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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EL COMITE PARA EL BIENESTAR DE
EARLIMART, an unincorporated
association; ASSOCIATION OF
IRRITATE RESIDENTS, an
unincorporated association;
COMMUNITY AND CHILDREN'S
ADVOCATES AGAINST PESTICIDE
POISONING, a California non-profit
corporation; WISHTOYO FOUNDATION,
a California non-profit corporation;
and VENTURA COASTKEEPER, a California
non-profit corporation,

NO. CIV. S-04-882 LKK/KJM

Plaintiffs,

v.

O R D E R

PAUL HELLIKER, in his official
capacity as Director, Department
of Pesticide Regulation; TERRY
TAMMINEN, in his official capacity
as Secretary, California Environmental
Protection Agency; CATHERINE
WITHERSPOON, in her official capacity
as Executive Officer, Air Resources
Board; ALAN LLOYD, in his official
capacity as Chairman, Air Resources
Board; and WILLIAM BURKE, JOSEPH CALHOUN,
DORENE D'ADAMO, MARK DESAULNIER, C. HUGH
FRIEDMAN, WILLIAM F. FRIEDMAN, MATTHEW
McKINNON, BARBARA PATRICK, BARBARA RIORDAN
and RON ROBERTS, in their official
capacities as members, Air Resources Board,

Defendants.

_____ /

1 On February 21, 2006, the court granted plaintiffs' motion for
2 summary judgment with respect to the first cause of action and
3 granted defendants' motion for summary judgment with respect to the
4 second cause of action. The court ordered the parties to file
5 cross-briefs as to remedies.

6 After considering the briefs of the parties, the court hereby
7 ORDERS as follows:

8 1. Defendants shall propose, adopt and submit to EPA for
9 approval, and implement regulations no later than January 1, 2008,
10 to achieve the emission reduction goals as set forth in the May 9,
11 1995 memorandum from James Well to James Boyd ("Wells memo").¹

12 2. On January 1, 2007, defendants shall file a status report
13 with the court as to its progress in meeting the reduction goals
14 described in ¶ 1. Within five (5) days of defendants' status
15 report, plaintiffs shall respond to this progress report notifying
16 the court whether it is satisfied with defendants' progress. The
17 court shall schedule a status conference if it deems it necessary
18 at that time.

19 3. In promulgating these regulations, defendants shall use
20 the 1991 inventory as a surrogate 1990 baseline from which
21 defendants shall measure the reduction goals in the Wells memo.

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25 ¹ The court has chosen not to micro-manage the manner in
26 which defendants shall comply with this order, but only admonishes
defendants that it shall retain jurisdiction to ensure such
compliance.

1 4. If plaintiffs' counsel seeks attorney's fees to ensure
2 compliance with this order or with any other order, plaintiffs'
3 counsel shall timely file a motion for attorney's fees with this
4 court.

5 5. The court declares that defendants are in violation of the
6 Clean Air Act and the 1994 Ozone State Implementation Plan by
7 failing to utilize the 1990 PUR data as set forth in the 1994 SIP
8 and by failing to adopt "enforceable control measures" as required
9 by the Clean Air Act.²

10 IT IS SO ORDERED.

11 DATED: April 25, 2006.

12 /s/Lawrence K. Karlton
13 LAWRENCE K. KARLTON
14 SENIOR JUDGE
15 UNITED STATES DISTRICT COURT
16

17 ² In their remedies brief, defendants' counsel states that
18 by proposing the remedy outlined above, they do not waive their
19 right to raise on appeal their objection that such relief is
20 inappropriate because it lacks a proper nexus to the court's
21 decision. Defs.' Br. at 4-5, n.4. Defendants explain that
22 ordering them to adopt, implement and submit regulations necessary
23 to reduce pesticide VOC emissions is inappropriate because there
24 is no nexus between that relief and the wrong that the court
25 identified. Id. Defendants' contention is without merit.

26 The court explained in its February 21, 2006 order that for
a SIP to be valid, enforceable standards must be included -
otherwise, the SIP would be invalid. The court did not explicitly
hold that defendants failed to comply with the SIP by virtue of
their failure to adopt and implement regulations, but the record
undoubtedly reflects that defendants failed to meet the promises
it made in the SIP, including failing to use the correct PUR data.
By virtue of their failure to use the correct PUR data, defendants
consequently were unable to adopt proper "enforceable control
measures," as they must, under the Clean Air Act.