

ENVIRONMENTAL LAW

CALIFORNIA
LAWYERS
ASSOCIATION

CYLA

Intro to Environmental Law Series

- Air Quality Law 101 – August 17, 2021
- Water Law 101 – September 2, 2021
- CEQA 101 – September, date TBD
- Navigating the Yosemite Conference – October, date TBD
- 30th Annual Environmental Law Conference at Yosemite – October 14-17, 2021



California Lawyers Association (CLA)

- Nonprofit, voluntary organization dedicated to the professional advancement of attorneys practicing in the state of California

California Young Lawyers Association (CYLA)

- Represents all lawyers in California in their first 8 years of practice
- Mission is to advance practical skills, leadership and pro bono opportunities, networking, and support to meet the unique needs of California's diverse community of new lawyers

Environmental Law Section (ELS)

- Mission is to advance the quality, breadth, and availability of information and services related to environmental, natural resources, land use, and energy law, and to enhance the profession by cultivating a well-informed, collegial, and diverse group of lawyers and law students throughout the state

Intro to Environmental Law Series

Air Quality Law 101



Moderator:

Marisa Choy, Attorney, Greenberg Glusker LLP



Speakers:

Jessi Hafer Fierro, Assistant Counsel, San Joaquin Valley Air Pollution Control District



Byron Chan, Senior Associate Attorney, Earthjustice



AGENDA

- **PROCEDURAL & SUBSTANTIVE BASICS**
- **WORK EXAMPLES**
- **OPPORTUNITIES**
- **RESOURCES**
- **WAYS TO GET INVOLVED**
- **QUESTIONS & DISCUSSION**

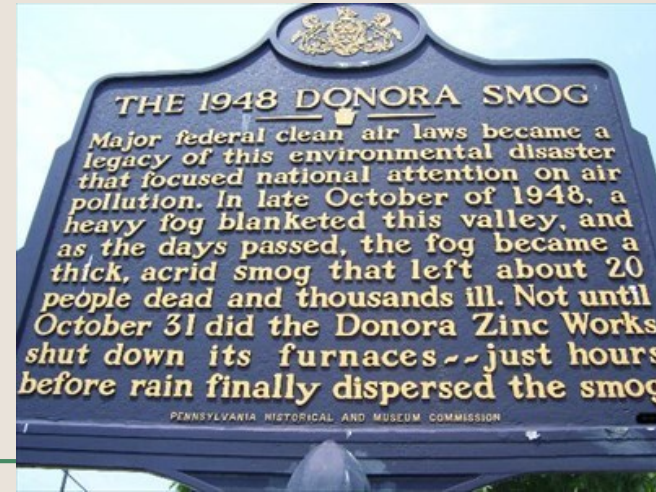
Historical Air Quality Problems



<http://www.pbs.org/kenburns/dustbowl/photos>



https://laist.com/2018/07/09/happy_smogiversary_la.php



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<https://www.smithsonianmag.com/history/a-darkness-in-donora-174128118/>



The view to the south from the Empire State Building on Nov. 24, 1966, one of New York's worst smog days. Neal Boenzi/The New York Times

