

TITLE V OF THE CLEAN AIR ACT: THE EFFECTS OF CALIFORNIA'S AGRICULTURAL EXEMPTION ON THE SAN JOAQUIN VALLEY

INTRODUCTION

What was once a breathtaking view from the heart of America's richest farm region is no longer majestic. The air quality in the San Joaquin Valley has reached abominable levels, rivaling that of Los Angeles as the "smog capital."¹ While enrollment in Fresno schools has increased at a rate of 60%, from 1990 to 1999 reported asthma cases of children from all income groups has increased 300% for the same period.² According to recent studies, increased levels of ozone pollution may cause asthma in children who actively participate in outdoor activities.³ The rate of children with asthma in Fresno is 16.4%, which is more than triple the national rate.⁴ In California, the leading cause of hospital admissions for children is related to asthma.⁵ According to doctors at the Children's Hospital Central California, in 2001 nearly 11,000 children were seen in the emergency room and clinics, while 800 children were admitted for asthma related symptoms.⁶ The leading cause of absences in the Fresno Unified School District is due to

¹ John Ritter, *Smog May Cost Calif. Farms*, USA TODAY, July 15, 2002, at 3A.

² *Id.*

³ Rob McConnell et al., *Asthma in Exercising Children Exposed to Ozone: A Cohort Study*, 359 *The Lancet* 386 (2002).

⁴ UCLA CENTER FOR HEALTH POLICY RESEARCH, CALIFORNIA HEALTH INTERVIEW SURVEY (2002), available at www.chis.ucla.edu (last visited February 16, 2003); see also CENTER FOR DISEASE CONTROL NATIONAL HEALTH CENTER FOR HEALTH STATISTICS, NEW ESTIMATES FOR ASTHMA TRACKED (2001), available at www.cdc.gov/nchs/releases/01facts/asthma.htm (last visited February 17, 2003) (The national childhood prevalence rate for asthma was 5.3 in 1998.).

⁵ ENVIRONMENTAL HEALTH INVESTIGATIONS BRANCH, CALIFORNIA DEPARTMENT OF HEALTH SERVICES, CALIFORNIA COUNTY ASTHMA HOSPITALIZATION CHART BOOK 1 (2000) [hereinafter *Hospitalization Chart Book*].

⁶ Barbara Anderson, *Asthma Steals Joys of Childhood*, THE FRESNO BEE, December 15, 2002, at 7 (this article was part of a special section, *Last Gasp*).

asthma.⁷ In 1997, the total cost of asthma-related hospitalizations in California was nearly \$350 million.⁸ Asthma has the potential to become an epidemic among Valley children if the air quality does not improve.

According to the San Joaquin Valley Unified Air Pollution Control District, a health advisory was issued five times during the summer of 2002, as opposed to one health advisory the previous year.⁹ The air quality has forced school districts to take drastic precautionary measures.¹⁰ Schools in the Central Valley have begun to monitor the activities of its students and athletic teams during high pollution periods.¹¹ According to a report produced by the American Lung Association on May 1, 2001, the San Joaquin Valley is home to three of the five most highly polluted regions in the nation.¹² These developments propelled several groups of environmentalists, including the Medical Alliance for Healthy Air, Earthjustice, the Sierra Club, Latino Issues Forum, and the Center on Race, Poverty & the Environment, to take the necessary action towards implementing the Clean Air Act (CAA) in the Central Valley, culminating in a lawsuit against the Environmental Protection Agency (EPA) insisting that the California state Legislature repeal agriculture's state exemption from air permit requirements under Title V of the CAA.¹³

This comment is intended to elucidate EPA's mandated repeal of the California exemption of agriculture from air permit programs as required under Title V of the CAA. This comment will seek to address the inability of the EPA to monitor the Valley's air, which has been a pervasive problem since the enactment of the CAA. This comment will explore the impact of the "smog" on Valley residents, as well as,

⁷ *Id.*

⁸ Hospitalization Chart Book, *supra* note 5, at 4.

⁹ KSEE 24, *Valley Air Quality Getting Worse*, available at <http://www.msnbc.com/local/ksee/a2002814222571.asp> (last visited August 14, 2002).

¹⁰ Ritter, *supra* note 1, at 3A.

¹¹ *Id.*

¹² AMERICAN LUNG ASSOCIATION OF CALIFORNIA, 34 CALIFORNIA COUNTIES FLUNK ANNUAL AMERICAN LUNG ASSOCIATION CLEAN AIR TEST, available at <http://www.californialung.org.press/020501stateofair.html> (last visited February 16, 2003).

¹³ EARTHJUSTICE: URGENT CASES: CLEANING THE AIR IN CALIFORNIA'S SAN JOAQUIN VALLEY (2002), available at <http://www.earthjustice.org/urgent/display.html?ID=65> (last visited July 25, 2002) [hereinafter *Cleaning the Air*]; see also EARTHJUSTICE, BIG AGRICULTURE IN CALIFORNIA WILL BE REQUIRED TO OBEY CLEAN AIR ACT: EPA SETTLES LAWSUIT WITH COMMUNITY AND ENVIRONMENTAL GROUPS (2002), available at <http://www.earthjustice.org/news/display.html?ID=370> (last visited February 24, 2003) [hereinafter *EPA Settles Lawsuit*].

the steps environmental groups have taken in order to preserve the air quality in the Valley. In addition, this comment will explore how much of the Valley's air pollution can be attributed to the agricultural industry and what impact the settlement between the EPA and the environmental groups will have on curbing agricultural related emissions, ultimately resulting in cleaner air for San Joaquin Valley residents.

I. BACKGROUND OF TITLE V OF THE CLEAN AIR ACT

The CAA was adopted by Congress in 1970, and at the time of its enactment it "promised healthy air for all Americans by no later than 1975."¹⁴ The EPA was founded in 1970 with the primary purpose to work with state and local governments in an attempt to "control and abate pollution in the air and water, and to deal with the problems of solid waste, pesticides, radiation and toxic substances."¹⁵ The establishment of the EPA prompted the adoption of the CAA in its pursuit towards healthier air for all Americans.¹⁶ According to the CAA, under Title V, the EPA administrator's authorization to approve state permit programs is regulated to the extent that "the Administrator may not exempt any major source from such requirements."¹⁷ Title V requires that sources of air pollution, which are categorized as "major sources," must apply for and receive operating permits.¹⁸ As indicated under Title V, a "major source" of air pollution will depend on the area's non-attainment status.¹⁹ A "major source" is defined as:

[A]ny stationary source or group of stationary sources located within contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation,

¹⁴ Complaint at 2, Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment v. San Joaquin Valley Unified Air Pollution Control District, (E.D. Cal. October 9, 2001) (Civ. No. F-01-6299).

