

Metro/Valley

THE FRESNO BEE Saturday, July 22, 1989

Lawsuit seeks to cleanse

Southwest residents blame three industrial neighbors

By DONALD E. COLEMAN
Bee staff writer

A \$10 million class action lawsuit has been filed by residents of a southwest Fresno community against several industries to stop the foul odors wafting through their neighborhood.

The class action lawsuit was filed in Fresno County Superior Court Thursday on behalf of Precious Whittle and others against Darling-Delaware, Peterson Mfg. Co., Zacky Farms and PKG Industries, operating under the name Southwest Hide Co.

"At first we just wanted them to eliminate the odors," Whittle said. "Now we just want them to get out. We've tried to work with them since 1974."

Whittle, who has lived in the neighborhood near the Fruit and Church Industrial Park since 1954, said the lawsuit was the residents' last alternative.

"I decided that I was not going to stand by and let them hurt people," she said. "People are sick. They are coughing and choking and having problems breathing. We don't want to put up with this the rest of our lives."

The plaintiffs' request for a temporary restraining order was denied Thursday. The suit is seeking to eliminate the odors or shut the operations. In addition, general damages, medical expenses, lost earnings and relief for the diminished value of the plaintiff's property are also being sought.

The \$10 million is being requested in punitive damages.

A request for a preliminary injunction will be heard Aug. 9. The complaint accuses the defendants of being a nuisance. It says the odorous emissions from the plants are harmful to the health of those in the neighborhood.

It also says the smells are indecent or offensive to the senses and an obstruction that keeps the residents from the comfortable enjoyment of their property.

The suit also alleges the intentional and negligent infliction

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everybody all together."

Carter and Dahl also denied claims by Whittle that the actions of both companies were "deliberate, intentional, and discriminatory."

"They felt like they could operate like this and get away with anything they want because of the percent of blacks, Hispanics and Asians in the neighborhood," Whittle said. "They wouldn't do something like this on the north side."

Carter said, "Zacky hired 600 or 700 people when the jobs were created by redevelopment. The company does not discriminate. They are very active in the community."

Southwest officials, reached in Manteca, declined comment.

The Fruit and Church area was converted into an industrial park in the early 1970s to create jobs and hold down land costs.

Lawsuit

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of emotional distress as well as negligence in their operations.

Attorneys for Zacky Farms and Darling-Delaware said they had only received notices the day of filing and had not had time to completely review the complaint.

"We are confident that the claims will be found to have no merit," said William Dahl of the firm of Thomas, Snjell, Jamison, Russell and Asperger, which represents Darling-Delaware.

Robert G. Carter, of the legal firm of Wild, Carter, Tipton and Oliver, which represents Zacky, said, "the accusations against Zacky are very minimal." He said when filing suit, the plaintiffs "probably lumped ev-

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SACRAMENTO HOT-LINE

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Editorials

A stinking mess

Officials of the Fresno County Air Pollution Control District promise that odors from a West Fresno rendering plant that have made a nearby residential neighborhood an unpleasant place to live in will be eliminated by June 30 or the plant will be closed down.

Considering the record so far, we can't blame those who are skeptical.

Government bigwigs and company executives have been jerking the residents around for more than 20 years, promising that the odors from the plant, Petersen Manufacturing Co. at 2354 S. Fruit Ave., were going to be stopped in the near future. But that hasn't happened.

Ah, but this time, insist the officials, new owners have taken over and they are determined to end the Petersen stink. As an indication of their earnestness, the owners are investing up to a half-million dollars in air scrubbers and other improvements.

The law requires giving the firm a last chance. In the meantime, this case could well be nominated as a textbook example of flagrant citizen abuse and poor planning. The city should never have allowed the plant to open near a residential area. Anytime

since then, the city could have revoked Petersen's permit to operate. But it didn't, preferring to blame the county for not stopping the nuisance. The city, indeed, has compounded the problem by encouraging other smelly industries to locate in the area. The county, for its part, didn't clamp down on the company for creating a nuisance.

In recent years, West Fresnans have circulated four petitions protesting that the smell has been so strong that they have had to leave their homes at times to get relief.

