TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 84-1101
of	:	OCTOBER 24, 1985
JOHN K. VAN DE KAMP Attorney General	:	
JOHN T. MURPHY Deputy Attorney General	:	

THE AIR RESOURCES BOARD has requested an opinion on the following question:

If an air pollution control district has not provided the emissions reductions from other sources to offset the adverse air quality impacts of cogeneration technology and resource recovery projects of less than 50 megawatts of generating capacity as the mitigation required by section 41604 of the Health and Safety Code, is the district nevertheless required to issue permits for such projects pursuant to section 42314 of the Health and Safety Code?

CONCLUSION

When it is impossible for an air pollution control district to provide the emissions reductions from other sources to offset the adverse air quality impacts of cogeneration technology and resource recovery projects of less than 50 megawatts of

generating capacity as the mitigation required by section 41604 of the Health and Safety Code, the district is not required to issue permits for such projects pursuant to section 42314 of the Health and Safety Code. When the mitigation required by section 41604 of the Health and Safety Code is available, an air pollution control district must grant permits for cogeneration technology and resource recovery projects and must provide the required mitigation in such a manner that the emissions reductions from other sources will be in place before operation of such projects.

ANALYSIS

This opinion involves the interaction of federal and state laws and regulations in the struggle to improve the quality of the physical environment particularly with reference to the atmosphere. The federal Clean Air Act (42 U.S.C. § 7401 et seq.) mandated, inter alia, that the Environmental Protection Agency (EPA) adopt air quality emission standards for stationary (non-vehicular) sources of air pollution and required each state to submit to the EPA, as part of an implementation plan, a scheme to limit emissions in order to attain or maintain federal standards.[1] (42 U.S.C. §§ 7410-7414.)

The Clean Air Act also placed the primary responsibility for the prevention and control of air pollution upon state and local governments. (42 U.S.C. § 7401.) California has recognized this responsibility. (Health & Saf. Code, § 40000 et seq.) Prevention and control of stationary sources of air pollution in California are the duties of local air pollution control districts. (Health & Saf. Code, § 39002.) A local district has been set up in every county except those which are components of multicounty districts (regional and unified districts). (Health & Saf. Code, § 40002.) The California Air Resources Board (ARB) oversees the efforts of the local districts and has authority to enforce air quality standards if a local district fails to attain and maintain local air quality according to federal standards. (Health & Saf. Code, §§ 39002 & 39602.) Moreover, pursuant to state law the ARB has established state air quality standards which the local districts are directed to meet as well. (Health & Saf. Code, §§ 39606, subd.(b) & 40001.) A local district also may establish additional stricter standards in some situations. (Health

[1] The Clean Air Act has evolved over a period of thirty years. Initially it provided research and technical assistance relating to air pollution control. When expanded in 1963 it directed the then Secretary of Health, Education and Welfare to publish air quality criteria to regulate interstate air pollution. In 1967, under the Air Quality Act, the Secretary was required to set ambient air quality standards which the states were required to attain within specified times in federally designated regions. The Clean Air Act Amendments of 1970 created the EPA which assumed the responsibility for promulgating the standards and required the states to meet the primary standards (those necessary to protect public health) by 1975. The Clean Air Act Amendments of 1977 introduced major revisions and extended the attainment deadline for certain of the standards.

& Saf. Code, §§ 39002 & 41508.) Local districts make the rules and regulations to limit source emissions so as to "achieve and maintain" the state standards and to "also endeavor to achieve and maintain" the federal standards. (Health & Saf. Code, §§ 40001 & 41601.)

A means of enforcement of air quality standards is the permit system mandated by the Clean Air Act and state law. A local district is authorized to require a permit prior to the construction of any "contrivance" which may cause the issuance of air contaminants and to require a permit after construction and prior to operation. (Health & Saf. Code, § 42300.) A permit "shall not prevent or interfere with the attainment or maintenance of *any* applicable air quality standard." (Health & Saf. Code, § 42301, subd.(a); emphasis added.)