¹⁵ FROM REVOLUTION TO RECONSTRUCTION . . . AND WHAT HAPPENED AFTERWARD, AN OUTLINE OF AMERICAN GOVERNMENT-THE EXECUTIVE BRANCH: POWERS OF THE PRESIDENCY, available at http://odur.let.rug.nl/usanew/GOV/ch3_p5htm (last visited August 16, 2002).

¹⁶ Clean Air Act § 101(b)(1), 42 U.S.C. § 7401 (2003).

¹⁷ Clean Air Act § 502(a), 42 U.S.C. § 7661(a) (2003).

¹⁸ Clean Air Act § 503(a), 42 U.S.C. § 7661(2)(a)-(b) (2003).

¹⁹ Clean Air Act § 501(2), 42 U.S.C. § 7661(2) (2003).

other characteristics of the air pollutant, or other relevant factors.²⁰

Smog forms as a result of a chemical reaction between volatile organic compounds (VOC) and oxides of nitrogen (NOx).²¹ If the area's non-attainment status is given a "severe" designation, a "major source" of air pollution will result from the production of between 25 and 50 tons of VOC's and NOx's per day.²² It is predicted that in 2005 livestock waste will emit 72 tons of VOC's per day in the San Joaquin Valley Air Basin, thus constituting a "major source" of air pollution.²³ The implementation of the air permit requirements prescribed under Title V of the CAA will adequately monitor the Valley's air.

II. HISTORY OF ENFORCING THE CLEAN AIR ACT IN THE SAN JOAQUIN VALLEY THROUGH LITIGATION

The EPA has neglected to enforce the CAA in the San Joaquin Valley, which has caused Valley air quality to diminish.²⁴ As a result, local environmental groups believe that litigation is the only recourse available in their attempt to clean the Valley's air.²⁵ The subsequent lawsuits were brought due to the inability of the San Joaquin Valley Air Pollution Control District to enforce State Implementation Plan's (SIP) as governed under the CAA in the San Joaquin Valley. Likewise, the EPA did not adequately enforce the CAA in the San Joaquin Valley due to a California state exemption for big agriculture, which ultimately culminated in a series of lawsuits.

²⁰ Clean Air Act § 112, 42 U.S.C. § 7412(a)(1) (2003).

²¹ Press Release, Our Children's Earth, EPA Settles Lawsuit with Community and Environmental Groups: Big Agriculture in California Will be Required to Obey Clean Air Act, (May 14, 2002) (on file with the San Joaquin Agricultural Law Review), available at <http://www.ocefoundation.org/press-051402.html> (last visited July 24, 2002) [hereinafter EPA Settles Lawsuit with Community and Environmental Groups].

²² EARTHJUSTICE. FACING LAWSUIT, EPA RECLASSIFIES CALIFORNIA CENTRAL VALLEY AIR POLLUTION AS "SEVERE", available at <http://www.earthjustice.org/news/display.html?ID=253> (last visited February 17, 2003) [hereinafter Air Pollution as "Severe"].

²³ SAN JOAQUIN VALLEY AIR CONTROL DISTRICT, TOP 25 CATEGORIES RANKED IN DESCENDING ORDER 2005 AND 2010 ROG EMISSIONS SAN JOAQUIN VALLEY AIR BASIN (2001) (on file with the San Joaquin Agricultural Law Review) [hereinafter ROG Emissions] (Reaction Organic Gases (ROG) are also known as Volatile Organic Compounds (VOC), which contribute to the formation of smog.).

²⁴ Mark Grossi, *Activists Sue EPA Over Poor Valley Air*, THE FRESNO BEE, October 22, 2002, at A7.

²⁵ *Id.* at A1.

A. Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment v. San Joaquin Valley Unified Air Pollution Control District²⁶

Under the CAA, the EPA delegated its authority to each state or region of a state to establish a SIP.²⁷ The SIP was a basis for the EPA to regulate and ensure that the national primary and secondary ambient air quality standards would be achieved and maintained within each air quality region in each respective State.²⁸ The San Joaquin Valley Unified Air Pollution Control District proposed its 1994 Ozone Attainment Demonstration Plan (hereinafter referred to as "Pollution Plan"), as a SIP for ozone in the San Joaquin Valley, which was approved by the EPA in 1996.²⁹ The San Joaquin Valley Unified Air Pollution Control District was required to implement its Pollution Plan by 1998.³⁰ This Pollution Plan required the San Joaquin Valley Unified Air Pollution Control Air District to "adopt . . . six new control measures in an attempt to reduce emissions of ozone precursors from architectural coatings, commercial barbecues, organic liquid storage, oil production well cellars, organic solvent waste, and oil well drilling rigs."³¹

At the time of its enactment, the CAA, under the direction of the EPA, sought to establish standards whereby the primary purpose was "to protect the public health" with "an adequate margin of safety."³² A requisite for compliance with the CAA was that each state or region of a state must attain the "National Primary and Secondary Ambient Air Quality Standard" for ozone.³³ On November 15, 1999, the San Joaquin Valley failed to obtain an acceptable standard for the third consecutive CAA deadline.³⁴ The lingering ozone problem has prevented the San Joaquin Valley from obtaining a single year of healthy

²⁶ Complaint at 1, *Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment v. San Joaquin Valley Unified Air Pollution Control District*, (E.D. Cal. October 9, 2001) (Civ. No. F-01-6299).

²⁷ Clean Air Act § 110(a), 42 U.S.C. § 7410(a)(1) (2003).

²⁸ *Id.*

²⁹ Complaint at 1-2, *Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment* (E.D. Cal. October 9, 2001) (No. F-01-6299).

³⁰ *Id.* at 2.

³¹ *Id.*

³² 42 U.S.C. § 7409 (b)(1) (2003).

³³ 42 U.S.C. § 7409(a)-(b) (2003).

