COMMENT LETTER #3

COMMUNITIES FOR BETTER ENVIRONMENT

APR-27-2001 FRI 03:54 PM FROM: FAX: PAGE 2

COMMUNITIES FOR A BETTER ENVIRONMENT

VIA E-MAIL, FACSIMILE AND U.S. MAIL

April 27, 2001

Mr. Jonathan Nadler (c/o CEQA)
21865 E. Copley Drive
Diamond Bar, CA 91765-4182
Fax: (909)396-3324
Email: jnadler@aqmd.gov

Re: CBE Comments on Draft Environmental Assessment (Draft EA) for Proposed New and Amended Rules, Regulation XX – Regional Clean Air Incentives Market (RECLAIM)

Dear Mr. Nadler,

A. Introduction

Communities for a Better Environment ("CBE") is a non-profit environmental justice organization committed to environmental issues impacting low-income communities of color in California. With over 20,000 members in the state, CBE has been involved in California's environmental justice movement for over a decade.

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As the South Coast Air Quality Management District ("District") knows, CBE submitted comments on the District's CEQA Initial study on February 23, 2001. Not only has the District failed to modify the project to address the grave concerns raised in that letter, the District has added insult to injury by summarily dismissing our concerns as mere "opinion" that "is contrary to the facts." Draft EA, Appendix C, page 1-10; ¶ 1-3. Specifically, the District disputes CBE's assertion that RECLAIM has failed. Recent media coverage of this issue, however, indicates that such "opinion" is widely shared by the public. A sampling of newspaper articles to that effect have been collectively attached as Exhibit A to this comment letter for the District's benefit. One such article, which was published in the Los Angeles Times, stated, "the Southland's market basket experiment has been a serious disappointment. . . . RECLAIM has fallen well short of expectations. Eight years into the program, smog cuts have been minimal, companies are failing to meet pollution reduction targets, and proposals to rescue the operation are mired in controversy. Manufacturers, power plants and refineries have reduced emissions by a scant 16%--much less than was anticipated by this time. . . ." April 17, 2001, Metro, Part B; Page 1 (attached as Exhibit A). The article goes on to quote an EPA official who said, "For seven years, the program did absolutely nothing." *Id.*

3-2

In various comment letters to the District on the proposed changes to RECLAIM, CBE has noted that RECLAIM has failed to provide participants with adequate economic incentives to install pollution control for the past seven years due to an initial oversupply of credits into the market and the District's failure to adequately oversee the progress of the program. As we have mentioned both in writing and orally, these fundamental flaws in the administration of the RECLAIM program is now resulting in massive non-compliance because demand for credits has finally met the supply of those credits (which was the contemplated function of the program

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since its inception). CBE cannot help but note that when RECLAIM was first introduced eight years ago, we predicted not only that it would fail, but that it would take seven years before the supply of credits in the market would meet demand, meaning a seven-year delay for finals compliance dates as compared to the command and control scheme RECLAIM replaced. *See A CBE Comment to the CARB on RECLAIM*, March 2, 1994, page 4, attached as Exhibit B.

3-2 cont.

Although it is true that the increase of power generation over the past year has resulted in an unexpected pull on the market, increased demand for credits from power plants is not the primary reason that credit prices have soared. The recent spike in credit prices is due to a simple reason – irresponsible risk taking by participants who have made little, if any, effort to control their pollution. This is the only explanation for why certain facilities (including a few power plants) are in the position to not only meet their current allocations, but actually offer credits to the market while the vast majority of facilities are emitting pollution in great excess of their allocation without being equipped with affordable pollution control technology that has been available for years. Rather than confront this reality, the District is using California's "energy crisis" to veil the fundamental flaws in the program and to justify the current proposed changes to RECLAIM. Unfortunately, the effect of these changes will feed the pollution market's dysfunction because they will create artificially low prices, thereby continuing the disincentive to install pollution control. This outcome does more than frustrate the District's purported goal of smog-causing pollution by 50% by the year 2003, it threatens public health of South Coast residents, especially those living near the sources of pollution that will continue to defer pollution control as a result of the proposed changes to RECLAIM.

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With these *facts* in mind, CBE holds to all of its initial comments, as submitted in response to the District's Initial Study for the Draft EA on the Amendments on RECLAIM, and adds the following comments specific to the Draft EA.