The ARB has been designated as the state agency responsible for the preparation of the state implementation plan required by the Clean Air Act. (Health & Saf. Code, § 39602.) The implementation plan submitted by the ARB to the EPA under the Clean Air Act specifies the manner in which the federal air quality standards will be achieved and maintained within the state. (42 U.S.C. §§ 7407 & 7410(a)(1).) The Clean Air Act mandated the attainment of federal standards in areas not yet in compliance by December 31, 1982. (42 U.S.C. § 7502 (a)(1).) Such areas are designated nonattainment areas. Nonattainment area means, for any air pollutant, an area which is shown by monitored data or by calculation to exceed any federal air quality standard for such pollutant. (42 U.S.C. § 7501(2).) However, if attainment for photochemical oxidants and carbon monoxide or both is not possible by that date, despite implementation of all reasonably available measures, attainment is to be accomplished by December 31, 1987. (42 U.S.C. § 7502(a)(2).)

The requirements of state implementation plans must be discussed in more detail. When many state implementation plans submitted to the EPA prior to 1976 were proving to be inadequate to meet the federal air quality standards, the problem arose as to whether new stationary emission sources might be legally permitted in an area where attainment had not been reached. Obviously, in a nonattainment area any new source emission of a pollutant would violate federal standards since the standards for that pollutant were already exceeded. In response to this issue of industrial growth in a nonattainment area, the EPA issued its first Emission Offset Interpretative Ruling which authorized new construction in areas where standards had not been met provided stringent conditions were satisfied that would assure further progress toward attainment of the standards. (41 Fed.Reg. 55524 (Dec. 21, 1976).) In 1977 Congress amended the Clean Air Act to codify the EPA's offset policy thereby providing a statutory solution to the question of industrial growth in already polluted areas. States wishing to allow such growth were required to include in their implementation plans preconstruction review procedures which would

ensure that no major new or modified emission source would prevent attainment of federal standards in nonattainment areas. (42 U.S.C. § 7502(b)(6).)

Nonattainment areas, such as those which are examined in the opinion, are subject to this new source review.[2] The Clean Air Act, in 42 U.S.C. § 7503, provides:

> "(A) by the time the source is to commence operation, total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources allowed under the applicable implementation plan prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or
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> "(B) that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(b) of this title."

Under this review permits will not be issued unless the applicant demonstrates that the proposed emission source will result in a reduction in the total allowable emissions of that pollutant from existing sources in the area and that by the time the new facility is in operation there will be pollution levels in the area sufficient to demonstrate reasonable further progress toward attainment and a net air quality benefit to the area; or that the emissions of such pollutant resulting from the major new or modified source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from major new or modified sources. (42 U.S.C. § 7503(1).) Moreover, the proposed source is required to comply with the lowest achievable emission rate (see 40 C.F.R. § 51.18(j)(1)(xiii)) and the applicant is required to demonstrate that all major sources already owned, operated or controlled by it in the state are in compliance or on schedule for compliance with the state plan emission limits. (42 U.S.C. §§ 7503(2) & 7503(3).) Any required emission reductions must be legally binding. (42 U.S.C. § 7503(4).) As to areas requiring extensions to December 31, 1987, the state

[2] New source review generally applies to a major new stationary source which is described as a source with the potential to emit 100 tons per year or more of any pollutant. (40 C.F.R. § 51.18(j)(1)(iv).) A project generating less than 50 megawatts of electricity is likely to fit this definition. For purposes of this opinion we are assuming that the project would be subject to new source review under federal law and regulation.

plan must provide that prior to construction an analysis be made concerning alternative sites, production processes and other environmental controls, and the benefits of the project vis-a-vis its environmental and social impacts.[3] (42 U.S.C. § 7502(b)(11).)

Accordingly, the applicant seeking a permit must establish that it can offset the pollution impact of its project or that its emissions are accommodated under the area's growth allowance.