Their complaints mostly went unheeded until the plant was closed for 12 days last fall by the air pollution control district. The residents thought the closing was to be permanent, but that was a misunderstanding. The plant was reopened, as was intended, when the new owners, under heavy pressure from the county, came up with a plan to stop the odors.

Now the mess seems headed for a June 30 climax, when the Petersen stink either will have to cease or the plant will be closed. Whatever happens, neither the company nor the city nor the county has shown itself to advantage.

State calls odor controls minimal

By DONALD E. COLEMAN
Bee staff writer

The Fresno County Air Pollution Control District may have done the minimum in imposing controls on the Darling-Delaware plant in southwest Fresno, the state Air Resources Board said.

County officials strongly deny the charge and point to the recent heavy financial modifications it required of the company along with revoking the company's permit to operate, which still has not been reissued.

The ARB report, issued this past April as a follow-up to citizens' complaints, said:

"It appears that the District's policy has been to add the smallest increment of control measure to the existing system in the hope of eliminating odors."

Gary Carozza, Fresno County environmental health director, called the report "verbiage" and a "standard chastising that's sent to all the districts."

"I don't agree with it," Carozza said. "When you're forcing a business to spend over \$500,000, that's not incremental."

The plant, now owned by the Darling-Delaware Co., has been the target of numerous complaints over the past 30 years because of foul odors. Darling-Delaware recently bought the facility from Peterson Manufacturing, which had operated the plant since 1965. The facility originally opened in 1956 as Sierra Rendering.

Last fall, the plant was closed for 12 days by the APCD but was reopened with several conditions. Among them were that the dock for loading and unloading raw materials be enclosed; that a new scrubber be installed; and that the meal room be enclosed.

When the plant was reopened, it did so without a new permit to operate. The conditions of remaining open for business were included with the document authorizing construction, Carozza said.

"The next 30 to 60 days are a shakedown

period," Carozza said. "If they can't eliminate the odors, then we can withdraw the authority or seek an abatement of a nuisance which could ultimately result in closing the plant."

Precious Whittle, head of the Walnut Gardens Community Organization, said she's heard it all before. "The APCD is just playing games. They've promised to close them down before and never did it. The people in this community just don't trust the county officials."

The APCD announced last week that Darling-Delaware has completed the requirements imposed on it last fall. Robert Dowell, air quality manager of the APCD said, "They've done everything we've asked them to do. They've also done some incidental housekeeping items beyond what we asked."

Whittle, who has lived in the neighborhood since 1954, said most of the residential neighborhood was there before the plants. She insists that it's not enough because the odors persist after the June 30 deadline. Whittle

said that was the latest deadline imposed by the APCD. She said she has a letter saying the APCD would close down the plant if the odors were not eliminated by the given date.

"You could spend \$10 million and if the smells are still there it doesn't do our health any good," Whittle said. "It's not about the amount of money that is spent."

The ARB report, issued from the office of James Morgester, chief of the compliance division, said: "The District has frequently amended conditions on the facility's permit to operate. Some conditions have been deleted while others have been introduced without the benefit of a full technical analysis."

