

Breathing Easy

In a 'win, win, win' settlement, three major supermarket chain agreed to cut emissions from their diesel-powered trucks.

BY LEONARD NOVARRO

Proposition 65 came under the gun recently. And when the smoke cleared, a landmark settlement in one case shone the way for cleaner air in the Los Angeles Basin, while a summary judgment in the other was one of the first of its kind against a citizen enforcement of the state statute that is supposed to protect the public from exposure to toxic substances.

These results occurred less than a month apart - *People v. Lucky Store Inc., Vons Companies Inc., and Ralphs Grocery Co.*, BC190078 (L.A. Super. Ct., 2000); and *Davidoff of Geneva Inc. v. Yeroushalmi, consolidated with Davidoff of Geneva Inc. v. Consumer Advocacy Group*, SC055014 and SC056931 (L.A. Super. Ct., 2000).

The first case challenged the use of diesel fuel in several densely populated areas of Los Angeles adjacent to or near distribution centers of three major California grocery chains. The suit was brought by Attorney General Bill Lockyer, the Natural Resources Defense Council, the Coalition for Clean Air and the Environmental Law Foundation, under the California Safe Drinking Water and Toxic Enforcement Act. This law was passed by voters as Propositions 65 in 1986 to protect the public from exposure to substances known to cause cancer, including diesel fuel and tobacco.

Says Lockyer of the April 27 settlement in the diesel case, "For the first time, facilities that generate large amounts of traffic are taking responsibility for the harmful emissions they cause in a particular community."

Sidney Kanazawa of Pillsbury, Madison & Sutro of Los Angeles, who represented the defendants, says the grocery chains were trying to do "the right thing."

"This thing was not driven by fear of litigation or worrying about going to trial," he says. "In fact, they wanted to go to trial and show exactly where things lay, but they were intent on helping the public in large part because of the business they're in."

Attorneys Gail Ruderman Feuer of the Natural Resources Defense Council and Susan L. Durbin, two key plaintiffs' attorneys who argued the case, see it differently.

Says Feuer, "We knew in 1990 that diesel exhaust is known to cause cancer, but when we started our investigation, not one single company was issuing a warning. Our goal was to find the worst companies that should be giving warnings and weren't."

Durbin notes that the exhaust levels at the five distribution centers studied were 10 times the risk under state law.

If the case had gone to trial and the companies lost, they'd be required to pay penalties of up to \$2,500 per day for every person exposed, "and that can mount up pretty fast," says Durbin, pointing out that some 25,000 people live near these centers. As a result of the consent judgment, mediated by Toluca Lake neutral Gig Kyriacou, the



From left, Gig Kyriacou, Susan L. Durbin and Gail Ruderman Feuer were all involved in the resolution of a Proposition 65 lawsuit against several supermarket chains. The settlement calls for a switch to alternate fuel vehicles.

defendants, Lucky, Vons and Ralphs, will mail or deliver warnings in Spanish and English about exposure to the exhaust fumes to residents who live near the Albertsons-Lucky centers in Buena Park and San Leandro, the Vons-Safeway centers in Santa Fe Springs and El Monte, and the Ralphs Center in Glendale. Many of the residents in these areas are Hispanic.

The agreement also calls for the chains to lower diesel emission by cutting the idling time on trucks and using alternative fuels. Vons agreed to test 60 heavy-duty natural gas trucks, while Albertsons and Ralphs will use 25 trucks with alternative fuels. Only 15 percent of power used by all trucks can come from diesel, according to the agreement. An award of \$895,000 was also made to cover the plaintiffs' attorney fees.

Mediator Kyriacou called the settlement a "win, win, win" for everybody-plaintiffs, defendants and mainly, the public.

"As a result, there'll be less diesel in the air. This couldn't have been achieved in the court," he says.

The cases had been consolidated for trial to begin March 29. The settlement came after two years of negotiations on both sides. The case was filed in Los Angeles Superior Court in April 1998 and ordered to mediation by Judge Paul Boland.

SIDEBAR

Case cite: People of the State of California, Natural Resources Defense Council Inc.; Coalition for Clean Air Inc; and Environmental Law Foundation v. the Vons Companies Inc., Safeway Inc.; Ralphs Grocery Co.; and Lucky Stores Inc.; dba Lucky Food Centers, American Stores Co., dba Delaware American Food Stores CO., BC190070 through BC190090 (L.A. Super. Ct., 2000)

Type: Environmental pollution under Proposition 65

Settlement: Defendants agree to warn about exposure to cancer-causing diesel fuel in English and Spanish, and agree to reduce emissions

Attorneys: Plaintiffs- Bill Lockyer, attorney general, state of California; Richard M. Frank, chief assistant attorney general; Susan L. Durbin and Dennis Ragen, deputy attorneys general, all Sacramento; Gail Ruderman Feuer, Natural Resources Defense Council, Los Angeles; James R Wheaton, Environmental Law Foundation, Oakland; Fred H. Altshuler, Altshuler, Berzon, Nussbaum Rubin & Demain, San Francisco; Fredric D Woocher, Strumwasser & Woocher, Santa Monica Defendant-Sidney Kanazawa and Christopher J. McNevin, Pillsbury, Madison 7 Sutro, Los Angeles

Experts: Plaintiffs- Dr. Steve Colome, professor of environmental studies, University of California, Los Angeles

Mediator: Gig Kyriacou, Mediation Offices of Gig Kyriacou, Toluca Lake