First we will consider offsets. (42 U.S.C. § 7503(1)(A).) Offsets can be obtained in a number of ways: product or process change; better maintenance and improved antipollution equipment on existing sources of the applicant or sources of others; the elimination of other sources in the area. Offsets cannot be obtained from emission reductions already required under the state plan. These reductions are required by law and regulation and therefore do not constitute valid offsets. (42 U.S.C. § 7411 (b); 40 C.F.R. § 51.18.) Accordingly, a local district may require the applicant to reduce existing source emissions to offset the new source emissions from its proposed project. As one commentator notes, the offset policy places the burden "on the owner of the proposed source to locate and produce the necessary emission reductions." (Landau, *Who Owns the Air? The Emission Offset Concept and Its Implications*, 9 Environmental Law 575, 580 (1979).) The EPA has issued regulations concerning offsets and offsets must receive that agency's approval. (See 40 C.F.R. § 51.18; 40 C.F.R. Part 51, appendix S.) As stated in a commentary (Beckman and Prairie, *A Guide to Obtaining Required Regulatory Approvals of New Industrial Facilities in California* (1980) 17 San Diego Law Review 979, 996):

> "Emission offsets may be difficult to locate even in highly industrialized areas. Many industrial facilities are not useful offset candidates because the major portion of their emissions cannot be cleaned up by the application of available control technology. In addition, if potential emission reductions have been mandated by a proposed federal or state regulation, such reductions cannot be utilized as emission offsets. The availability of emission offsets is further diminished by the prevalent attitude among companies that potential reduction capability should be saved for future industrial expansion and not be sold to other industries.
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> "The costs of offsets can be substantial. They include the cost of (i) identifying the candidates, (ii) determining the current actual emissions of the candidates, (iii) determining whether control technology is available to achieve the necessary reductions, (iv) negotiating for permission to use the

[3] For a discussion of the historical development of new source review see *Chevron U.S.A. Inc.* v. *Natural Resources Defense* (1984) 104 Sup.Ct.Rptr. 2778, 2783-2786.)

offsets, and (v) engineering and installing the control equipment . . . ." (Fns. omitted.)

We turn now to growth allowances. (42 U.S.C. § 7503(1)(B).) The state implementation plan must include an inventory of actual emissions from all sources of each pollutant and expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area. (42 U.S.C. §§ 7502(b)(4) & 7502(b)(5).) Consequently, the plan must account for future expected increases in emissions of a pollutant from the new and modified stationary sources in the nonattainment area. Growth allowances developed for mitigation must be legally binding and enforceable before they can be used in lieu of offsets required by new source review procedures. The application of growth allowances is made pursuant to EPA policies and criteria. (See *EPA Guidance Document for Correction of Part D SIPs in Nonattainment Areas* (Jan. 27, 1984); *EPA Emissions Trading Policy Statement*, 47 Fed.Reg. 15076 (May 12, 1982).)

Consequently, federal law and regulations require adherence to federal new source review (with policies and criteria for offsets and growth allowances) as a condition to the issuance of preconstruction permits for major new or modified projects in nonattainment areas.

If the EPA determines that a state implementation plan is substantially inadequate to achieve and maintain federal air quality standards, the plan must be revised. (42 U.S.C. § 7410(a)(2)(H).) The EPA will prepare and publish regulations applying to the state if the state does not properly revise its plan. (42 U.S.C. § 7410(c)(1).) If the state does not enforce its approved plan the EPA may issue administrative orders or file civil suits. (42 U.S.C. § 7413(a)(2).) The sanctions imposed on a state for failure to have an approved new source review procedure in its implementation plan include a curtailment of grant funds and a construction ban on new major sources. (42 U.S.C. §§ 7410(a)(2)(I) & 7506(a).) Moreover, citizens may sue the EPA to carry out its mandatory responsibility to enforce compliance in noncomplying states. (See 42 U.S.C. § 7604; *Natural Resources Defense Council, Inc.* v. *EPA* (1st Cir. 1973) 484 F.2d 1331, 1334.)

With this summary we can begin to address the subject of cogeneration technology projects and resource recovery projects. Cogeneration, in general terms, means the sequential use of energy for the production of electrical and useful thermal energy. (See Pub. Res. Code, § 25134; Health & Saf. Code, §§ 39019.5 & 39019.6.) An example would be a gas turbine electric generation plant. Resource recovery is the conversion of liquid or solid waste in such a manner so as to provide energy as a by-product. (See Health & Saf. Code, § 39050.5.) An example would be a plant generating steam and electricity by burning wood waste.