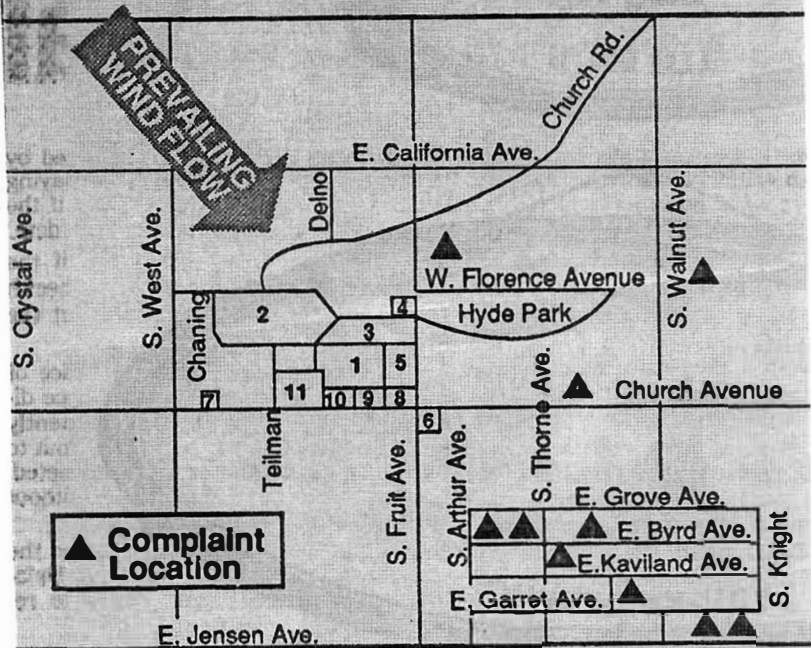
Carozza said the odors that penetrated the air were anticipated because Darling-Delaware needed a period of adjustment to replace its old system.

"We're going to have meetings to prove whether it works or not," Carozza said.

See **Odor**, Page 83

Odor complaints

Map shows location of complaints made to the state Air Resources Board about odors. Most complaints are down wind from rendering plants and other facilities.



- | | | |
|-----------------------|--------------------------|----------------------|
| 1. Darling-Delaware | 5. Southfield Beef Co. | 9. Waste water plant |
| 2. Zacky Farms | 6. King Of Meat | 10. CIT Truck Repair |
| 3. Southwest Hide Co. | 7. Rapelli Sausage | 11. Storage yard |
| 4. Harvey By-Products | 8. Abandoned gas station | |

Source: California Air Resources Board

Fresno Bee/Perry Huffmar

Odor

Continued from Metro page

optimistic, but there's never going to be a day when I can look someone in the face and say there is not going to be an odor."

Although the Darling-Delaware facility has been the primary target of citizen complaints, other plants and proposed plants in the Fruit and Church Industrial Park in southwest Fresno have felt the wrath of the residents who complain about respiratory problems, and eye and throat irritation.

Besides Darling-Delaware, other facilities located in the industrial park are Zacky Farms, Southwest Hide Co., Harvey By-Products, Southfield Beef Co., King-O-Meat Co., and Rapelli of Calif.

The industrial plants are located northwest of the Walnut Gardens community. The prevailing wind in Fresno is one that flows out of the northwest, swooping across the industrial park and carting the odors over the residential area.

Last week, for the second time in four months, the Fresno Planning Commission required that an environmental impact report be prepared before Modesto-based Western Power Systems could build a gas-burning cogeneration plant in the area.

This past spring, Zacky Farms was rebuffed by the Planning Commission in its attempt to build a

an EIR being prepared.

The attorney for Zacky believes that his client may have been a victim of the cumulative effect of industry in the area. Robert Oliver, who will represent Zacky at the July 19 Planning Commission hearing, when the protein conversion facility is heard again, said, "My client has never had a complaint lodged by Fresno County health authorities. The issue of our application has been clouded by concerns voiced by area residents over other plants in that designated industrial area."

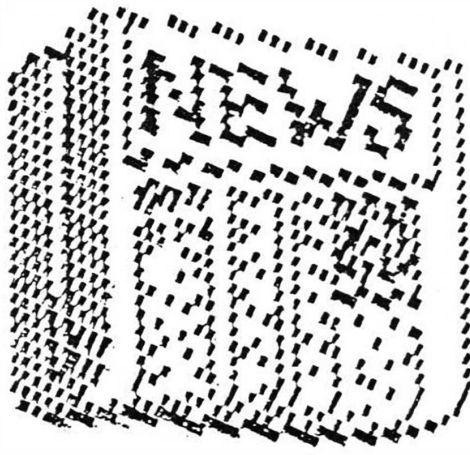
The struggle for most residents has been long. In 1967, two years after purchasing the facility, Peterson officials vowed to reduce the objectionable odors.

Seven years later, the residents enlisted the aid of the county health department and the county District Attorney's office. The DA ordered new equipment installed to curb the foul odors.