<https://www.nytimes.com/2017/02/28/nyregion/new-york-city-smog.html>



By Ozone	By Year Round Particle Pollution	By Short-Term Particle Pollution
#1: Los Angeles-Long Beach, CA	#1: Bakersfield, CA	#1: Fairbanks, AK
#2: Bakersfield, CA	#2: Fresno-Madera-Hanford, CA	#2: Fresno-Madera-Hanford, CA
#3: Visalia, CA	#3: Visalia, CA	#3: Bakersfield, CA
#4: Fresno-Madera-Hanford, CA	#4: Los Angeles-Long Beach, CA	#4: San Jose-San Francisco-Oakland, CA
#5: Phoenix-Mesa, AZ	#5: Medford-Grants Pass, OR	#5: Yakima, WA
#6: Sacramento-Roseville, CA	#6: Fairbanks, AK	#6: Los Angeles-Long Beach, CA
#7: San Diego-Chula Vista-Carlsbad, CA	#7: San Jose-San Francisco-Oakland, CA	#7: Logan, UT-ID
#8: Denver-Aurora, CO	#8: Phoenix-Mesa, AZ	#8: Redding-Red Bluff, CA
#8: Salt Lake City-Provo-Orem, UT	#9: Pittsburgh-New Castle-Weirton, PA-OH-WV	#9: Missoula, MT
#10: San Jose-San Francisco-Oakland, CA	#10: El Centro, CA	#10: Sacramento-Roseville, CA
#11: Houston-The Woodlands, TX	#11: Cincinnati-Wilmington-Maysville, OH-KY-IN	#11: Visalia, CA
#12: Las Vegas-Henderson, NV	#12: Detroit-Warren-Ann Arbor, MI	#11: Spokane-Spokane Valley-Coeur d-Alene, WA-ID
#13: El Paso-Las Cruces, TX-NM		#13: Phoenix-Mesa, AZ

American Lung Association,
State of the Air, “Most Polluted
Cities,”
<https://www.lung.org/research/sota/city-rankings/most-polluted-cities>