The focal points of this opinion are Health and Safety Code sections 41604 and 42314.[4] (These sections are set out in full in the appendix to this opinion.) Taking section 42314 first, subdivision (a)(4) of that section seemingly would require the local district to issue a permit for a cogeneration project smaller than 50 megawatts and such project's pollution impacts need only be offset by the applicant "to the extent they [the offsets] are available from facilities it [the applicant] owns or operates in the district . . . ." Subdivision (b) of Health and Safety Code section 42314 seemingly would require the local district to issue a permit for a resource recovery project producing less than 50 megawatts of electricity if the project will utilize the appropriate degree of pollution control technology required by the new source review rule of the district, and the applicant has in the judgment of the district made a good faith effort to secure all available emission offsets to mitigate the project's impact even though these efforts were insufficient to mitigate the total impact.[5] If the resource recovery project constitutes a modification to an existing pollution source the applicant shall only be required to provide offsets from facilities which the applicant owns or operates within the air basin. Subdivisions (a)(4) and (b) are operative "[n]otwithstanding any other provision of any state or local new source review or prevention of significant deterioration rules[6] and regulations . . . ." (Health & Saf. Code, § 42314.) This language removes the burden of full mitigation from the applicant for this type of project. As we have seen, under federal law full mitigation is a prerequisite for new construction in nonattainment areas. (42 U.S.C. §§ 7502(b)(6) & 7503.)

We turn now to Health and Safety Code section 41604 which states in part that local "districts shall provide for, not later than July 1, 1984, and shall periodically revise as appropriate, the necessary mitigation of the air quality impact of . . . projects smaller than 50 megawatts expected to be permitted by 1987, pursuant to Section 42314 . . . so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment." The effect of this provision is to require local districts to provide offsets to counteract the unmitigated impact of a

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[4] Senate Bill No. 166 (1985-86 Regular Session), as enacted by the Legislature (Stats. 1983, ch. 978, § 1 et seq.), would substantially change these statutes effective January 1, 1986.

[5] Either type of project is assigned offset credits for the utility or biomass burning the project is projected to displace. (Health & Saf. Code, §§ 41605 & 41605.5.) Only if these are insufficient to offset the project's emissions need any other offsets be provided. However, the EPA has neither approved nor disapproved this form of offset.

[6] The new source review rule is discussed in the text above. The prevention of significant deterioration rule is that part of the state implementation plan which contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality. (40 C.F.R. § 51.24.) The rule is applicable in areas meeting federal standards. Consequently, in areas cleaner than federal standards offsets may still be needed to ensure that no standards are exceeded in the future. (See 65 Ops.Cal.Atty.Gen. 435, 436 (1982).)

qualified smaller than 50 megawatt cogeneration project or resource recovery project. These offsets must be submitted to the ARB for inclusion in the state plan. (Health and Saf. Code, § 41604, subd.(b).) Consequently, the local district may be compelled to act to reduce other sources of pollution, such as emissions from other industrial plants and facilities within the district, in order to accommodate cogeneration projects or resource recovery projects qualified to be issued permits under section 42314, subdivisions (a)(4) and (b).

We are informed by the requester that the question before us arises because some local districts in nonattainment status have not provided the offsets or do not have the growth allowances to prevent the adverse impacts of proposed cogeneration technology or resource recovery projects which are otherwise eligible for permits under subdivisions (a)(4) or (b) of section 42314. The issuance of a permit in such circumstances would have an adverse air quality result, would cause further pollution of the already polluted air and would prevent the local district from reaching the federal and state goals or impede progress toward those goals.[7] Consequently, a local district may be confronted with a proposed project which will emit a pollutant which cannot be mitigated by the applicant from its other facilities, if any, within the area or by the implementation of the district's present orders.

