaquin Valley will be required to obtain federal air pollution permits beginning in May.

The U.S. Environmental Protection Agency is moving ahead with a permitting program that will apply to non-mobile diesel engines and other air pollution sources, like manure ponds and large animal feeding operations.

Applications for diesel engines, like irrigation pumps, will be due May 14.

Further information about the other air pollution sources will be available in the next few months and those permit applications will be due Aug. 1.

In the meantime all farmers with stationary diesel engines are encouraged to contact the EPA or fill out a worksheet to determine whether they need a permit for the May 14 deadline.

Mobile farm machinery, like tractors, aren't affected by the new permits.

The EPA is working with farm bureaus throughout the state to explain the permits. And in the coming weeks the EPA and San Joaquin Valley Air Pollution Control District are also planning three workshops to educate farmers on the issue.

"It's critical that we identify all major sources of air pollution in our area, including agriculture, so we can continue to move forward on effective control strategies," said David Crow, executive director of the Valley air district.

The new program will require farmers to obtain permits if their operations generate more than 25 tons of nitrogen oxide pollutants per year.

A 200-horse-power engine, model year 2000, running for 2,000 hours per year, produces about two tons of nitrogen oxide pollutants each year, according to David Wampler, an EPA engineer.

The EPA has established a Web site with worksheets and explanations to help farmers determine if they need a permit. Applications can also be downloaded from the site.

That address is www.epa.gov/region09/air/ca/title5app.html.

Farmers can also call the EPA Region 9 office in San

Francisco at (800) 810-9798 or e-mail farmpermits@epa.gov.

Lisa Fasano, an EPA spokeswoman, said her agency hasn't yet established a method to enforce the permitting.

"At this point we're just focussing on getting the applications out," she said.

It also remains to be seen what the cost of the permits might be.

The fee for the permits in other industries is \$36 per ton for each of the first 25 tons and then \$36 per ton after that.

However, Fasano said that the application farmers will use is expected to be less work to fill out than those used by other businesses.

So the cost may be less.

"It doesn't make sense to charge them the same," she said, also adding, "We'll be making a request soon to defer fees until we can determine what they should be."

Informational meetings are scheduled for the following dates and valley air district office locations:

- Fresno - 10 a.m. to 2 p.m., Monday, 1990 E. Gettysburg Ave.
- Modesto - 10 a.m. to 2 p.m., April 14, 4230 Kiernan Ave., Suite 130.
- Bakersfield - 10 a.m. to 2 p.m., May 8, 2700 M St., Suite 275.

Each meeting will be broadcast to the two other locations. That means Merced County farmers could go to Modesto or Fresno to attend the meetings by video link during any of the three presentations.

The California Farm Bureau Federation is complying with the new permits, although not entirely pleased.

"The ... program is going to be a heavy regulatory burden for many growers," said Cynthia Cory, director of environmental affairs for the state farm federation.

"No one knows what the full impact of these new permits will be on agriculture at this early stage, but it is safe to say that it will divert time away from work to produce our food and voluntary measures already underway to enhance air quality."

Cory said that farmers are already doing their part to improve air pollution by taking such voluntary measures as using cleaner engines and watering roads.

"Farmers have often been misunderstood and mischaracterized in the air quality debate," said Cory.

"Farmers from one end of the state to the other make sustained and significant contributions to air quality that often go unnoticed by the public. Generations of family farmers have made a strong commitment to protect the land and that commitment extends to air quality as well."

Ed Pattison, executive director of the Merced County Farm Bureau, said he is concerned with how soon the permitting process is moving forward.

"It doesn't give people time to get up to speed and understand what's going on," he said.

Because of liability concerns, the Merced farm bureau is simply trying to inform area farmers about the permits but not help them fill out any forms.

Inside Cal/EPA

Statewide fallout seen

CRISIS OVER CENTRAL VALLEY AIR CREDITS CHILLS MARKET; LAWSUITS LOOM

An escalating battle between U.S. EPA and the San Joaquin Valley air district over the legitimacy of hundreds of millions of dollars worth of emission reduction credits (ERCs) has chilled the trading market there and is increasing the likelihood of a legal battle involving major energy and oil companies and the federal agency. The regional dispute is also raising fears among air officials and industry leaders that the state faces a shutdown of industrial growth if ERC program policies are not overhauled soon.