Now, 22 years after Peterson's promise, the residents are still complaining.

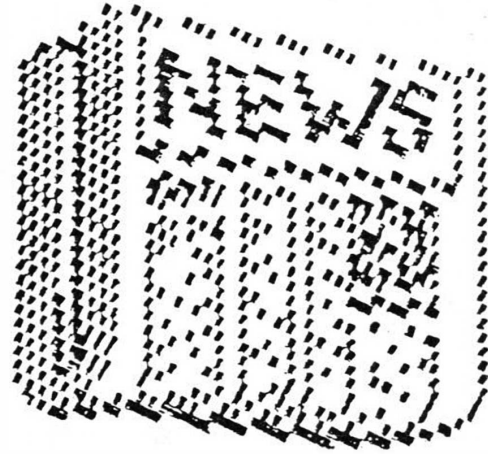
"They promised to close the plant in 1974, but they didn't," Whittle said. "We've lost all confidence in the county and the APCD."

Aletha Solis moved to the neighborhood two years ago from the Bay area. She said she knew nothing about the smells that penetrated the air, but quickly found out. "That's why I got a four-bedroom house for \$35,000," she said. "Anything that is too good to be true,



ATTENTION!

ATTENTION!



ATTENTION!

ALL "WEST FRESNO RESIDENTS", ZACKY FARMS HAVE MADE AN APPLICATION TO THE PLANNING COMMISSION TO BUILD ANOTHER RENDERING PLANT IN THE FRESNO AREA (FRUIT AND CHURCH AVENUE).

WE CANNOT ACCEPT ANY MORE CHEMICAL ODORS IN WEST FRESNO.

THEY CANNOT CONTROL THE ODORS FROM PETERSON RENDERING COMPANY, ZACKY FARMS COMPANY AND SOUTHWEST HIDE COMPANY.

WE MUST PREVENT ANY MORE HEALTH HAZARDOUS PLANTS FROM BEING BUILT IN THE FRUIT AND CHURCH INDUSTRIAL AREA. WE ARE ASKING YOU TO PLEASE ATTEND THIS MEETING.

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CITY HALL - ROOM 215

WHEN: AUGUST 16, 1989 (WEDNESDAY)

TIME: 5:30 PM

LET'S STAND TOGETHER FOR WEST FRESNO!

THE WALNUT GARDEN ORGANIZATION

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Bee staff writer

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Fresno Bee

PRECIOUS WHITTLE
—'People are sick'

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Whittle, who has lived in the neighborhood near the Fruit and Church Industrial Park since 1954, said the lawsuit was the residents' last alternative.

"I decided that I was not going to stand by and let them hurt people," she said. "People are sick. They are coughing and choking and having problems breathing. We don't want to put up with this the rest of our lives."

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The \$10 million is being requested in punitive damages.

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See **Lawsuit**, Page B7

Mary Lou Garcia, 35-year southwest Fresno resident, with granddaughter Dolores, 6, is tired of

Abatement

Continued from Metro page

"I will probably recommend various operating conditions in the interim," Freund said. "The company is putting a lot of money into the plant and attempting to solve the problem — we realize that. However, we want to protect people during the next few months when the weather is starting to get warmer."

Freund called the odors sometimes emitted by the plant a "major inconvenience" to nearby residents who are unable to enjoy the full benefits of their property. The abatement order, if granted, could limit the hours of operation or the type of material handled by the plant.

"If the citizens come out in large enough numbers and can demon-

strate at the hearing that their use and enjoyment of their homes is substantially affected, it could warrant an abatement order," Freund said.

Dave Clark, general manager of the Peterson plant, was out of town Thursday and could not be reached for comment.

The rendering plant processes meat, bones, grease and other wastes from animal slaughtering into bone meal and tallow, which are sold for feed and other uses.

Officials have blamed much of the stench on an outdoor loading area, which is to be enclosed under the conditions of a new permit. The plant also has agreed to limit its handling of chicken parts.

Last fall, the plant was shut down for 12 days and reopened in November to new complaints. The plant has embarked on an eight-

month plan to eliminate the odors.