There are two situations which must be distinguished respecting the availability of offsets to the district from sources other than the applicant's. The first situation occurs when offsets cannot be obtained by the local district because of impossibility. For example, there are no offset candidates within the district or there are other laws which prevent the use of the potential offsets. The other situation occurs when offsets may be available but the local district has not taken or completed any action to obtain them.

The Legislature, in section 41604, did not require a local district to perform an impossible task, namely, to provide mitigation where there is none. A statute will not be given a construction which will lead to absurd consequences. (*Interinsurance Exchange* v. *Ohio Car Ins. Co.* (1962) 58 Cal.2d 142, 153.) Where the district has been classified as a nonattainment area and has neither candidates for offsets nor growth allowances, we do not discern a legislative intent that the district pursue an idle act under section 41604. (*Clean Air Constituency* v. *California State Air Resources Board* (1974) 11 Cal.3d 801,

[7] We are not here concerned with the authority of the ARB to compel a district to act when it has failed to act. (See Health and Saf. Code, §§ 39002, 40001, 41500 & 41502.) We address rather the situation of a local district being asked for a preconstruction permit by a qualified applicant and not having at the time of the application offsets or growth allowances to meet the adverse air quality impact which will result when the new facility begins operation.

813-814; *Stanley* v. *Justice Court* (1976) 55 Cal.App.3d 244, 253.) Accordingly, when it is impossible for a local district to provide the emissions reductions from other sources to offset the adverse air quality impact of a proposed cogeneration or resource recovery project of less than 50 megawatts generating capacity the local district is not required by section 42314 to issue a permit. Our concern here, then, is the situation when mitigation from other sources is available to the district or, in other words, full mitigation is possible.[8]

The Legislature, in sections 41604 and 42314, has imposed a lesser burden on certain applicants for cogeneration permits and resource recovery permits than on other new source applicants by relieving the former of the responsibility of total mitigation and other new source limitations. This is apparently premised on the legislative intent to encourage cogeneration and resource recovery as alternative energy sources, particularly with regard to the production of electricity from an otherwise wasted fuel. As part of the Warren-Alquist State Energy Resources Conservation and Development Act, the Legislature has found in Public Resources Code section 25004.2 as follows:

> "The Legislature further finds that cogeneration technology is a potential energy resource and should be an important element of the state's energy supply mix. The Legislature further finds that cogeneration technology can assist meeting the state's energy needs while reducing the long-term use of conventional fuels, is readily available for immediate application, and reduces negative environmental impacts. The Legislature further finds that cogeneration technology is important with respect to the providing of a reliable and clean source of energy within the state and that cogeneration technology should receive immediate support and commitment from state government."

Likewise, in Health and Safety Code section 41515 the Legislature found and declared as follows:

> "The Legislature finds and declares (a) that present methods of generating and using energy in California result in substantial waste of such energy through the loss of exhaust steam and heat which is not recovered or otherwise put to use, and that this waste of energy results in adverse environmental and economic impacts and accelerates the need for new powerplant construction, and increases dependence upon imported oil, (b) that the use of cogeneration technology can substantially increase the efficiency of energy use in California and can also result in environmental and economic benefits for the people of the state, (c) that the expanded use

[8] A local district may resolve any factual issues relating to the availability of offsets under section 41604. (Health & Saf. Code, §§ 40001, 40701, 40702, 40703 & 40709.)

> of cogeneration technology is specifically encouraged as a matter of national energy policy through the tax and regulatory incentives provided in the National Energy Act, and through state legislation which encourages the expeditious approval of cogeneration projects, and (d) the construction and operation of cogeneration facilities will result in an incremental air quality emissions benefit to the extent they reduce demand on existing utility combustion generation facilities in the same air basin and that such benefit should be recognized in determining requirements for new cogeneration projects."

A similar finding and declaration was made with respect to resource recovery projects. (Health & Saf. Code, § 41516.)

The legislative intent is to encourage or favor such projects but not without due consideration to the production of clean energy and the maintenance of air quality. Indeed, the Legislature in Health and Safety Code section 41517 has also found and declared as follows:

> "The Legislature further finds and declares that the 1977 amendments to the federal Clean Air Act specifically authorize local governments to provide for the mitigation of the air quality impact of projects with communitywide benefits, such as cogeneration technology and resource recovery projects, by providing regional growth increments in the state implementation plan."

