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OPINION	:	No. 81-1201
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THE HONORABLE KENNETH L. MADDY, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. Do local air pollution control districts have authority under state law to administer a preconstruction permit procedure and to redesignate areas from class II to class I as specified in sections 7474 and 7475 of title 42 of the United States Code?

2. Does the State Air Resources Board have authority under state law to administer a preconstruction permit procedure and to redesignate areas from class II to class I as specified in sections 7474 and 7475 of title 42 of the United States Code?

3. What is the legal status of the Rule for Siting of New and Modified Stationary Sources in California adopted by the California Air Pollution Control Officers' Association and California Air Resources Board Committee?

CONCLUSIONS

1. Local air pollution control districts have the authority under state law to administer a preconstruction permit procedure but do not have the authority to redesignate areas from class II to class I as specified in sections 7474 and 7475 of title 42 of the United States Code.

2. The State Air Resources Board has the authority under state law to administer a preconstruction permit procedure if a local air pollution control district fails to do so but does not have the authority to redesignate areas from class II to class I as specified in sections 7474 and 7475 of title 42 of the United States Code.

3. The legal status of the Rule for Siting of New and Modified Stationary Sources in California adopted by the California Air Pollution Control Officers' Association and California Air Resources Board Committee is that of a model which a local air pollution control district may follow in adopting a source siting rule.

ANALYSIS

In 1963 Congress enacted the Clean Air Act (42 U.S.C. §§ 7401-7642)[1] to, among other purposes, "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." (§ 7401(b)(1).)

As part of the federal program, each state is responsible for adopting an implementation plan for the maintenance of the air quality standards established by the administrator of the federal Environmental Protection Agency. (§ 7410.)

Merely maintaining the federal standards, however, is not enough under the Clean Air Act. For those areas "cleaner" than the standards, a separate program is required to prevent any significant deterioration of air quality. Under section 7471, each state plan must contain "emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this Act, to prevent significant deterioration of air quality in each region" that already meets the national air quality standards. These areas were initially classified into two categories by Congress in the Clean Air Act. Some of these areas were specifically designated as "class I," with the remaining areas designated as "class II" in the federal legislation. (§ 7172.) Congress also authorized the states to "redesignate" certain of these regions under specified conditions.

[1] All section references prior to footnote 3 are to title 42 of the United States Code.

(§ 7474.) Significantly, the most stringent standards for air quality are in the class I areas. (§ 7473.)

Subdivision (a) of section 7474 states, "Except as otherwise provided under subsection (c) of this section, a State may redesignate such areas as it deems appropriate as class I areas."[2] (See 40 C.F.R. § 52.21(g) (1981).)

The basic mechanism for enforcing the prevention of significant deterioration (hereafter "PSD") program in the various classified areas is a preconstruction permit procedure, whereby an owner or operator of a proposed facility demonstrates that the federal standards will be met by the best available control technology. (§§ 7475, 7479.)

1. Local Air Pollution Control Districts' Powers

The first question presented for analysis concerns the powers and duties under state law, specifically Health and Safety Code sections 39000-43841.5,[3] of local air pollution control districts[4] to implement the PSD program of the Clean Air Act. Does state law allow the districts to administer the preconstruction permit procedure and to redesignate areas from class II to class I? We conclude that they may administer the permit procedure but not redesignate areas.

Each district has "primary responsibility for control of air pollution from all sources other than vehicular sources" within its jurisdiction. (§ 39002; see §§ 39025, 39037, 40000.) Section 40001 states:

> "Subject to the powers and duties of the state board, the districts shall adopt and enforce rules and regulations which assure that reasonable provision is made to achieve and maintain the state ambient air quality standards for the area under their jurisdiction, and shall enforce all applicable provisions of state law. The districts shall also endeavor to achieve and maintain the federal ambient air quality standards.

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[2] Subsection (c) authorizes the redesignation of Indian reservation lands "by the appropriate Indian governing body."

[3] All section references hereafter are to the Health and Safety Code unless otherwise indicated.

[4] There are currently 41 local air pollution control districts with boundaries coterminous with county boundaries (§ 40002), 3 unified air control districts (§§ 40150-40161), and 2 multi-county districts known as the Bay Area Air Quality Management District (§§ 40200-40276) and the South Coast Air Quality Management District (§§ 40400-40526). These various districts may be treated similarly for purposes of the questions presented and will be referred to hereafter as "districts." (See § 39025.)

"Such rules and regulations may, and at the request of the state board shall, provide for the prevention and abatement of air pollution episodes which, at intervals, cause discomfort or health risks to, or damage to property of, a significant number of persons or class of persons."

Section 40702 provides in part:

"A district shall adopt rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the district by this division and other statutory provisions."

As for the specific authority to administer a preconstruction permit procedure under state law, section 42300 states:

"Every district board may establish, by regulation, a permit system that requires, except as otherwise provided in Section 42310, that before any person builds, erects, alters, replaces, operates, or uses any article, machine, equipment, or other contrivance which may cause the issuance of air contaminants, such person obtain a permit to do so from the air pollution control officer of the district.