³⁴ Complaint at 2, *Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment* (E.D. Cal. October 9, 2001) (No. F-01-6299).

air since the CAA was passed in 1970.³⁵

Due to its inability to implement the six ozone pollution control measures in adherence to its 1994 Pollution Plan, a coalition of medical, community, and environmental groups brought a lawsuit against the San Joaquin Valley Unified Air Pollution Control District.³⁶ On October 9, 2000, with the threat of a pending lawsuit, the San Joaquin Valley Unified Air Pollution Control District agreed to settle with the groups who brought this action.³⁷ Under the settlement, the San Joaquin Valley Unified Air Pollution Control District must now enact and implement these six new pollution control measures.³⁸ This action was intended to result in the elimination of 6 tons of pollution per day.³⁹

B. Environmental Protection Agency's Reclassification of the San Joaquin Valley

In October 2001, the EPA designated the San Joaquin Valley as a "severe" ozone region, as opposed to the Valley's 1990 "serious" non-attainment area designation.⁴⁰ This designation as a "severe" ozone region by the EPA, which will require a reduction in Valley pollution by 2005, was in response to a series of pending lawsuits filed by Valley clean air proponents.⁴¹ Due to the "serious" designation in 1990, the region was given ten years to rectify its ozone pollution problems.⁴² However, the San Joaquin Valley was unable to meet the attainment levels as prescribed under the 1990 designation by the EPA and thus, under federal law the EPA was required to downgrade the air quality designation by May 15, 2000.⁴³ Therefore, in an attempt to protect public health, community groups declared their intention to bring suit against the EPA.⁴⁴

³⁵ *Id.*

³⁶ *Id.* at 1-2.

³⁷ Consent Decree at 1-2, *Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment v. San Joaquin Valley Air Pollution Control District*, (E.D. Cal. October 9, 2001) (Civ. No. F-01-6299) (the decree was signed by the Court on January 14, 2002).

³⁸ *Id.* at 2-4.

³⁹ Complaint at 2, *Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment*, (E.D. Cal. October 9, 2001) (No. F-01-6299).

⁴⁰ Air Pollution as "Severe," *supra* note 22.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

The 2005 attainment deadline has been contested by state legislatures, local governments, California Air Resources Board, and the San Joaquin Valley Unified Air Pollution Control District.⁴⁵ They proposed that the Valley should be given severe-17 classification, which would give the Valley until November 15, 2007 to achieve the required 1-hour National Ambient Air Quality Standard for ozone.⁴⁶ These groups felt that it would be unlikely for the Valley to meet the attainment deadline by 2005 and in fact, the appropriate ozone standards would not be met until 2010.⁴⁷ Regardless, the EPA concluded that the San Joaquin Valley must have a 30 percent reduction in ozone pollution by the 2005 deadline.⁴⁸ The downgrade from a “serious” to a “severe” designation signified that the “25,000-square-mile valley [became] one of the 11 most polluted regions in the nation.”⁴⁹ This reclassification will require more Valley industries to comply with federal air permit regulations.

C. Medical Alliance for Healthy Air, et al. v. Whitman, et al.⁵⁰

On November 1, 2001, a group of environmentalists filed a lawsuit against the EPA for failing to monitor ozone and particulate matter (PM) pollution in the San Joaquin Valley.⁵¹ Particulate matter is a product of dust and soot particles that exist in the air.⁵² They come in the form of particulate matter 10 (PM-10) and particulate matter 2.5 (PM-2.5).⁵³ These microscopic particles are produced from “vehicle

⁴⁵ Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; Designation of East Kern County Nonattainment Area and Extension of Attainment Date; California; Ozone, 66 Fed. Reg. 56,476, 56,477 (Nov. 8, 2001) (to be codified at 40 C.F.R. pt. 300).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 56,477-56,478.

⁴⁹ *Cleaning the Air*, *supra* note 13.

⁵⁰ Complaint at 1, Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment v. Christine Todd Whitman, and Wayne Nastri, (N.D. Cal. November 1, 2001) (Civ. No. C-01-4086) (Christine Todd Whitman was sued in her official capacity as the Administrator of the EPA. Wayne Nastri was sued in his official capacity as EPA Regional Administrator for Region IX.).

⁵¹ EARTHJUSTICE. COMMUNITY GROUPS SUE EPA FOR CLEAN AIR ENFORCEMENT IN SAN JOAQUIN VALLEY: EPA HAS DELAYED ACTION FOR TOO LONG. MEDICAL EXPERTS SAY, available at <http://www.earthjustice.org/news/print.html?ID=258> (last visited March 11, 2003) [hereinafter EPA Delay].

⁵² *Annual Average PM2.5 Concentrations*, THE FRESNO BEE, December 15, 2002, at 16 (see special report, *Last Gasp*).

⁵³ *Id.*

exhaust, farms, unpaved roads, power plants, factories, oil refineries, wood-burning stoves, and fireplaces.”⁵⁴

In accordance with the 1990 amendments of the CAA, the San Joaquin Valley was deemed a “moderate” PM-10 non-attainment area.⁵⁵ As a result, the Valley was given until December 31, 1994 to comply with both the “24-hour and an annual national ambient air quality standard for PM-10.”⁵⁶ However, due to the Valley’s inability to comply with the 1994 deadline, the EPA designated the Valley a “serious” PM-10 non-attainment area and extended its deadline of compliance to December 31, 2001.⁵⁷ As prescribed under the CAA, the San Joaquin Valley Unified Air Pollution Control District submitted its 1997 PM-10 Attainment Demonstration Plan (hereinafter referred to as “1997 PM-10 Plan”) to the EPA on July 17, 1997.⁵⁸ The San Joaquin Valley Unified Air Pollution Control District admitted that “[t]he Plan departs from Clean Air Act requirements in that it does not identify the specific controls which will result in attainment of PM-10 standard by 2006 in all areas.”⁵⁹ Nonetheless, the EPA neglected to take action with respect to the 1997 PM-10 Plan.⁶⁰

The consent decree required the EPA to take action with regards to the 1997 PM-10 Plan by February 28, 2002.⁶¹ However, on February 26, 2002 the San Joaquin Valley Unified Air Pollution Control District withdrew its 1997 PM-10 Plan.⁶² The EPA held that the San Joaquin Valley Unified Air Pollution Control District neglected to submit a sufficient PM-10 SIP, and thus the Valley will be subject to sanctions if an adequate PM-10 plan is not submitted by August 28, 2003.⁶³ Particulate matter will continue to plague the health of Valley residents of all ages if an implementation plan is not enacted.