The Legislature has further declared its intent to preserve the quality of the environment. Health and Safety Code section 39000 states:

> "The Legislature finds and declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California."

In this regard, the Legislature has expressed clearly California's intent to fully implement the Clean Air Act. (See Health & Saf. Code, §§ 39602, 40001, 41517, 41604 & 41650.)

Section 42314, if it stood alone, would compel a local district to issue a permit to a qualified smaller than 50 megawatt cogeneration or resource recovery plant even though the applicant itself is unable to furnish all of the offsets which would be

required of an applicant for larger or different facility. However, the section cannot be read in isolation from the state scheme and from the Clean Air Act upon which state scheme is based. Section 41604, which was enacted together with section 42314 and which expressly refers to section 42314 and to federal law, requires the local district to have the necessary mitigation for such smaller projects "expected to be permitted by 1987 . . . ."[9] In addition, as we have seen, the local districts are, by section 42301, subdivision (a), prohibited from issuing a permit which would "prevent or interfere with the attainment or maintenance of any applicable air quality standard." The Legislature, in enacting and amending the above statutes, was implementing the Clean Air Act and its strictures. (See *Fuentes* v. *Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7; *In re White* (1969) 1 Cal.3d 207, 212.) In interpreting the California statutes the federal law cannot be ignored.

At this point illustrations may help us analyze and resolve the problem facing a local district which has not attained federal standards and is confronted with an application for a cogeneration or resource recovery preconstruction permit. A company proposes to build an oil-fired cogeneration plant which will produce less than 50 megawatts of electricity. The plant's electricity will be sold to a utility. The operation of the plant will cause the emission of pollutants to the atmosphere. There is no growth allowance. The company neither owns nor operates any other facility in the district from which it can provide the offsets necessary to reduce the project's pollution impact. Nevertheless, the company would seemingly qualify for a permit pursuant to Health and Safety Code section 42314. The section purports to be operative "notwithstanding" the state or local new source review rules which would require other applicants to find their own offsets. The local district where the new cogeneration facility will be constructed is a nonattainment area which must meet federal standards by December 31, 1987. Must the local district issue the permit to the qualified applicant under section 42314 even though there will be a net adverse emissions increase and the quality of the air will be reduced? We conclude that it may not do so until the necessary offsets have been obtained.

In the above illustration the emissions need not, under state law, be mitigated completely by the applicant and must be mitigated completely by the district before the plant is placed in operation. Indeed, Health and Safety Code section 41604 specifically states that local districts shall provide for the "necessary mitigation of the air quality impact of . . . projects smaller than 50 megawatts expected to be permitted by 1987 . . . so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment." This language, however, is precursory. The local districts are mandated to anticipate and prepare for the expected applications for small cogeneration and resource recovery plant permits. (See Health &

[9] The ARB is required to develop an inventory of such potential projects. (Health & Saf. Code, §§ 41518 & 41519.)

Saf. Code, §§ 40709, 41518 & 41519.) In our view section 41604 directs local districts to ensure that new cogeneration technology and resource recovery projects, which are afforded relaxed permit requirements under section 42314, do not preclude the local districts from otherwise carrying out their responsibilities under the Clean Air Act. The express intent of section 41604 is the achievement and maintenance of standards, not the opposite. If a permit were issued to the proposed project without full mitigation and the result were to cause further pollution and to prevent attainment or to impede progress toward attainment, then the local district would be in violation of the Clean Air Act and the declared policy of this state to implement that act. We believe that sections 41604 and 42314, as read together, do not allow a local district to issue a permit under subdivisions (a)(4) and (b) of section 42314 when the district itself has not fulfilled section 41604 by locating the necessary legally available mitigation. Consequently, a project such as that being illustrated here must not be authorized until full mitigation is available.