EXAMPLES OF AIR POLLUTION SOURCES

STATIONARY SOURCES

Point Sources

Power Plants



Refineries



Businesses



Area Sources

Small Engines



Agricultural
Burn



Consumer Products



MOBILE SOURCES

On-Road

Trucks



Cars/Buses



Off-Road

Ships



Trains



Construction
Equipment



Planes



ENVIRONMENTAL FACTORS

Mixing and Ventilation



Temperature



Seasons



Storms



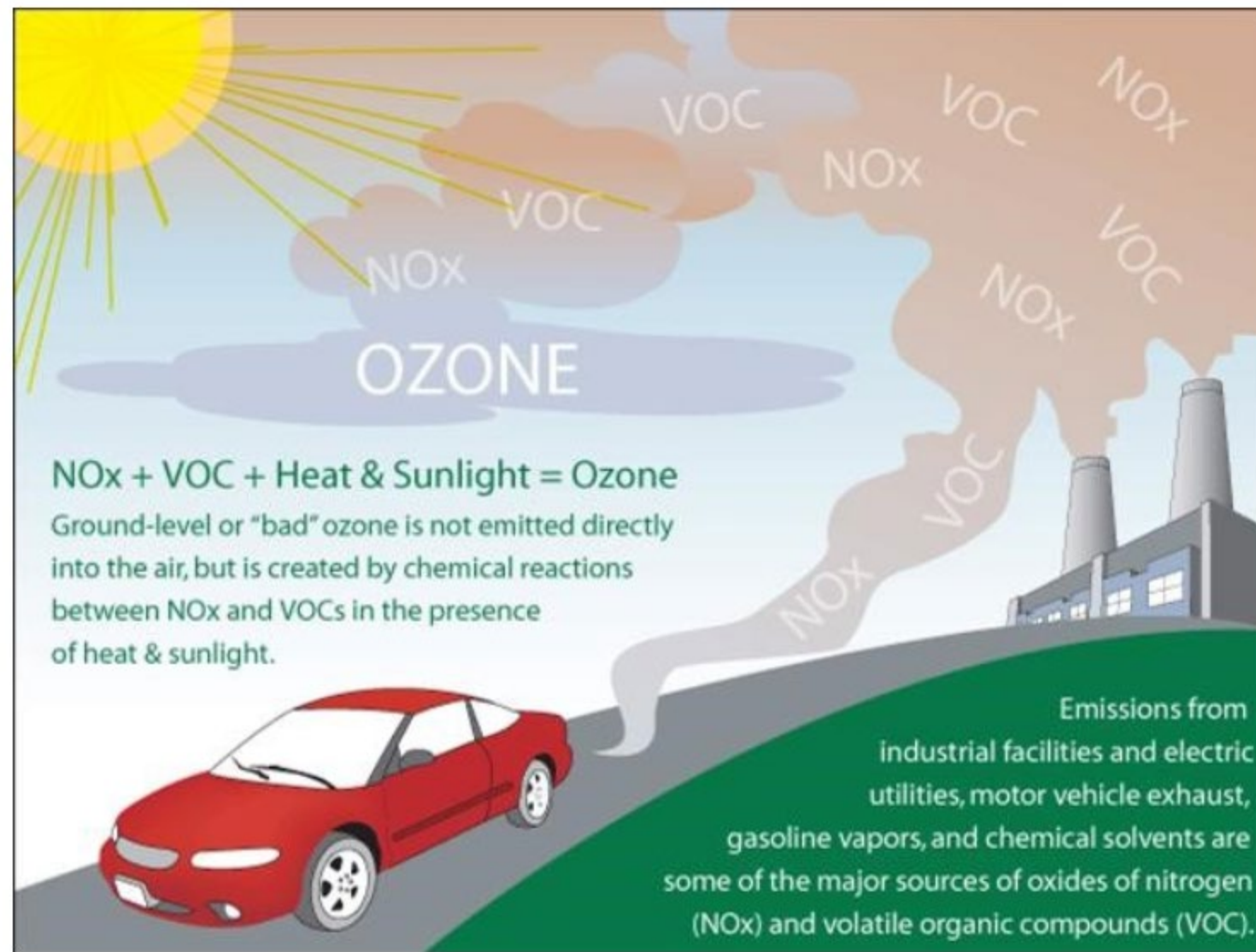
Fog and Humidity



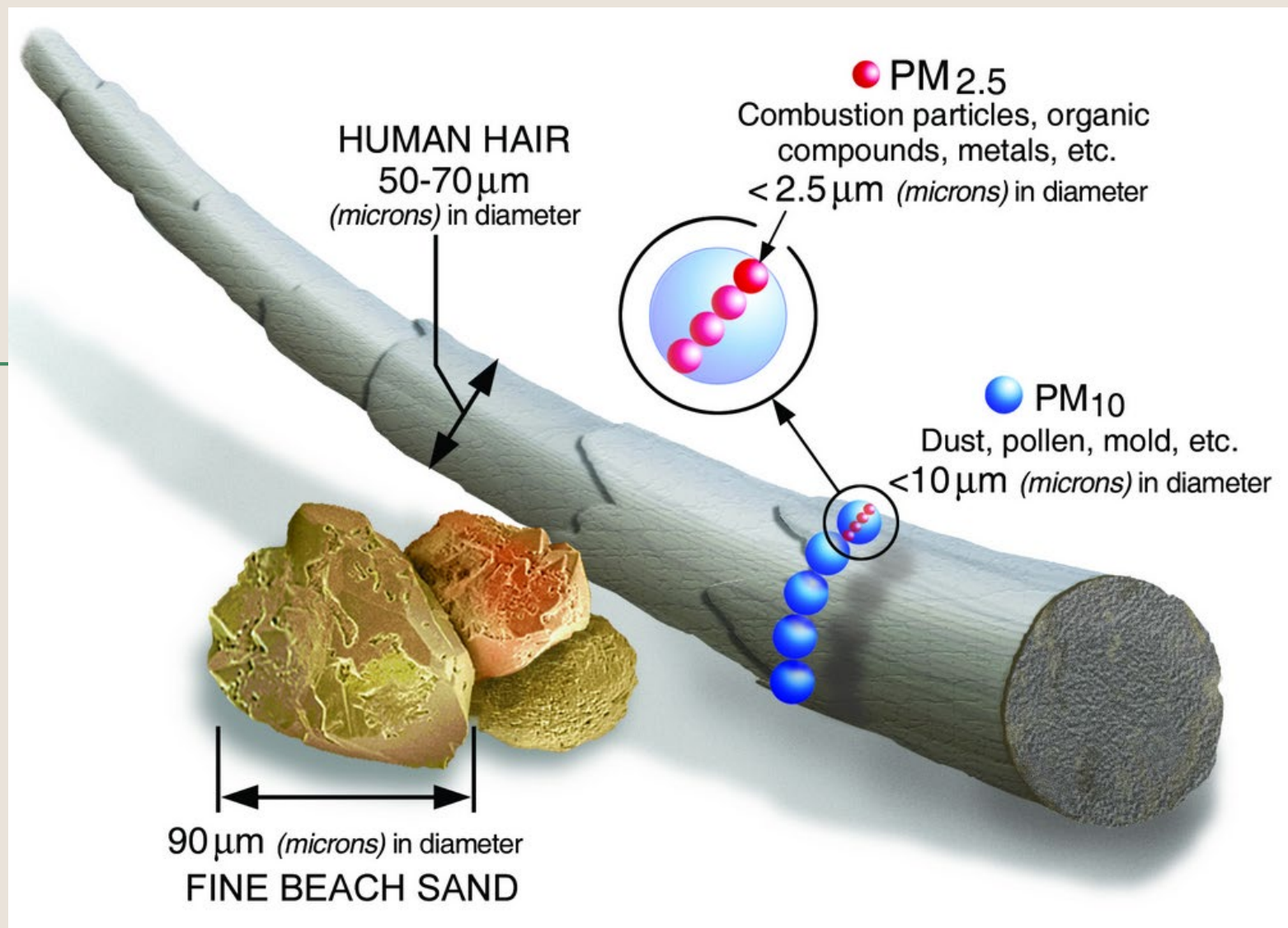
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South Coast AQMD 2020
Annual Report, page 4,
<http://www.aqmd.gov/docs/default-source/annual-reports/2020-annual-report.pdf>