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B. The Draft EA Offers An Inadequate Alternatives Analysis

The Draft EA does not include an alternatives analysis considering more stringent enforcement mechanisms that carry a higher deterrent effect for non-compliance. Instead, the District dismisses the need for stricter enforcement of RECLAIM violations by stating, "As noted in each audit report, RECLAIM has typically shown a high rate of compliance." Draft EA, C-1-12. What the District failed to mention in that response, however, was that until last year, when gross non-compliance became the norm, the price of credits were severely undervalued, making the cost of compliance low and thus enforcement action unnecessary. Now that the price of credits are representing the true cost of foregoing pollution control (which was assumed to occur eventually), we are witnessing gross non-compliance by participating facilities, indicating a willingness to make unreasonable "bets" on the market without the fear of enforcement action by the District.

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The absence of an analysis of the enforcement aspects of the program is especially troubling given that the express mandate calling for such investigation in District Rule 2015 (b)(6). It should be noted that if the District fails to conduct such an investigation by the 6-month deadline, that failure will constitute a violation of that Rule, and , in turn, a violation of

the federal Clean Air Act since the rule is included in California's State Implementation Plan under the Act.

3-5 cont.

Furthermore, the proposed changes to RECLAIM will have long-term effects that are irreversible. Once new credit generation rules are adopted, the adverse effect of flooding the market with credits could be severe and long-lasting. Such a prospect contradicts one of the primary objectives of the proposed project, which is "to lower RTC prices in the near-term." Draft EA, page 4-17.

C. The District Must Place Limits on the Number of MSERCs and ATCs That May Enter The Market

According to the Draft EA, there is currently no limit on the number of mobile source and area source credits that the proposed rules may bring into the RECLAIM market. In fact, "[t]he only limitation on MSERC generation is that the Executive Officer can approve plans for scrapping vehicles pursuant to Rule 1610 for no more than 30,000 vehicles per year. This limitation applies only to the annual number of scrapped vehicles, and is ***not intended to limit the amount of MSERCs entering the RECLAIM market.*** Neither Regulation XX nor Rule 2506 places limits on the amount of ASCs that can be converted to RTCs." Draft EA, Page 2-3 (emphasis added). This creates a potentially disastrous situation where the market is again flooded with credits, driving down the price to create a dysfunctional market that provides no incentives for pollution control. This is an unacceptable result of any "backstop" measures the District is putting forward to deal with the sudden increase in RECLAIM credit prices. 3-6

The potential for a disruptive influence of new credits entering the market is especially true for proposed Rule 2507, which allows for area source credit generation. This is because area sources in the South Coast are currently unpermitted by the District, meaning that the current level of aggregate emissions from these sources is a mystery (which means that the District does not know how many pollution credits may be generated from reductions at these sources). Given these great uncertainties with respect to Proposed Rule 2507 and the other proposed MSERC rules along with the technical uncertainties in the calculation of such credits discussed in the memo from Julia May to Sarna Peesapati, dated April 27, 2001 (attached to this comment letter), allowing credits generated under those programs into the RECLAIM universe is environmentally irresponsible.

1. Limitless numbers of MSERCs and ASCs Frustrates the Purpose of Annual Allocations

The infusion of a potentially infinite number of credits into the market contradicts the purpose of giving facilities a declining cap on annual emissions. If credits are cheap enough, facilities will continue to pollute near or at current levels regardless of the allocated level of pollution the District imposes on them. They will simply buy more credits to offset the pollution they emit in excess of their allocation, thereby allowing the market's dysfunction to continue. 3-7

2. Limitless numbers of MSERCs and ASCs Eviscerates the Potential Benefit of Compliance Plans as Proposed Under the 2009.1 3-8

CBE supports the District's effort to force facilities to demonstrate how they will come into compliance with RECLAIM through the submittal of compliance plans under Proposed Rules 2009 and 2009.1. Proposed Rule 2009.1, however allows participants to either attain BARCT (technology standard) or demonstrate how they plan to procure enough RECLAIM credits to meet their allocation levels. Proposed Rule 2009.1 (b)(3). If the price of credits again falls, which is the express purpose of the creation of the new mobile source and area source credit generation rules, RECLAIM participants will obviously choose to use the latter option and buy more credits to offset their emissions above their allocation rather than spend money on relatively more expensive pollution control technology. In sum, the new credit generation rules undermine the goal of aggressive pollution control at permitted stationary sources, the purported motivating force behind RECLAIM.

3-8 cont.