The local district is not excused from complying with section 41604. If there are offsets locatable and legally available within the local district, action must be taken or completed to obtain them. For example, a company applies for a cogeneration permit to construct a small electricity plant fueled by agricultural waste but the company cannot fully mitigate the plant's pollution impact within the nonattainment area. The local district by imposing stricter rules on industries emitting the same pollutant, such as ordering the installation of new control technology, can accommodate the proposed project and still show progress in the district toward attainment. In this illustration the district under section 41604 would be required to take or complete action to secure such offsets. However, as discussed in the prior illustration, a permit cannot issue under section 42314 unless such offsets are indeed located and legally enforceable.

In examining section 41604 and 42314 we are mindful of several principles of statutory construction. The primary rule is to "'ascertain the intent of the Legislature so as to effectuate the purpose of the law.'" (*People* v. *Davis* (1981) 29 Cal.3d 814, 828.) In determining legislative intent, we first turn to the language used, giving the words their usual and ordinary import. (*California Teachers Assn*. v. *San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698; *People* v. *Belleci* (1979) 24 Cal.3d 879, 884.) "Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (*Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) We believe the state statutes here are in harmony with each other and comply with the Clean Air Act, as was the intent of the Legislature.

The requirements of federal law bind the state if there is a conflict between state and federal law. The supremacy clauses of the United States and California constitutions would require the local districts to follow federal law. (U.S. Const., art. VI,

cl. 2; Cal. Const., art. III, § 1.) Moreover, regulations promulgated by a federal agency, such as the EPA, have the force and effect of federal statutory law. (*Public Utilities Commission of California* v. *United States* (1958) 355 U.S. 534, 543-544.) However, we discern no conflict. Under federal and state law in nonattainment areas a major new source or modification may be permitted only if its emissions are offset or they do not exceed the allowable levels in the growth increment for the area.

In order to satisfy the Clean Air Act (and the regulations adopted by the EPA thereunder) and at the same time comply with state law, local districts must provide the emissions reductions from other sources before they issue permits for new projects which cannot themselves furnish complete mitigation. Stated differently, the law (§§ 41604 & 42314 read together as part of a statutory scheme and in harmony with the Clean Air Act) requires the local districts to obtain the necessary emissions reductions *in advance* of the operation of the new cogeneration or resource recovery project. We observe no legislative intent to allow a new pollution source to operate and foul the air and then place the burden on a local district after granting the permit to search out a means of mitigation. New source review requires that a permit be withheld if granting it will impede progress toward meeting the standard for the particular pollutant in the area in question.

The Legislature has stated its intention to encourage cogeneration and resource recovery and its intention to comply with the Clean Air Act. The statutes must be interpreted consistently with both expressed intentions.

Section 41604 concerns the revision of the state plan to achieve, maintain or move toward state and federal standards in projects "expected to be permitted by 1987." This language indicates that the district is mandated to obtain the full mitigation in advance of granting approval. Thus, a local district before granting a preconstruction permit must completely mitigate the impact of a proposed less than 50 megawatt cogeneration or resource recovery project.

We do not read Health and Safety Code sections 41604 and 42314 as requiring a local district to violate those provisions of federal law that require adequate offsets and growth allowances to be in place when operation begins. Indeed, section 42301, subdivision (a), of that code provides that the issuance of a permit "shall not prevent or interfere with the attainment of any applicable air quality standard." Section 41604, as we have seen, contains similar language.

When it is impossible for an air pollution control district to provide the emissions reductions from other sources to offset the adverse air quality impacts of cogeneration technology and resource recovery projects of less than 50 megawatts of generating capacity as the mitigation required by section 41604 of the Health and Safety

Code, the district is not required to issue permits for such projects pursuant to section 42314 of the Health and Safety Code. When the mitigation required by section 41604 of the Health and Safety Code is available, an air pollution control district must both grant permits for cogeneration technology and resource recovery projects and provide the required mitigation in such a manner that the emissions reductions from other sources will be in place before operation of such projects.

APPENDIX

HEALTH AND SAFETY CODE

§ 41604. (a) The districts shall provide for, not later than July 1, 1984, and shall periodically revise as appropriate, the necessary mitigation of the air quality impact of (1) projects smaller than 50 megawatts expected to be permitted by 1987, pursuant to Section 42314, or (2) projects granted offset credits pursuant to Section 42314.5, so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment.