EPA, Ground-level Ozone Basics, <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics>



Federal Clean Air Act

- 1955: Air Pollution Control Act
- 1963: Clean Air Act
- 1967: Air Quality Act
- 1970: Clean Air Act
- 1977: CAA Amendments
- 1990: CAA Amendments
- Also several minor amendments
- Also implementation through EPA regulations (Federal Register, Code of Federal Regulations)

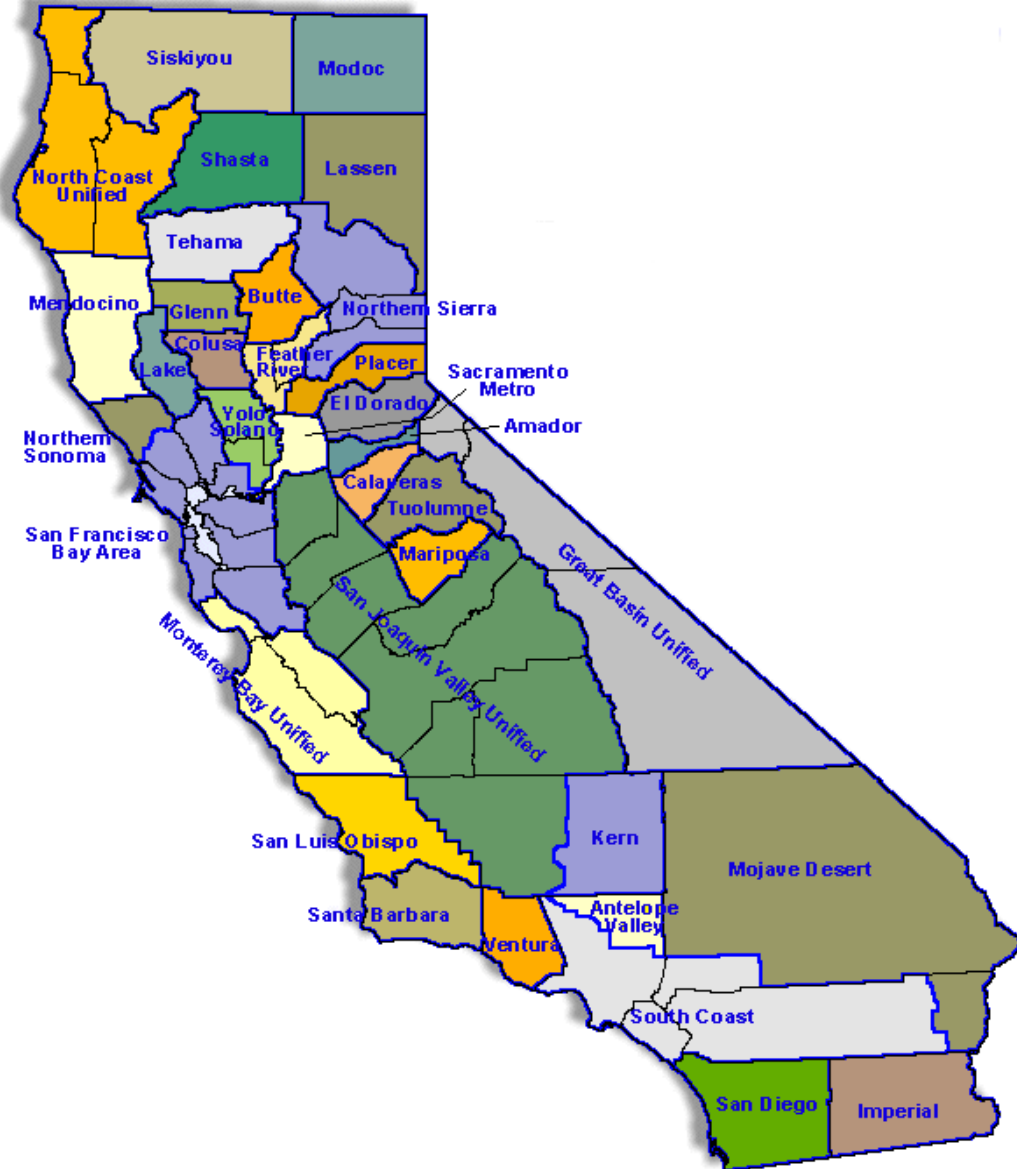
Federal Clean Air Act

- U.S. EPA establishes National Ambient Air Quality Standards (NAAQS), designates regions as attainment or nonattainment, and assigns nonattainment classifications
 - NAAQS to be based on public health studies without regard to costs of achieving the standards (Whitman v. Am. Trucking Associations, 531 U.S. 457 (2001))
 - NAAQS for six “criteria pollutants:” ozone, particulate matter (PM10 and PM2.5), sulfur dioxide, lead, nitrogen dioxide, and carbon monoxide
- States develop “State Implementation Plans”:
 - Document current air quality and emissions
 - Model future air quality
 - Identify specific regulations and other strategies to meet the attainment deadline
 - Satisfy progress milestones and other demonstrations
- EPA approval makes the plan federally enforceable
- The state implements the plan by adopting regulations and fulfilling other commitments

Early Efforts in California

- 1947: Los Angeles County Air Pollution Control District formed (first such body in the nation)
- Bureau of Air Sanitation – part of the Dept. of Public Health
- 1955: Bay Area APCD created
- 1966: California establishes the nation's first tailpipe emissions standards
- 1967: Air Resources Board created – combining the Bureau of Air Sanitation and the Motor Vehicle Pollution Control Board

California Air Districts



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AIR RESOURCES BOARD

CARB & Regional Boards

- CARB regulates on-road mobile sources (with EPA-waiver) and consumer products
- Regional air districts regulate stationary and many “area sources”
 - Also “Indirect Source Review” at San Joaquin and South Coast
- California Health and Safety Code §40001 provides local authority to adopt rules to achieve and maintain state and federal ambient air quality standards.
- The agency must assess the rule for necessity, clarity, socioeconomic impacts, and more (§§40727, 40728.5)
- CARB also establishes state ambient air quality standards