"The regulations may provide that a permit shall be valid only for a specified period. However, a permit shall be renewable upon payment of the fees required pursuant to Section 42311, except where action to suspend or revoke the permit has been initiated pursuant to Section 42304, 42307, or 42390, and such action has resulted in a final determination to suspend or revoke the permit by the air pollution control officer or the hearing board by whom, or before whom, such action has been initiated and all appeals, or time for appeals, for such final determination has been exhausted."[5]

Section 42301 specifies the purposes of a local permit system as follows:

"A permit system established pursuant to Section 42300 shall:

"(a) Insure that the article, machine, equipment, or contrivance for which the permit was issued shall not prevent or interfere with the attainment or maintenance of any applicable air quality standard.

[5] The exceptions to the permit requirement contained in section 42310 relate to vehicles, certain residential structures, agricultural equipment, noncommercial barbeque equipment, and minor maintenance operations.

"(b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all applicable orders, rules, and regulations of the district and of the state board and with all applicable provisions of this division."

Besides these express powers given to the districts by the Legislature, certain powers are conferred upon them by implication. (See *Ferdig* v. *State Personnel Bd.* (1969) 71 Cal.2d 96, 103; *City and County of San Francisco* v. *Padilla* (1972) 23 Cal.App.3d 388, 400.) While the doctrine of implied powers is not without limitation, it justifies those powers "'essential to the declared objects and purposes of the enabling act. . . .'" (*Addison* v. *Department of Motor Vehicles* (1977) 69 Cal.App.3d 486, 498.)

Taken together, these statutory provisions not only confer authority upon the districts to administer the preconstruction permit procedure of the PSD program but also a responsibility to do so.[6] No other method is provided under federal law for enforcing the requirements of the program, which requirements are part of the required state implementation plan. Section 39002 places "primary" enforcement responsibility upon the districts in controlling the air pollution at issue.

A different conclusion, however, must be reached with regard to redesignating areas from class II to class I under the PSD program. As previously noted, the redesignation procedure is accomplished through the provisions of the required state implementation plan. Districts do not have responsibility for the contents of the state plan; rather, the Legislature has directed the State Air Resources Board (hereafter "Board") to assume this duty. Section 39602 states in part, "The state board is designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act (42 U.S.C. § 7401, et seq.) and, to this end, shall coordinate the activities of all districts necessary to comply with that act."

We have not found any legislative enactment suggesting that the districts may take over this responsibility from the Board. The intent of section 39602 appears unmistakable: only the Board is to be responsible for the contents of the state implementation plan, which plan contains the area classifications.

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[6] Under certain conditions, a "cogeneration technology project" and a "resource recovery project" must be given a construction permit by a district "[n]otwithstanding any other provision of any . . . local . . . prevention of significant deterioration rules and regulations." (§ 42314.) By implication, therefore, the Legislature has recognized the authority of the districts to issue PSD preconstruction permit regulations, the only ones currently possible for enforcing the PSD program under federal law.

The primary rule of statutory construction is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials* v. *Board of Equal.*, (1959) 51 Cal.2d 640, 645.) In ascertaining legislative intent, we turn first to the language used (*People* v. *Knowles* (1950) 35 Cal.2d 175, 182), giving the words their usual and ordinary meaning. (*People* v. *Belleci* (1979) 24 Cal.3d 879, 884.) "When statutory language is . . . clear and unambiguous there is no need for construction." (*Solberg* v. *Superior Court* (1977) 19 Cal.3d 182, 198.)

While sections 39002, 40001, 40702, 42300 and 42314 support convincingly the authority of a district to administer the preconstruction permit procedure of the PSD program, section 39602 strongly indicates that a district does not have the authority to unilaterally change the provisions of the state implementation plan through area redesignations.

We thus conclude in answer to the first question that districts have the authority under state law to administer a preconstruction permit procedure but not the authority to redesignate areas from class II to class I as specified in sections 7474 and 7475 of title 42 of the United States Code.

2. Board Powers

The second question presented is identical to the first except that it centers on the powers of the Board rather than the districts. We conclude that under state law, the Board may administer a preconstruction permit procedure if a district fails to do so but does not have the authority to redesignate areas from class II to class I.

As pointed out in response to the first question, it is the districts that have primary responsibility for controlling air pollution from all nonvehicular sources within their respective jurisdictions. The Board's duties are more administrative in nature. It assists the districts in their duties (§ 39605), adopts standards of ambient air quality for the various regions of the state (§ 39606), monitors air pollutants (§ 39607), collects research data on air pollution (§ 39701), and reports to the Legislature on problems relating to air quality management (§ 39702), among other responsibilities. Significantly, the Legislature has authorized the Board to assume the enforcement duties of the districts under certain conditions. Section 39002 states in part,

> ". . . the state board shall, after holding public hearings as required in this division, undertake control activities in any area wherein it determines

> that the local or regional authority has failed to meet the responsibilities given to it by this division or by any other provisions of law."[7]

The general provisions of section 39002 (see also §§ 41504, 41505) are supported by the specific provisions of section 39602 regarding state implementation plans. Under the latter statute, it is the Board that is responsible for a state plan which meets the federal requirements of the PSD program. A preconstruction permit procedure is part of that program's requirements. If the districts do not implement a permit system, the Board must do so to meet its responsibilities under section 39602.