Precious Whittle, a member of the citizen's group who lives less than half a mile from the plant, said cleanup efforts have failed and the stench from the plant is frequently unbearable.

Aletha Solis said she bought a house about a mile from the plant last year.

"You can't go out in your yard and barbecue because it gets to stinking so bad," Solis said. "If you're in the house and have the cooler on, the stink covers the whole house and sometimes wakes you up at night. . . . You can't have company — it's embarrassing."

Robert Dowell, air quality control chief for the Fresno County Air Pollution Control District, said the hearing board will review the abatement order petition and decide if a public hearing is warranted.

Abatement of rendering plant sought

By SCOTT REEVES
Bee staff writer

Operations at the Peterson Manufacturing Co. rendering plant in west Fresno should be curtailed or halted until an extensive renovation is completed to end the emission of foul odors, a citizens group believes.

The Walnut Gardens Community Organization is seeking an abatement order for the plant at 2354 S. Fruit Ave. However, the Fresno County Air Pollution Control District has not yet set a hearing date.

Michael B. Freund, a Berkeley attorney representing the organization, said he does not seek to close the plant permanently, but wants to protect area residents until it can be enclosed and the emission of strong smells halted.

See Abatement, Page B4

Hearing cleared air, lawyer says

Industries' odors 'greatly reduced'

By **JOE ROSATO**
Bee staff writer

The foul odors that came from southwest Fresno industries appear to be clearing up.

At least that is the opinion of the attorney for Precious Whittle, a Fresno woman who has waged a long battle against the firms she said emitted the foul odors.

Whittle's attorney, Michael Freund of Berkeley, said that there has been a "significant reduction" in the odors and that it has been that way since a court hearing was held in early August seeking to halt the odors.

Whittle filed a \$10 million lawsuit in July against Darling-Delaware (formerly Peterson Mfg. Co.), Zacky Farms and Southwest Hide Co. The three businesses are in the Fresno

Whittle's attorney, Michael Freund of Berkeley, said there has been a "significant reduction" in the odors.

Church Industrial Park, northwest of the Walnut Gardens community.

She and other residents had complained to the Fresno County Air Pollution Control District about the plants' odors, saying they often had been prevented from enjoying outdoor activities because of them.

Fresno County Superior Court Judge James Thaxter last month denied Whittle's motion for a preliminary injunction.

Thaxter, in a ruling issued Aug. 3, said the damage to Darling-Delaware and the other defendants appears to outweigh any damages that Whittle and other area residents could suffer between now and the trial that will be held on the merits of the case.

"The court is not insensitive to the plaintiffs' complaints. The evi-

dence, however, does not clearly establish that the defendants are maintaining a nuisance," Thaxter wrote in his ruling.

"The plaintiffs have also not offered any medical evidence suggesting that the odors of which they complain pose any health hazard."

Thaxter said declarations submitted by residents describing the odors "are on a pre-printed form apparently prepared by plaintiffs' counsel. They contain suggestive and leading statements."

In addition, Thaxter said, although Freund conceded that recent curative measures taken by Darling-Delaware have improved the situation, the declarations failed to make any reference to the changes.

Thaxter, in his ruling, quoted Robert Dowell of the APCD, who noted that "there has been a marked improvement since June 30, 1989" in odor control at the Darling-Delaware plant.

Thaxter said the APCD is monitoring the situation and has power to take appropriate action if it determines that a nuisance exists.

Although Thaxter refused to grant the injunction, Whittle's lawsuit is still in the courts.

According to Freund, Whittle has told him that the odors were "greatly reduced" the week after the hearing.

"This was the first time that she has ever told this to me since I have been counsel for the community," Freund said in a letter to Fresno attorney Robert Wright, whose law firm represents Darling-Delaware. Whittle could not be reached for comment.

"We are extremely pleased that the situation has improved and hope that the present odor situation continues. Re-routing and covering the trucks is a positive step toward reducing the odors," Freund wrote.

While the odors have abated, Freund said that if they return, "we will go back to court with another motion for injunction. Hopefully, this will not be necessary."

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