3. The District's Inclusion of MSERCs and ASCs for RECLAIM Violates Equivalency Requirement Under Health and Safety Code

As Mike Schieble, deputy executive officer for the state Air Resources Board, aptly stated, RECLAIM "hasn't done as well as the regulations it replaced. I don't think it has worked yet to achieve the emission-reduction goals that is set out to do. The reductions we've anticipated have been delayed and won't be achieved for a couple more years." L.A. Times, Metro, Part B at 1 (attached as Exhibit A). RECLAIM's failure to achieve equivalent reductions as the regulations it replaced is not only the unfortunate fulfillment of CBE's eight-year-old prediction, but it is also a clear violation of state law. The California Health and Safety Code §39616(c) mandates any economic incentive program created by the District to "result in equivalent or greater reduction and control strategies" to the program it replaces, a provision the District itself cites. Draft EA, 2-3. To date, the facts, on their face, demonstrate that the program has not met the equivalency requirement established by the Health and Safety Code. A generous estimate of actual overall reductions resulting from RECLAIM is 16% since 1993. See Exhibit A, L.A. Times article. In fact, according to the District's own White Paper on RECLAIM stabilization, refineries and power plants have actually increased their emissions since 1998. See White Paper on RECLAIM Stabilization, page 19, figure 3.1. The District wrote, "In *fact* both refineries and utilities are showing an increased emission trend." *Id.* (emphasis added).

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The proposed changes to RECLAIM will only serve to exacerbate RECLAIM's failure to met the Health and Safety Code's equivalency standard by providing further disincentives for real pollution control. These programs therefore constitute new and separate violations of the equivalency standard as articulated in California Health and Safety Code § 39616(c). These are violations that are actionable in a court of law.

4. Amendments to RECLAIM That Allow The Use of MSERCs For NSR Are Illegal Under Federal Law

As discussed in our previous comments, the federal Clean Air Act clearly prohibits the use of mobile source credits for purposes of new source review offsets – one of the anticipated uses of the MSERCs that result from RECLAIM's amendments. Section 173(a)(1)(A) of the Act states that before a new source commences operation, it must obtain offsetting emissions

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3-10 cont.

reductions "from existing sources in the region." Section 111(a)(6) states that the term "existing source" means "any *stationary source* other than a new source." Therefore, offsets for new and modified sources in non-attainment zones must be obtained from stationary, not mobile, sources. This legal defect in the proposed amendments subjects the AQMD along with any source that uses MSERCs for purposes of NSR offsets to liability under the federal Clean Air Act.

D. The Mitigation Fee Program And the AQIP Violate the Equivalency Requirement Under State Law

The Mitigation Fee Program allows power plants to pay into a fund for each unit of pollution they emit in excess of their allocation. If the fund is not able to pay for an amount of reductions that are equivalent to the initial excess, the District will deduct the remaining excess pollution from the facility's future allocation. This allows a potential two-year delay in a facility's compliance with its annual allocation. This is a clear violation of the California Health and Safety Code's equivalency standard, as articulated in §39616(c), and described above.

3-11

To make matters worse, because the Mitigation Fee Fund is not prefunded with a reserve of credits to offset the initial emission excesses, it will likely lead to a game of "catch up" where monies from the fund will always be used to procure reductions to compensate for past emission excesses, without having enough funding to offset current excesses. The District admits this problem in the Draft EA, which states, "the proposed amendments to RECLAIM may result in a delay in the accounting for allocation exceedances." Draft EA, page 4-5. The Mitigation Fee Program is therefore fundamentally flawed, leaving it open to legal challenge under Health and Safety Code §39616(c), as explained above.

The AQIP scheme proposed by the District is plagued by the same issues, as discussed in CBE's prior comments to the District.

E. The District's BARCT Standards Are Unclear

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CBE supports the District's effort to mandate pollution control at certain power plants in the South Coast Air Basin through submittal of compliance plans that describe how the facility will attain Best Available Retrofit Control Technology ("BARCT") standards. It is unclear, however, exactly what the BARCT standards are for power producing facilities. An exhaustive search of the District's website, including the "RACT Guidelines" did not illuminate this issue. Without providing the public with adequate information to understand what BARCT means, the imposition of that technology standard is rendered meaningless.

F. "Best Available Information" For Environmental Dispatch At Power Plants Is Undefined

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The District calls for environmental dispatch for power plants based on "best available information" in Rule 2009. The District does not define "best available information," thereby undermining the potential benefits of environmental dispatch. In order to create an environmental dispatch scheme that is effective, the District must provide a concrete definition for "best available information."

G. Conclusion

CBE strongly urges the Air District to consider the above concerns carefully and to abandon all changes to RECLAIM that do not result in the immediate installation of pollution control at participating facilities.