We thus conclude that where the Board has held public meetings and determined that a district has failed to meet its responsibilities in implementing a preconstruction permit procedure for the PSD program, the Board may do so under the authority given to it by the Legislature in section 39002.

Sections 39600 and 39602 provide the answer to the second part of question two: whether the Board has authority under state law to redesignate class II areas to class I areas for purposes of the PSD program.

Section 39600 states:

> "The state board shall do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the state board by this division and by any other provision of law."

Pursuant to section 39602, as previously set forth, the Board is "responsible for the preparation of the state implementation plan required by the Clean Air Act. . . ."

The Clean Air Act requires that each area meeting the national air quality standards be placed in a class I, class II, or class III category, since the type of classification determines what emissions limitations are to be applied under the state plan. (42 U.S.C. §§ 7471, 7473.) If an area does not have a designation, federal law would be rendered meaningless and absurd. We must "interpret statutes so as to make them workable and reasonable" (*City of Santa Clara* v. *Van Raesfeld* (1970) 3 Cal.3d 239, 248) and avoid rendering "statutory language useless or meaningless" (*Wells* v. *Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788).

[7] A "local or regional authority" includes a district. (§ 39037.)

Accordingly, the Board is authorized to perform "necessary" acts under section 39600, and this would include designating all appropriate areas in the state implementation plan as class I, II, or III in compliance with federal law.

Such designation authority, however, is limited insofar as a class I category is concerned to what the Congress originally classified in the Clean Air Act as a class I region. As previously pointed out, the federal legislation initially specified certain regions of the country as class I areas and authorized the states to redesignate additional areas as class I if they so deemed appropriate. The Legislature, however, has directed that "[n]otwithstanding any other provision of this division, the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act." (§ 39602.) Does this statutory prohibition apply to a class I redesignation by the Board? We think that it does.

While a *designation* of some type is "necessary" and a "requirement" of the Clean Air Act for all areas of the state, the same cannot be said of a class I *redesignation*. Congress has merely specified that "a State may redesignate such areas as it deems appropriate to class I areas." (42 U.S.C. § 7474(a).) We cannot conclude from such language that redesignation is "necessary" or a federal "requirement" for purposes of sections 39600 and 39602. (See *People* v. *Bellici*, *supra*, 24 Cal.3d 879, 884; *Tracy* v. *Municipal Court* (1978) 22 Cal.3d 760, 764; *Jonon* v. *Superior Court* (1979) 93 Cal.3d 683, 694.)[8]

The Clean Air Act manifestly contemplates redesignations by the states. Authorization is expressly given to the states for redesignations (42 U.S.C. § 7474(a)), and certain provisions would be rendered meaningless if a state were to preclude any possible redesignation (see, e.g., 42 U.S.C. § 7474(d)). In California, the Legislature has expressed no intent, however, to grant redesignation authority to local districts or to the Board. Rather, it would be the Legislature itself that would carry out the federal authorization.

We thus conclude in answer to the second question that under state law, the Board has the authority to administer a preconstruction permit procedure if a district fails to do so but does not have the authority to redesignate areas from class II to class I as specified in sections 7474 and 7475 of title 42 of the United States Code.

3. Source Siting Rules

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[8] Ordinarily, "may" is permissive, and "shall" is mandatory. (Webster's New Internat. Dict. (3d ed. 1966) pp. 1683, 2085; *Hogya* v. *Superior Court* (1977) 75 Cal.App.3d 122, 133.) "Notwithstanding any other provision" makes the language of section 39602 stand alone. (See *In re Marriage of Dover* (1971) 15 Cal.App.3d 675, 678, fn. 3; *State of California* v. *Superior Court* (1965) 238 Cal.App.2d 691, 695-696.)

The third question presented concerns the legal status of the Rule for Siting of New and Modified Stationary Sources in California (hereafter "Rule") adopted by the California Air Pollution Control Officers' Association and California Air Resources Board Committee. We conclude that the Rule has the effect of a model which a district may follow in adopting a source siting rule.

We have reviewed the Rule, and its evident purpose is to streamline and make more efficient the permit procedure in the administrative review of new and modified stationary sources of air pollution. This is accomplished by combining into a single, unified rule the PSD permit provisions (for areas where the national ambient air quality standards are already met) and the permit requirements for "nonattainment areas" (those areas in which one or more national standards is not met) of the Clean Air Act.

We view the Rule as a basis for the development and adoption of source siting rules by districts in performing their responsibilities under state law. As previously pointed out, it is the districts that have primary responsibility for adopting a permit procedure. (See §§ 39001, 39002, 40000, 40001, 40702, 42300.)

Hence, we conclude that the Rule has the "legal status" of a model, guide, or suggested format, to be followed by the districts as they deem appropriate.

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