⁵⁴ *Id.*

⁵⁵ Complaint at 6, *Medical Alliance for Healthy Air, Sierra Club, Latino Issues Forum, and Center on Race, Poverty and the Environment* (N.D. Cal. November 1, 2001) (Civ. No. C-01-4086).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 9.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ EARTHJUSTICE, A HISTORY OF INACTION (2001) (on file with the San Joaquin Agricultural Law Review).

⁶² Environmental Protection Agency, Finding of Failure To Submit a Required State Implementation Plan for Particulate Matter, California-San Joaquin Valley, 67 Fed. Reg. 11925 (Mar. 18, 2002) (to be codified at 40 C.F.R. pt. 52).

⁶³ *Id.* at 11926.

D. Medical Advocates for Healthy Air, et al. v. Whitman, et al.⁶⁴

Due to the EPA's inability to monitor the soot and dust problem in the San Joaquin Valley, a group of environmentalists filed suit on October 22, 2002.⁶⁵ The activists contend that the EPA did not take appropriate action upon its 1991 notification to the San Joaquin Valley Unified Air Pollution Control District that a soot and dust plan needed to be filed.⁶⁶ According to federal law, the EPA was required to impose its own plan if the San Joaquin Valley Unified Air Pollution Control District did not approve a plan within 24 months of the 1991 notification.⁶⁷ The EPA is authorized to take action, "(1) promulgating a federal implementation plan ("FIP") for the area to ensure attainment of the national PM-10 standards, and (2) imposing sanctions on the area."⁶⁸ This action would relinquish the power of the San Joaquin Valley Unified Air Pollution Control District in developing a soot and dust plan for the Valley, which is considered to be among the sixth worst in the nation.⁶⁹ The San Joaquin Valley Unified Air Pollution Control District is in the process of developing a new particulate matter plan, which is set to debut in the Spring of 2003.⁷⁰

E. Association of Irrigated Residents, et al. v. United States Environmental Protection Agency⁷¹

In 1976 the California state Legislature granted agriculture an exemption from Title V of the CAA, and as a result farmers could operate their businesses without having to comply with federal air permit requirements.⁷² According to the California Health and Safety Code,

⁶⁴ Complaint at 1, *Medical Advocates for Healthy Air, Sierra Club, and Latino Issues Forum v. Christine Todd Whitman, and Wayne Nastri* (N.D. Cal. October 22, 2002) (Civ. No. C-02-5102) (Christine Todd Whitman was sued in her official capacity as the Administrator of the EPA. Wayne Nastri was sued in his official capacity as EPA Regional Administrator for Region IX.).

⁶⁵ Grossi, *supra* note 24, at A1.

⁶⁶ *Id.* at A7.

⁶⁷ *Id.*

⁶⁸ Complaint at 5, *Medical Advocates for Healthy Air, Sierra Club, and Latino Issues Forum* (N.D. Cal. October 22, 2002) (Civ. No. C-02-5102).

⁶⁹ Grossi, *supra* note 24, at A1.

⁷⁰ *Id.* at A7.

⁷¹ Petition for Review at 1, *Association of Irrigated Residents, et al. v. United States Environmental Protection Agency*, 67 Fed. Reg. 35812 (9th Cir. 2001) (Nos. 02-70177, 02-70191, 02-70160) (9th Cir.2001).

⁷² Leslie Berkman, *California Dairies, Farms Now Face Clean Air Act Regulation*, THE PRESS-ENTERPRISE, May 16, 2002, available at http://www.mycattle.com/news/dsp_regulatory_article.cfm?storyid=3631 (last visited February 23, 2003).

permits shall not be required for “[a]gricultural operations necessary for the growing of crops or raising fowl or animals,” or “[t]he use of other equipment in agricultural operations necessary for the growing of crops or the raising of fowl or animals.”⁷³ Along with Oregon, California is the only other state in the country that provides an exemption for agriculture from the permit requirements under Title V of the CAA.⁷⁴ However, due to the size of many Oregon farms, they do not typically qualify as major sources of emissions as determined under the law.⁷⁵

The agricultural industry is a major source of jobs and taxes for California.⁷⁶ Due to the fact that California is home to the largest agricultural industry in the country, legislators have been inclined to exempt agriculture from the CAA because they believe its requirements are too burdensome to an industry that is vital to the state’s economy.⁷⁷ In addition, legislators have historically fought for an industry that is considered to be an active political contributor.⁷⁸ However, environmental groups consider the emissions resulting from agricultural operations, which include “diesel tractors, irrigations pumps, and other heavy farm machinery,” as well as animal waste from highly concentrated dairies, as major sources of air pollution that should be regulated.⁷⁹

In an effort to further combat the San Joaquin Valley’s distinction as having the worst air quality in the nation, clean-air activists brought three consolidated lawsuits against the EPA in January of 2002 due to the agency’s inability to subject California’s agricultural industry to the federal permit requirements as specified under Title V of the CAA.⁸⁰ This action was brought in response to the EPA’s approval of Califor-

⁷³ CAL. HEALTH & SAFETY CODE § 41704(g), (h) (West 1996).

⁷⁴ James Sterngold, *U.S. Plans to End Exemption of California Farmers From Air Pollution*, NEW YORK TIMES, May 14, 2002, available at [http://vil-lagenews.weblogger.com/discuss/msgReader\\$4708](http://vil-lagenews.weblogger.com/discuss/msgReader$4708) (last visited February 23, 2003).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ CALIFORNIA AIR RESOURCES BOARD, ANNUAL OZONE SUMMARIES FOR SELECTED REGIONS, available at www.arb.ca.gov/adam/cgi-bin/db2www/ozonereport_annual.d2w/start (last visited Feb. 16, 2003) (The San Joaquin Valley violated the 8-hour national ozone standard “103 days in 2000, 109 days in 2001, and 124 days in 2002.” The South Coast Air Basin violated the 8-hour national ozone standard “94 days in 2000, 92 days in 2001, and 98 days in 2002.”). See also EPA Settles Lawsuit, *supra* note 13.

nia's operating permit programs in December of 2001, which deferred the Title V permitting of agricultural related sources that had been previously given a state-exemption.⁸¹ The deferral was granted because the EPA felt that insufficient data existed linking the San Joaquin Valley's air quality to agriculture's air emissions.⁸² The EPA granted a three year exemption while they assessed which air regulations applied to agriculture.⁸³ However, local environmental groups insisted that agriculture's exemption violated federal laws, such that California's 34 local permitting authorities were not adequately enforcing Title V permits as it pertains to agricultural related emissions due to the state-exemption.⁸⁴