San Joaquin Valley air district officials and the Western States Petroleum Association (WSPA), which represents major oil and energy companies that own substantial numbers of ERCs in the region, this week are urging EPA Region IX officials to reevaluate their conclusion that pre-1990 - and

potentially pre-2000 - banked ERCs in the San Joaquin Valley are invalid. EPA has stated that it believes the ERCs are invalid because the district is not operating under approved air plans, among other reasons (see Jan. 31 issue, p1).

But air district and industry officials say EPA is wholly misunderstanding the way the state's and district's ERC programs operate, and that the dispute threatens the San Joaquin Valley's estimated \$800-million ERC bank. San Joaquin Valley air district permit officials last month sent letters to 300 companies that own \$280 million worth of pre-1990 ERCs in the region, alerting them of the dispute with EPA. Consequently, there has been a "chilling impact on ERC banking" in the region, according to a district official, "because people are not confident that the credits they have are worth anything now or in the future." Among the frustrated ERC credit holders are Enron Corp. liquidators working for the state, who say they now cannot sell \$6 million worth of ERCs owned by the bankrupt energy company, said a source. District officials are attempting to convince EPA to change its position on the ERCs, most recently through a letter to Region IX's permitting division. *A copy of the letter is available at InsideEPA.com. See page 10 for details.*

The Region IX permitting division recently approved the district's new source review (NSR) rules and a credit-tracking plan, but at the same time included statements supporting its conclusion that the ERCs are invalid. District officials and industry leaders hope that the federal review of comments will afford all parties an opportunity to meet and discuss resolution of the ERC dispute.

A Region IX official said this week that the agency is holding to its opinion that the district has failed to properly account for the credits in its existing air plans and must do so in future plans now being drafted. "The district's next air quality attainment planning cycle is pretty critical for all these credits, and we're working real closely with the district to make sure there is a common understanding on how ERCs should be treated and about how to make them available," said the EPA source.

The EPA source said that the issue of the district's ERC validity is not new and that all parties have known for many years that the credits faced problems. "EPA has been very consistent in terms of what we've said about the credits," the source said.

Critical to resolving the dispute is the district's evolving plan to achieve attainment of the federal ozone and particulate matter standards, the EPA source said. Part of the planning process is dealing with baseline emission inventories of the two pollutants. "In short, they need to make sure that any credits they want to make usable after the new plans are submitted have to be included in the baseline inventories, as emissions in the air," the source said. Even though the credits represent pollution reductions, "because they represent future growth, they must" be included in baseline pollution inventories used in the plans. Regional officials will release their proposed final rulemaking, including a detailed response regarding the ERC issue, "as soon as we can," the source added.

If EPA holds to its position, major legal action is inevitable, the district source said. "The people who do have the technical and legal resources I think will ultimately challenge EPA on this once it becomes somewhat finalized and a concrete position," the source said. District officials expect Region IX to more specifically and legally explain its position that the ERCs are invalid when it finalizes approval of the district's NSR program rules. "Up till now, EPA has waffled back and forth," the district source charged.

"We don't think it's fair and we should at least be afforded the opportunity to sit down with EPA, [the Air Resources Board], the district and the people who have pre-1990 and pre-2000 ERCs and seek a compromise," said a WSPA source. In a March 17 letter to EPA's permitting division, WSPA's lawyer said EPA's position on ERC validity "will have substantial adverse effects on the availability of ERCs needed to maintain current levels of business activity, employment, and

domestic energy production in California, and for future economic development in the San Joaquin Valley." *The WSPA letter is available at InsideEPA.com. See page 10 for details.*

The dispute over ERCs emerged when Calpine Corp. submitted a plan to use pre-1990 nitrogen oxide and volatile organic compound credits to offset pollution that will be created by a new power plant in the region. Region IX officials declared that because the San Joaquin Valley air district does not have an approved ozone attainment plan and has not properly maintained several other important air planning strategies, the pre-1990 ERCs cannot be used to offset future pollution created by the Calpine facility. EPA recommended that the California Energy Commission (CEC) reject the plant certification. In a new wrinkle, however, Region IX officials recently approved the ERC plan for the plant, according to an air district source, but with a series of conditions. "At first, EPA said CEC should deny the project - now they've backtracked on that at the final hearing and said it's okay for the project to use pre-1990 credits as long as the district finds some credits to make up for that," the district source said. "They've put a Band-Aid on that project . . . but the district has to find the credits. We're talking about several hundred tons of credits. We don't have the credits to do that." If the district fails to identify enough credits to make up for that project's pollution impact, "then all permitted sources would be punished" according to a "hammer" mechanism in the district's NSR rule, the official added.