Adopt Rules

Permitting

Enforcement

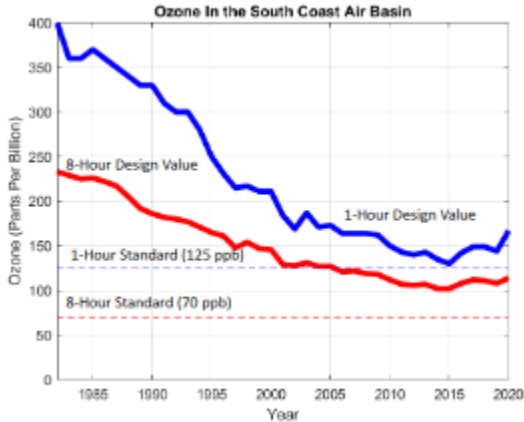
Permitting

- Facilities installing or modifying equipment that may emit air pollution need to obtain a permit from the regional permitting authority prior to installations (though there are often exemptions)
 - Authority to Construct (ATC) (pre-construction) and Permit to Operate (PTO)
- Process:
 - Facility/applicant submits the appropriate applications to the agency
 - The agency conducts a preliminary/completeness review, and then a more detailed review (including engineering analysis and health risk reviews)
 - Permit conditions are drafted to identify operational limitations, applicable rules, etc
 - Satisfy applicable CEQA requirements
 - Public noticing (if applicable)
 - ATC issued
 - After equipment is installed, the agency conducts an inspection to ensure ATC compliance
 - PTO issued

Enforcement

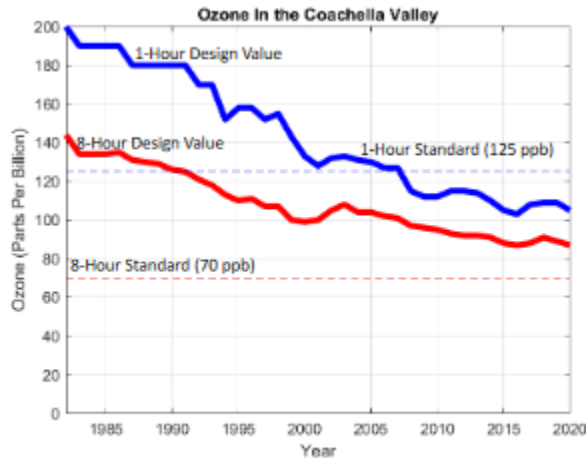
- Criminal and Civil penalties: California Health and Safety Code §§42400
- In determining the amount of penalties to be assessed, the court or the settling agency considers “all relevant circumstances,” including but not limited to the extent of harm, persistence, duration, frequency, record of maintenance, the unproven nature of the control equipment, mitigation, and financial burden of the defendant (CH&SC §42403)
- Variances: hearing boards can grant temporary relief from requirements of air district rules (CH&SC §§40800, 42350 et. seq.)

Air Quality Progress and Remaining Challenges: South Coast

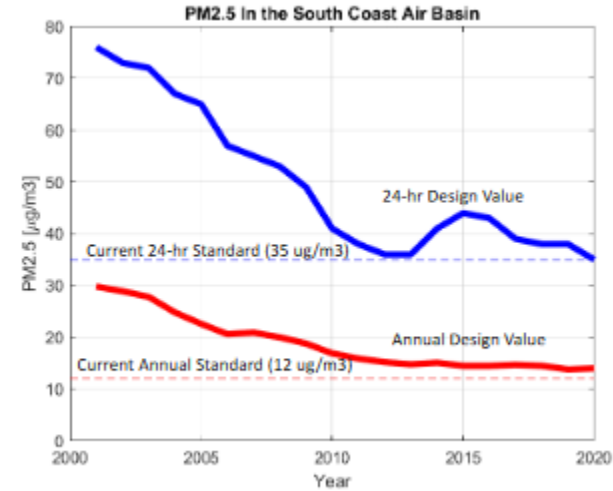


**OZONE IN THE
SOUTH COAST
AIR BASIN**

**OZONE IN THE
COACHELLA VALLEY**



*Concentrations in the graphs are design values, which are metrics developed by U.S. EPA to determine attainment of air quality standards.