The CAA includes a provision which allows citizens to challenge the EPA's actions in its implementation of the Act.⁸⁵ The lawsuit, known as a Petition for Review, was a means to deter the EPA from violating the law that Congress intended it to enforce.⁸⁶ After reconsidering its position on the issue in December of 2001, the EPA felt that California's \$29 billion agricultural industry could no longer be exempt from the federal CAA.⁸⁷

The settlement agreement called for the Regional Administrator of the EPA Region 9 to sign a Notice of Deficiency (NOD).⁸⁸ The purpose of the NOD is the following:

[T]o provide notice to the State of California that the 34 local air districts that received full approval of their operating permits programs under 40 C.F.R. pt.70 ("Part 70 programs") in the Title V Approval Rule are not adequately administering or enforcing their Part 70 programs be-

⁸¹ Environmental Protection Agency, Proposed Partial Withdrawal of Approval of 34 Clean Air Act Title V Operating Permits Programs and Implementation of a Partial Part 71 Federal Operating Permits Program in California, 67 Fed. Reg. 48,426, 48,427 (July 24, 2002) (to be codified at 40 C.F.R. pts. 70 and 71).

⁸² Brian Melley, *EPA Settles Lawsuit to Regulate Agricultural Air Pollution in California*, ASSOCIATED PRESS, May 14, 2002, at 1, available at www.ebfarm.com/news-world/epaFarm.html (last visited February 23, 2003).

⁸³ *Id.*

⁸⁴ Environmental Protection Agency, Proposed Partial Withdrawal of Approval of 34 Clean Air Act Title V Operating Permits Programs and Implementation of a Partial Part 71 Federal Operating Permits Program in California, 67 Fed. Reg. 48,427 (July 24, 2002) (to be codified at 40 C.F.R. pts. 70 and 71).

⁸⁵ CAA § 304(a), 42 U.S.C. §7604 (2003).

⁸⁶ EPA Settles Lawsuit, *supra* note 13.

⁸⁷ Jane Kay, *Agriculture's Air Breaks May Vanish EPA Says State Farmers Must Conform to Laws*, SAN FRANCISCO CHRONICLE, May 15, 2002, at A-3.

⁸⁸ Petition for Review at 2, Association of Irrigated Residents, et al. v. United States Environmental Protection Agency, 67 Fed. Reg. 35812 (9th Cir. 2001) (Nos. 02-70177, 02-70191, 02-70160) (9th Cir.2001).

cause the districts lack adequate authority to issue permits to, and assure compliance by, all major agricultural sources required to have a permit under Title V of the Clean Air Act as a result of the exemption in section 42310 of the California Health and Safety Code⁸⁹

Under the terms of the settlement agreement, farmers will be required to apply for Title V permits.⁹⁰ Major sources of air pollution from diesel-powered engines, which have previously been given state exempt agricultural status, will be required to “submit permit applications to EPA no later than six months after the effective date of the Part 71 program (the proposed federal operating permits program) or May 1, 2003, whichever is later”⁹¹ “[A]ll remaining major state-exempt agricultural sources [of pollution] must submit Part 71 permit applications to EPA no later than August 1, 2003.”⁹² In addition, the California state Legislature is required to amend the current Health and Safety Code.⁹³ Within 24 months, if the Legislature neglects to repeal the exemption, California could face the prospects of losing billions of dollars of federal subsidized highway funds.⁹⁴

F. California Farm Bureau Federation, et al. v. United States Environmental Protection Agency⁹⁵

The impact of the decision by the EPA to sacrifice agriculture for the sake of cleaner air could have a lasting affect on the entire nation.⁹⁶ Farmers are concerned that in other problematic regions, state and local officials may regulate agricultural operations in order to comply with federal standards.⁹⁷ The California Farm Bureau insists that there is not adequate scientific data that can link agriculture to the Central Valley’s bad air.⁹⁸ Ultimately, this decision could set a prece-

⁸⁹ *Id.* at 2-3.

⁹⁰ *Id.* at 3.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 4.

⁹⁴ Kay, *supra* note 87, at A-3.

⁹⁵ Motion to Intervene, California Farm Bureau Federation, et al. v. United States Environmental Protection Agency (9th Cir. October 24, 2002) (Civ. No. 02-73371).

⁹⁶ LEIGH KENNEDY. GEORGIA PEANUT COMMISSION. FARMING MAY HAVE IMPACT ON NATIONAL AIR STANDARDS, May 21, 2002, at 30, *available at* <http://www.gapeanuts.com/052112002.htm> (last visited August 13, 2002) [hereinafter Impact on National Air].

⁹⁷ *Id.*

⁹⁸ Press Release, California Farm Bureau Federation, Farm Bureau Continues Fight for Sound Science in EPA Air Decision, (July 24, 2002) (on file with the San Joaquin Agricultural Law Review), *available at* <http://www.cfbf.com/releases/2002/pr->

dent for the regulation of various agricultural related acts, such as the concentrated animal feeding operations, due to its high ammonia emissions.⁹⁹ In an attempt to challenge the settlement agreement, the Farm Bureau filed suit for the second time on October 17, 2002, following the EPA's final ruling requiring the partial withdrawal of California's 34 Title V operating permits on October 15, 2002.¹⁰⁰ The environmental groups who brought the original action against the EPA, seeking enforcement of the CAA in the San Joaquin Valley with respect to agriculture, sought to intervene in the recent action filed by the Farm Bureau on October 24, 2002 on behalf of the EPA.¹⁰¹ The environmental groups sought their motion on the basis that they satisfied the four elements that the Court must weight in order to grant the motion to intervene, such as:

- (1) [T]hey have a "significant protectable interest relating to the property or transaction that is subject to the action, (2) the disposition of the action may, as a practical matter, impair or impede [their] ability to protect [their] interest, (3) the application is timely, and (4) the existing parties may not adequately represent [their] interests."¹⁰²

While the Farm Bureau continues to fight to save the exemption, state Legislature's have begun the process of modifying the Health and Safety Code that has exempted the agriculture industry from federal air permit requirements since 1976.