The San Joaquin Valley ERC dispute underscores a statewide crisis, the WSPA source contended. "My concern is about where the state is going, relative to NSR - how we're going to handle new sources coming into the area and how we're going to handle an [ERC program] that is shrinking, because it's been used to site power plants and other [facilities] and there's no investment opportunity for companies to generate more. So basically you end up in a no-growth scenario." ERCs "are so far and few between anymore in any district. I don't think it's clear where we are without ERCs - there's no way to expand and grow." While environmentalists may be silently applauding EPA's invalidation of the San Joaquin Valley ERCs, the WSPA source said it could mean more pollution in the future. "The flipside is that the only time you can generate any money to [develop] innovative solutions is when the economy is good. In a place like the San Joaquin Valley, with the ERC pool under review by EPA, if people aren't given the certainty of a process they can't make the investment on the front end."

ARB should take the lead to draft a strategy for future use of ERCs or a new program to allow industrial growth in the state while maintaining environmental protection, the WSPA source added. "The current NSR and ERC programs have served their time well but they're not the programs that are going to take us into the future. We better sit down with every agency, stakeholder and interested party and think 'out of the box' about what kind of program can give certainty to people generating investment credits, and give comfort to the environmental community that it's still going to be a process that results in air quality improvement." Last fall ARB officials had planned to hold a closed-door meeting about the future of ERCs among a select group of stakeholders; but a variety of organizations that learned about the meetings demanded that the public be noticed and that more outfits be invited. ARB officials cancelled the meetings and have not yet announced when they plan to take up the issue.

[Modesto Bee editorial, March 25, 2003 \(published earlier in the Fresno Bee\):](#)
Valley legislators' mixed record on air quality issues

In recent months there has been a remarkable upsurge in attention to the pervasive air quality problems we endure here in the valley. That's gratifying, since recognizing the problems is the first step toward cleaning them up.

The record of our valley legislative delegation is a bit spotty, though there are clear highlights. State Sen. Dean Florez, the Shafter Democrat, has to lead that list. He's taken the bit between his teeth and is lapping the field, an indication of his aggressive approach to legislative issues. His colleagues have been more measured (if you're one of those who thinks Florez is pushy) or more timid (if you like Florez's brash style).

Florez has introduced a package of 10 bills on topics ranging from ag exemptions from pollution permits to older cars, from dairies to wood-burning fireplaces. The legislation is a good start in what promises to be a long and difficult struggle to clean up our air.

Florez is not alone, though.

Assemblyman Dave Cogdill, R-Modesto, is working on the issue of forest fires and how they affect air quality and has some legislation related to that. He is also working on AB1672, a bill related to biomass plants, which burn ag waste to produce electrical power. And he has pushed AB565, which would provide a 25 percent tax credit on the replacement of old stoves or fireplaces with Environmental Protection Agency-certified clean-burning stoves.

Sen. Chuck Poochigian, R-Fresno, is a co-sponsor of Florez's SB703, which would revoke "standby" charges that agricultural customers must pay utilities to keep irrigation pumps connected to the electricity grid. That would reduce costs, and should encourage farmers to use electricity rather than cheaper, but dirtier, diesel fuel. But beyond that, all Poochigian has offered is skepticism, which isn't very helpful.

Assemblywoman Sarah Reyes, D-Fresno, put herself in the air quality picture by stepping in to help neighbors put at risk by the recent Crippen trash pile fire in Fresno. She also is working on a bill to address the long-standing exemption agriculture has enjoyed from certain pollution permits.

Assemblywoman Nicole Parra, D-Bakersfield, is offering a bill that would require all coastal air districts to comply with Smog Check II, much the same as last year's legislation by former Assemblyman Dennis Cardoza of Merced (now serving in Congress) that imposed similar requirements on the Bay Area. Parra has a second bill to extend the life of the grant program for biomass facilities to burn ag waste, a key component of the effort to end open-air ag burning in the valley. The program is set to expire next January, and Parra's measure would keep it alive indefinitely.

Unfortunately, the bill may fall victim to the state budget crisis. The state's general fund, the source of the grant funding, is shrinking by the day.

And that's about it. Assemblymen Steve Samuelian, R-Fresno, and Bill Maze, R-Visalia, along with Sen. Roy Ashburn, R-Bakersfield, are missing in action on air quality.

The good, the bad, the ugly. It will help if all of us who are concerned about our collective health - and the futures of our children in this valley -- give aid and comfort to those leaders working to make our lives healthier. And it won't hurt if the slackers get a different message.