(b) If appropriate, the districts shall submit to the state board the necessary mitigation measures required by subdivision (a) of Section 41604 for inclusion in the next state implementation plan revisions.

§ 42314. Notwithstanding any other provision of any state or local new source review or prevention of significant deterioration rules and regulations, except as provided in subdivision (c), the district shall issue permits for the following:

(a)(1) The construction and operation of a cogeneration technology project, if the project will utilize, for each affected pollutant only, the appropriate degree of pollution control technology (BACT or LAER) as defined and to the extent required by the rules of the district.

(2) Pursuant to procedures developed in accordance with Section 41605, for the electrical generation portion of any cogeneration project, offsets shall be provided by the applicant only for those pollutant emissions which exceed the calculated average of emissions from hydrocarbon combustion-based electrical generating facilities operated by the serving utility in the same air basin to provide the same amount of electrical energy. In no event shall any calculated utility pollutant emissions displacements which may be considered in accordance with this section be banked or otherwise reserved for future use.

(3) Except as provided in paragraph (2), offsets shall be provided in accordance with the requirements of local rules and regulations.

(4) For cogeneration projects smaller than 50 megawatts for which offsets are required under either paragraph (2) or (3), the applicant shall be required to provide offsets only to the extent they are available from facilities it owns or operates in the district and would mitigate the project's impacts. In the case of a cogeneration project using a combined cycle configuration, the electrical capacity of the steam turbine portion may be excluded from the calculation of the total electrical capacity of the project for purposes of subdivision (a) of section 41604 and of this paragraph only if no supplemental firing is used for the steam turbine portion and if the combustion turbine has a minimum efficiency of 25 percent.

(5) In providing the electrical generation credit for the project pursuant to paragraph (2), and for the purposes of this section only, the utility, where not an applicant, shall not be required to furnish emission offsets on a case-by-case basis for the project, nor shall this section permit the district on a case-by-case basis to limit the ability of the utility to operate its existing hydrocarbon combustion facilities in accordance with the requirements of the Public Utilities Code or the governing body of a public utility owned by a municipality or other political subdivision of the state.

(b) The construction of a resource recovery project, if all of the following conditions are met:

(1) The project produces less than 50 megawatts of electricity, except as provided in paragraph (4).

(2) The project will utilize the appropriate degree of pollution control technology required by the new source review rule of the district.

(3) The project applicant has, in the judgment of the district, made a good faith effort to secure all available emission offsets to mitigate the impact of the project, but that sufficient offsets or other mitigation measures are not available. The applicant, however, shall be required to secure all the offsets which are available to mitigate the air quality impact of the project, except for resource recovery projects which constitute a modification to an existing source under the district's new source review rule, in which case the applicant shall only be required to provide offsets from facilities which the applicant owns or operates within the air basin.

(4) The project produces 50 megawatts or more, but less than 80 megawatts, of electricity, meets the requirements of paragraphs (2) and (3), is located in a district whose state implementation plan revisions have been approved by the Environmental Protection Agency and that has attained, or is reasonably expected to attain, national air quality standards for any criteria pollutant for which sufficient growth allowances are

available in the air quality maintenance plan or, in the event the project would cause any criteria pollutant to exceed the available or possible future growth allowance, the applicant shall secure offsets in an amount equal to the excess in the growth allowance, and processes municipal wastes from one or more municipalities. Notwithstanding any other provision of this section, any project under this paragraph shall comply with applicable prevention of significant deterioration rules and regulations.

(c) If a proposed resource recovery project under subdivision (b) has an electrical generating capacity of 50 megawatts or more, the district shall determine whether the project meets the requirements of this section and, in making its determination, shall consider the potential emission of noncriteria pollutants from project facilities and develop appropriate permit conditions. The district shall submit its determination and supporting analysis, including the analysis of noncriteria pollutants and appropriate permit conditions, to the State Energy Resources Conservation and Development Commission for use pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

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