G. California Legislature Looks To Repeal State Agriculture Exemption

The EPA mandated the state Legislature to repeal the air permit exemption by November 23, 2003, otherwise new, large, and expanding businesses in California would be subject to extra fees.¹⁰³ The EPA recently approved the San Joaquin Valley Unified Air Pollution Control District's permit program, which did not include the agricultural exemption.¹⁰⁴ As a result, lawmakers have begun to draft proposals that would subject farmers to greater pollution rules.¹⁰⁵ The proposals seeks

072402.html (last modified July 24, 2002) [hereinafter Sound Science].

⁹⁹ Impact on National Air, *supra* note 96, at 30.

¹⁰⁰ Motion to Intervene at 6, *California Farm Bureau Federation, et al.* (No. 02-73371).

¹⁰¹ *Id.* at 1, 14.

¹⁰² *Id.* at 7-8.

¹⁰³ Mark Grossi, *EPA Orders State to Repeal Ag Air Exemption*, THE FRESNO BEE, February 14, 2003, at A1.

¹⁰⁴ *Id.*

¹⁰⁵ Lesli A. Maxwell, *Pollution Measure to Focus on Farms*, THE FRESNO BEE, February 10, 2003, at A12.

to authorize the San Joaquin Valley Air Pollution Control District to regulate diesel-run irrigation pumps, and various confined animal feeding operations, such as dairies and poultry farms.¹⁰⁶ However, a point of contention is related to the fact that the proposal neglects to include farming activities that further the dust and soot problem in the Valley.¹⁰⁷ The EPA does not believe that the state Legislature's proposed revisions address the crux of the problem.¹⁰⁸ In fact, the EPA has required the state Legislature's amendment to deem large farms as a "major source" of air pollution and not solely limit the distinction to farm equipment.¹⁰⁹ The EPA also does not want these restrictions limited to strictly Title V of the CAA.¹¹⁰ The agricultural industry has taken a proactive stance by oiling dirt roads, replacing nearly 2,300 old diesel engines, and reduced 20% of smog forming emissions.¹¹¹ Nonetheless, the EPA made their sentiment known at a recent state Senate hearing and indicated that they believe that the state exemption for agriculture should not be modified, but should be eliminated altogether.¹¹²

Air legislation written by state Senator Dean Florez recently won approval within the Senate Environmental Quality Committee.¹¹³ SB 700, co-authored by Senator Byron Sher, would repeal agriculture's state exemption from federal air permit requirements by January 1, 2004, as well as, require air pollution control districts to eliminate air pollution resulting from farming activities by January 1, 2005.¹¹⁴ SB 807, which countered SB 700, failed, as it sought to require farmers to obtain permits for diesel-run irrigation pumps but did not place restrictions on dairy farmers or general farming activities.¹¹⁵ SB 705, which would eliminate agricultural burning by 2010, was approved.¹¹⁶ SB 707, which would place restrictions on the development of new dairies and prevent the building of homes and schools within three miles of

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Lesli A. Maxwell and Mark Grossi, *Farmers Pressured to Tighten Air Rule*, THE FRESNO BEE, February 28, 2003, at A1.

¹⁰⁹ *Id.* at A20.

¹¹⁰ *Id.*

¹¹¹ Mark Grossi, *EPA Calls for Axing Loophole for Ag*, THE FRESNO BEE, March 1, 2003, at A1.

¹¹² *Id.*

¹¹³ Lesli A. Maxwell, *Bills to Clean Up Air Pass First Test*, THE FRESNO BEE, April 29, 2003, at A1.

¹¹⁴ *Id.* at A1, A14.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at A14.

existing dairies, absent any local exemptions, was approved.¹¹⁷ SB 704, which would require biomass facilities to produce electricity via agricultural waste in order to receive state aid, was approved.¹¹⁸ These air bills will now move on to the Appropriations Committee.¹¹⁹

In summary, this stance by the EPA suggests the imminent threat created by agricultural emissions on the Valley's air quality. The Valley's air has been neglected by the authorities for far too long. The California state agricultural exemption must be eliminated, otherwise California's businesses will be subject to immediate federal sanctions and the health of San Joaquin Valley residents will continue to be at risk.

III. DEBATE

A. *Statistical Data Links Agriculture to Valley Air Pollution*

According to the San Joaquin Valley Unified Air Pollution Control District, farm equipment is projected to be the number one source of NOx emissions in the San Joaquin Valley by 2005.¹²⁰ Food and agricultural processing is projected as the fifth greatest source of NOx emissions by 2005 and the third greatest source by 2010.¹²¹

It is projected that in 2005 and 2010 livestock waste will be the largest source of ROG emissions in the San Joaquin Valley, constituting 15.1% of the total ROG emissions by 2005 and 17.7% by 2010.¹²² Pesticides/fertilizers are projected to rank fourth at 9.6% of total ROG emissions by 2005 and second at 10.5% by 2010.¹²³ Agricultural and prescribed burning are projected to rank fifth at 7.2% of total ROG emissions by 2005 and fourth at 7.5% by 2010.¹²⁴ Between 2005 and 2010 three of the top five ROG emissions in the San Joaquin Valley will be attributed to agriculture.¹²⁵ According to the state of California, farms in this eight-county district, which includes the San Joaquin Val-

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, TOP 25 CATEGORIES RANKED IN DESCENDING ORDER 2005 AND 2010 NOX EMISSIONS (TONS/PER SUMMER DAY) SAN JOAQUIN VALLEY AIR BASIN (2001) [hereinafter NOx Emissions] (on file with the San Joaquin Agricultural Law Review).

¹²¹ *Id.*

¹²² ROG Emissions, *supra* note 23.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

ley, "emit 875 tons a day of total organic gases, along with 244 tons per day of total particulate matter, as opposed to 182 tons per day of total organic gases and 7.5 tons of particulate matter from on-road vehicles."¹²⁶ Farmers insist that there is not sufficient scientific data to link agricultural operations to air pollution.¹²⁷ However, data suggests that farming related operations emit a significant amount of the pollutants that make-up "smog" in the San Joaquin Valley Air Basin.¹²⁸ California's state exemption of the agriculture industry violates Title V of the CAA and the failure of the Legislature to repeal this exemption could be detrimental to the health and well-being of its citizens.