**PM2.5 IN THE SOUTH
COAST AIR BASIN**

Number of days exceeding the 1997 Ozone standard in 2020*:

26

*At any station in the South Coast Air Basin

Number of days exceeding the 2015 Ozone standard in 2020*:

157

*At any station in the South Coast Air Basin

Number of days exceeding the 24-hr PM2.5 standard in 2020* (excluding exceptional events):

16

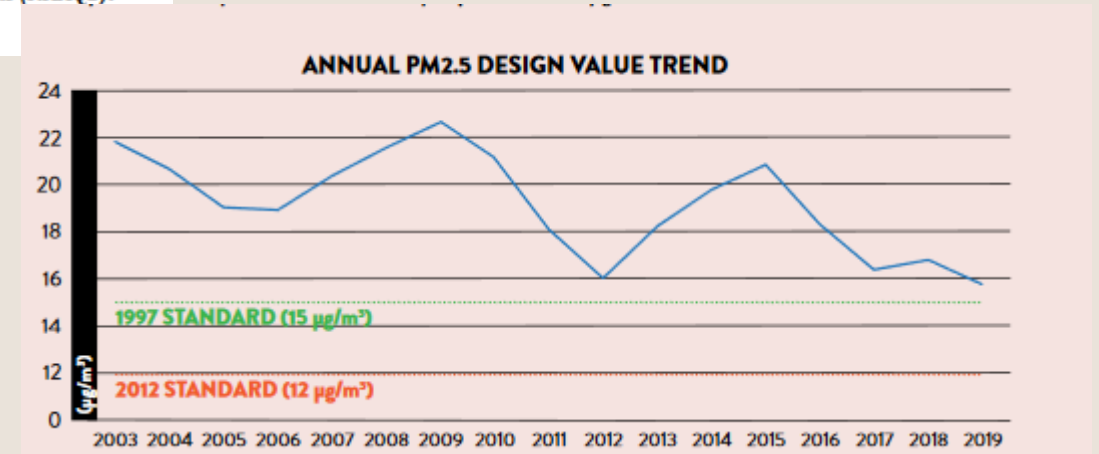
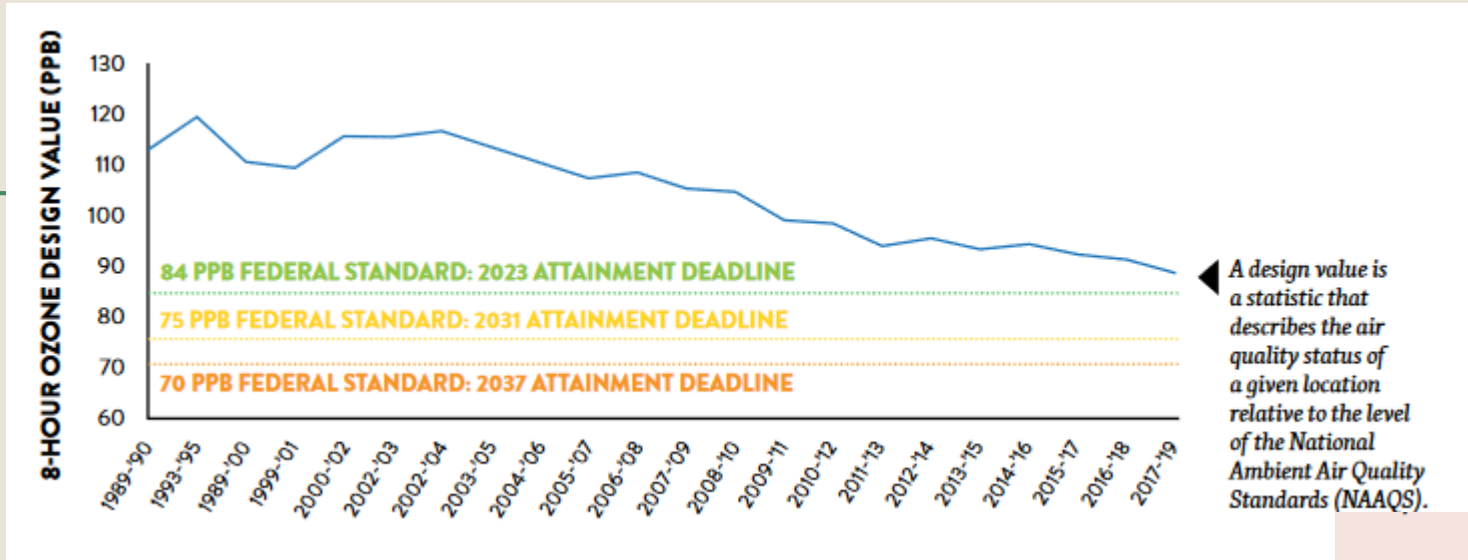
*At any station in the South Coast Air Basin