B. Particulate Matter

In 2001, Tulare and Kern Counties were among one the most heavily concentrated PM-2.5 regions in the United States.¹²⁹ According to a report by the Environmental Working Group, pollution resulting from "airborne soot and dust causes or contributes to the deaths of more Californians than traffic accidents, homicide and AIDS combined."¹³⁰ Due to the respiratory illnesses that are caused by particulate matter, Californians miss nearly five million days of work annually, resulting in an economic loss of over \$880 million for the state.¹³¹ According to the Environmental Working Group, state scientists believe that a reduction in particulate pollution would lower "particulate matter triggered deaths by 69%, asthma attacks by 57%, hospital visits by 56% and cases of chronic bronchitis by 58%."¹³² Air pollution is increasingly becoming an issue in the Latino community because many of the members do not have adequate health care.¹³³

Further studies by the Environmental Working Group indicated that agriculture is a major source of particulate matter in the San Joaquin Valley.¹³⁴ PM-10 is a "particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such

¹²⁶ Sterngold, *supra* note 74.

¹²⁷ FARM BUREAU: WORKING FOR YOU, UP IN THE AIR: FARM BUREAU FIGHTS FOR RULES BASED ON sound science, July, 2002, at 2.

¹²⁸ ROG Emissions, *supra* note 23; *see also* NOx Emissions, *supra* note 120.

¹²⁹ Annual Average PM2.5 Concentration, *supra* note 52, at 16.

¹³⁰ *Particulate Pollution Blamed for California Health Problems*, ENVIRONMENTAL STRATEGIST (Environmental Strategist, Inc., Leland, MI), June 13, 2002, *available at* <http://www.estrategist.com/newsletter/061302.html> (last visited February 23, 2003) [hereinafter Particulate Pollution].

¹³¹ *Id.*

¹³² *Id.*

¹³³ Cleaning the Air, *supra* note 13.

¹³⁴ Particulate Pollution, *supra* note 130.

method as the Administrator may determine.”¹³⁵ Unpaved roads, which are primarily located on farms, are the greatest source of PM-10 emissions in the San Joaquin Valley Air Basin, constituting 24.2% of 1999 PM-10 emissions.¹³⁶ Pollution particles designated as PM-2.5, which is particulate matter that is less than 2.5 micrometers in diameter, actively contribute to air pollution.¹³⁷ According to *Circulation*, which is a journal of the American Heart Association, a study of men four days after they suffered a heart attack concluded that within two hours of exposure to PM-2.5 the potential risk of a heart attack increased by 48%.¹³⁸ Particulate matter has been proven to cause health problems among Valley residents. In order to comply with federal air regulations the major sources of particulate matter, particularly agriculture, must be regulated.

C. Dairy

The dairy industry in California is a \$4.5 billion industry.¹³⁹ However, the dairy industry is the leading source of ammonia in the San Joaquin Valley.¹⁴⁰ In the 1950's dairies in California averaged 40 cows per dairy.¹⁴¹ In 2001, California dairies were home to approximately 721 cows per dairy, while Fresno County dairies averaged 789 cows, Kern County dairies averaged 1,884, and Tulare County averaged 1,215 cows per dairy.¹⁴² Dairy farmers have moved beyond the traditional family run dairies and the industry has expanded to “megadairies.”¹⁴³ The San Joaquin Valley has been an attractive location for Southern California dairy farmers because of its vast amount of land and its reasonable price.¹⁴⁴ For example, Tulare County produced dairy

¹³⁵ CAA § 302(t), 42 U.S.C. § 7602(t) (2003).

¹³⁶ SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, TOP 20 CATEGORIES RANKED IN DESCENDING ORDER 1999 PM10 EMISSIONS (TONS/ANNUAL AVERAGE DAY) SAN JOAQUIN VALLEY AIR BASIN (2002) (on file with the San Joaquin Agricultural Law Review).

¹³⁷ RENTAR ENVIRONMENTAL SOLUTIONS, INC., POLLUTION / HEART ATTACK. POLLUTION MAY TRIGGER Heart Attack, available at http://www.rentar.com/new_page_22168.htm (last visited February 24, 2003).

¹³⁸ *Id.*

¹³⁹ Mark Grossi, *Cows Rival Cars as Smog Producers*, THE FRESNO BEE, December 15, 2002, at 17 (this article was part of a special report, *Last Gasp*).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 18.

¹⁴² DAIRY INDUSTRY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, CALIFORNIA DAIRY STATISTICS ANNUAL 7 (2001).

¹⁴³ Grossi, *supra* note 139, at 17.

¹⁴⁴ *Id.* at 18.

products totaling \$1.2 billion, which led the nation in 2001.¹⁴⁵ Between 1993 and 1998 California saw a decline in the number of dairies from 4,000 to 2,700.¹⁴⁶ It is estimated that the new dairy in Tulare County, and the two Kern County dairies will have an average of 14,000 cows.¹⁴⁷ However, the state of California produced 20 percent more milk during this span, which represents an increase in the concentration of cows at dairies and their waste.¹⁴⁸ As a result, ammonia nitrate, which forms when ammonia from animal waste combines with NOx from vehicle exhaust, is one of the leading sources of PM2.5 in the Valley.¹⁴⁹

Particulate matter is so small that it can not be seen, yet these particles cause huge respiratory problems for Valley residents. The production of particulate matter from animal waste of dairy cows and unpaved dirt roads are not regulated under federal air permit requirements, yet they emit the greatest concentration of particulate matter in the Valley.

D. Cost of Compliance

Legislators have supported the state permit exemption for farmers because California's economy heavily relies on the agricultural industry.¹⁵⁰ It is estimated that agriculture is a \$14 billion industry in the San Joaquin Valley.¹⁵¹ In 2001, the United States Supreme Court held that the federal government does not have to consider the cost of implementation when establishing its air pollution standards.¹⁵² As a result, businesses would bear an annual expense of approximately \$50 billion in order to comply with the air pollution standards that were established by the EPA in 1997.¹⁵³ However, the Supreme Court said

¹⁴⁵ *Id.* at 17.

¹⁴⁶ U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9: ANIMAL WASTE MANAGEMENT, CALIFORNIA ANIMAL WASTE MANAGEMENT, available at www.epa.gov/region09/cross_pr/animalwaste/california.html (last visited February 16, 2003) [hereinafter Animal Waste].

¹⁴⁷ Grossi, *supra* note 139, at 17.

¹⁴⁸ Animal Waste, *supra* note 146.

¹⁴⁹ Grossi, *supra* note 139, at 18.

¹⁵⁰ Sterngold, *supra* note 74.

¹⁵¹ Mark Grossi, *Agriculture a Leading Polluter*, THE FRESNO BEE, December 15, 2002, at 15 (this article was part of a special report, *Last Gasp*).

¹⁵² *Whitman v. American Trucking Association*, 531 U.S. 457, 469 (2001) (rejecting the business group's argument that the clean air law required the government to go beyond the public health benefits of reducing air pollution and take into account the economic costs).

¹⁵³ RENTAR ENVIRONMENTAL SOLUTIONS, INC., HIGH COURT UPHOLDS EPA CLEAN-

that “the EPA may not consider implementation costs in setting . . .” the standards.¹⁵⁴

Further attempts to clean the air have been taken by the California Air Resources Board (CARB).¹⁵⁵ The tailpipe bill will place greater restrictions on automobile manufacturers with respect to air emissions from California tail-pipes.¹⁵⁶ The bill was opposed by members of the automotive industry because they believe this bill could severely impact California’s economy.¹⁵⁷ Within the past 27 years, the automotive industry has seen an increase in the amount of trucks, sports utility vehicles, and vans in the California marketplace.¹⁵⁸ The purpose of this bill is to allow automotive manufacturers the liberty to reduce carbon dioxide emitted from automobiles via their own means.¹⁵⁹

The air quality is a pervasive problem in California and all major industries must do their part to create less air pollution. The Supreme Court’s holding was a direct blow to industries who fear the cost of compliance over the health of its consumers. The tailpipe bill represents California’s desire to regulate the automotive industry, and thus the agricultural industry should not be held to a higher standard due to its economic impact to California or the San Joaquin Valley.

E. Wind-Blown Pollution

Much of the debate between San Joaquin Valley and Bay Area is related to the concept of wind-blown pollution.¹⁶⁰ A major point of contention for Valley farmers and business leaders has been the lenient air standards imposed on the Bay Area.¹⁶¹ According to a 1990 study by the Air Resources Board, 27% of the ozone in Modesto, 11% of the ozone in Fresno, and 7% of the ozone in Bakersfield, can be attributed to Bay Area pollution.¹⁶²

AIR RULE METHOD, available at http://www.rentar.com/new_page_2216105.htm (last visited August 14, 2002).

¹⁵⁴ Whitman v. American Trucking Association, 531 U.S. 457, 471 (2001).

¹⁵⁵ Sean Holstege and Bill Brand, *Davis to Sign Emissions Legislation*, THE OAKLAND TRIBUNE, July 20, 2002, at NEWS-1.

¹⁵⁶ *Id.* at NEWS-11.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* (In 1975 sports utility vehicles, vans, and truck accounted for 20% of the market, as opposed to 2001, where they consist of 47% of the marketplace.).

¹⁵⁹ *Id.*

¹⁶⁰ Ritter, *supra* note 1, at 3A.

¹⁶¹ Gary Polakovic, *Bay Area Smog Proposal Revives Blame Game*, LOS ANGELES TIMES, August 8, 2001, reprinted in VernalPool.Org Discussion, available at http://www.vernalpools.org/discussion/_disc1/00000087.htm (last visited July 24, 2002).

¹⁶² *Id.*

The Bay Area is home to nearly 7 million residents and over 5 million automobiles.¹⁶³ The polluted air that travels down-wind from the Bay Area is nestled in the San Joaquin Valley between the Sierra Nevada Mountains, the Tehachapi Mountains, and the Coastal Ranges.¹⁶⁴ The reality, however, is that the wind-blown pollution from the Bay Area only consists of a fraction of the pollution that is produced in the Central Valley.¹⁶⁵ Nonetheless, AB 2637 was passed into law, which will subject the San Francisco Bay Area to the Smog Check II program by January, 2003.¹⁶⁶ The Smog Check II program requires a higher standard of emissions testing and will ultimately seek to reduce the "smog" that travels to the San Joaquin Valley from the Bay Area, which consists of approximately 10-27 percent of the Central Valley's pollution each year.¹⁶⁷

IV. CONCLUSION

The air pollution problem in the San Joaquin Valley has become a source of conflict between environmentalists and farmers. The movement to clean the air in the San Joaquin Valley is a progressive one and the EPA has been forced to regulate an agricultural industry that has been exempt from the CAA. Due to its vital impact on California's economy, the California state Legislature historically has supported the \$14 billion stalwart.

The impact of bad air has had an adverse affect on the health of San Joaquin Valley residents. Children in this region can not play outside without putting themselves at risk for contracting asthma. The EPA's objective upon the enactment of the CAA was "to protect public health" with "an adequate margin of safety."¹⁶⁸ Yet, nearly 30 years after its implementation, this Valley has seen the state of its air quality gradually worsen. In America, 42 million Americans have no health insurance.¹⁶⁹ These staggering numbers in connection with the

¹⁶³ Ritter, *supra* note 1, at 3A.

¹⁶⁴ Marcy E. Mullins and David Merrill, *How Smog Gets Into the Valley*, USA TODAY, July 15, 2002, at 3A.

¹⁶⁵ Ritter, *supra* note 1, at 3A.

¹⁶⁶ Assemblyman Dennis Cardoza, Remarks at AB 2637 signing ceremony (Sept. 27, 2002) (transcript on file with the San Joaquin Agricultural Law Review), available at <http://www.denniscardoza.com/docs/cardoza-200209271200.txt> (last visited March 31, 2003).

¹⁶⁷ *Id.*

¹⁶⁸ 42 U.S.C. § 7409(b)(1) (2003).

¹⁶⁹ Ann McFeatters, *Health Crisis is Brewing*, THE CINCINNATI POST ONLINE EDITION, January 4, 2003, available at <http://www.cincypost.com/2003/01/04/>

quality of air in the Valley suggest that we have a potential epidemic on the horizon.

The EPA's mandated repeal of California's 1976 exemption of the agricultural industry was long overdue. Air quality is a pervasive problem in the State of California and responsible industries should bear the burden of cleaning the air. The reality is that this exemption will not have a direct affect on the small farming operations. Permits will be required for farmers whose emissions are considered "major sources". The California state Legislature is at a crossroads, as it must balance a billion dollar industry and the health of its citizens with federally imposed sanctions at stake. Despite California's current fiscal crisis, the California state Legislature must look beyond the potential financial ramifications of Title V compliance and move towards providing cleaner air for its citizens.

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