Number of No Burn Days Declared in 2020:

25

South Coast AQMD 2020 Annual Report, page 5, <http://www.aqmd.gov/docs/default-source/annual-reports/2020-annual-report.pdf>

Air Quality Progress and Remaining Challenges: San Joaquin Valley



San Joaquin Valley APCD 2020 Annual Report, pages 7 and 10,
https://www.valleyair.org/General_info/pubdocs/2019-20-Annual-Report.PDF

Related Issues

- Climate Change
- Environmental Justice (EJ) and AB617
- Transported Air Pollution and Interstate Pollution
- Wildfire Impacts
- California Mobile-Source Waiver
- Acid Rain
- Stratospheric Ozone Protection
- Air Quality Analysis through the California Environmental Quality Act (CEQA)

WORK EXAMPLES

- Submit comments to EPA, CARB, and local air districts regarding proposed actions
- Participate in related workshops and public hearings
- File a citizen suit
- Challenge an agency action
 - Writ of mandate in county superior court
 - Petition the 9th Circuit for review of Region 9 action
 - Petition the D.C. Circuit for review of an action of nation-wide applicability
- Represent a client in determining the applicability and implementation of permitting requirements
- Represent a client in an enforcement action
 - Negotiate with the agency issuing a violation to your client
 - Represent a client in enforcement litigation in county superior court
- Represent a client in seeking a variance (temporary relief from regulations pursuant to California Health and Safety Code) before a regional agency Hearing Board

OPPORTUNITIES

- In-house counsel at government agencies (EPA, CARB, local Air Districts)
- Counsel for Non-Governmental Organizations (NGOs) advocating for communities impacted by air pollution
- Representing businesses and other entities subject to local and state regulations

RESOURCES

- Current National Ambient Air Quality Standards: <https://www.epa.gov/criteria-air-pollutants/naaqs-table>
- California Air Resources Board: <https://ww2.arb.ca.gov/>
- Map and links for regional California Air Districts: <https://www.arb.ca.gov/capcoa/dismap.htm>
 - Refer to your local agency for regulations, grants, real-time air quality data, and more
- U.S. EPA Air Topics: <https://www.epa.gov/environmental-topics/air-topics>
- Clean Air Act Permitting in California: <https://www.epa.gov/caa-permitting/clean-air-act-permitting-california>
- American Lung Association State of the Air: <https://www.lung.org/research/sota>
- Congressional Research Service, “Clean Air Act: A Summary of the Act and Its Major Requirements,” <https://crsreports.congress.gov/product/pdf/RL/RL30853>

WAYS TO GET INVOLVED

- Join CLA, CYLA, or one of the Sections once you graduate and are admitted to the Bar
- Attend webinars and in-person events (e.g., Yosemite Conference, Diversity Conference, 101 Series, Annual Meeting)
- Earn MCLE credit through online videos or self-study materials
- Submit an article for our eNews or other Section publications
- Watch CYLA's 10 Minute Mentor videos on YouTube
- Participate in Student Negotiation and Writing Competitions
- Attend our Book Club
- Apply for Summer Fellowships

Diversity & Inclusion Fellowship for Law Students

For more information about the *Environmental Law Diversity & Inclusion Fellowship* and to apply please visit: <https://calawyers.org/section/environmental-law/fellowships/>



QUESTIONS & DISCUSSION

THANK YOU!



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