Sincerely,

Suma Peesapati, Staff Attorney
Richard Toshiyuki Drury, Legal Director

APR-27-2001 FRI 03:58 PM FROM: FAX: PAGE 8

Memo to: Suma Peesapati, Staff Attorney, CBE
From: Julia May, Lead Scientist, CBE
Date: 4/27/01

Re: My Comments on SCAQMD Draft Environmental Assessment (EA) for new RECLAIM Amendments & Proposed Rules 1631, 1632, 1633, & 2507

I have the following concerns about the project. The project description is not complete, the project has the potential to cause significant impacts such as increases in air emissions and delays in implementing required emission reductions which were not described in the EA, and the alternatives section is not complete. My comments are as follows:

Credits May Represent Emission Reductions That Are Not Proximate To Where Credits Are Being Used

The location of diesel agricultural pumps, truck distribution centers, diesel powered refrigerated trucks, and captive marine vessels and likely buyers of credits in the region which could take part in this program is not provided in the District analysis, and needs to be. As the District also states, there is the potential for trading to cause increases in emissions in one geographic area, which are traded for reductions in an entirely different area. The District states that it will track this issue in the future, however, the CEQA analysis for this project can and should provide information on the locations of sources which may take part. Especially given the potential for errors in calculation of emissions traded, there are potentially significant increased emission impacts from the project.

3-14 The locations of the potential emission reductions must be evaluated in order to provide a complete project description, impacts analysis, and alternatives analysis. This will also help the public to be able to evaluate the project and comment on potential alternatives, such as proposing geographic limitations to trading, etc. These details should not have to be ferreted out by the public. The following chart roughly outlines potential geographic disparities caused by differences in the location of emissions reductions and users of credits, where emissions reductions are avoided. In cases in the proposed project where credits generated are closer to credit usage, geographic disparity impacts would be minimized. Please provide the location information for credit generators and users.

Emissions Reductions from:	Credits used by:	Reductions near Buyer?
Marine vessel diesel engines → Repowered to meet lower standard	Power plants, Refineries, Others	May be close to the buyer of the credits, but this is not guaranteed. (This would mainly be true for refineries.)
Marine diesel-fueled hotelling (electricity generation while at port) → Repowered by fuel cells	"	"
Diesel-powered refrigeration trucks at distribution centers	"	Unknown – The location of distribution centers was not provided, so the proximity

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→ Repowered by hooking to electrical grid		Between air reductions achieved and air reductions avoided is unknown.
Diesel-fueled agricultural pumps → Repowered using electric motor	"	Not likely to be close to the credit user

3-14 cont.

Error in emissions calculations was not evaluated, yet may be additive and may cause a significant impact from the project

The project description and environmental impacts section do not provide some key evaluations. One of the biggest problems with pollution trading schemes, (besides the introduction of inequities caused by geographic differences in reductions & credit usage) is the need for a very accurate comparison between two different emissions sources in order to calculate the credits. Instead of requiring one piece of equipment to meet an emission standard, which is the case in traditional command and control regulation, this project requires a comparison between two different polluting sources. Their emissions must be separately calculated and subtracted (which is often based on independent generalized emissions factors). The difference between these two calculations results in the credits generated. There will definitely be errors in each of these calculations, and there is a significant potential that the two errors will be additive, causing generation of some amount of illegitimate pollution credits.

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Such an error will accumulate when all the different trades are added up. This total error needs to be clearly evaluated under CEQA in order to determine whether the cumulative error exceeds the District's significance criteria. (In addition, the basis of the emissions factors used in the regulation should be provided as part of the project description and so that the public can evaluate them and evaluate potential impacts from any errors in these factors.) Use of illegitimately generated credits would result in an increase in emissions (without any real credit offsets) compared to the no project alternative. These errors could result in a significant adverse environmental impact from this project, in violation of the California Environmental Quality Act.

The numbers of diesel agricultural pumps, truck distribution centers, diesel powered refrigerated trucks, and captive marine vessels in the region which could take part in this program is potentially very large. The appendix includes both total numbers of such sources and estimates of the number of those sources that are likely to participate in the project. The District does not provide justification for these numbers. Also, the currently proposed rules do not set a limit for the number of trades which are allowed. In that case, any errors in emissions factors which overestimate credits generated would be multiplied by the number of facilities taking part. As described above, the total error could be large. This could cause a significant increase in air emissions due to the use of credits that do not represent real emissions reductions. The District should have studied these issues in the Draft Environmental Assessment, and should have included limits in numbers of trades allowed to mitigate any potential environmental harm.

Since there are errors in all calculations and measurements of emissions, these must be quantified for the CEQA analysis. In fact, the District has historically committed large errors in

determinations of emissions for various pollution trading schemes it administers. For example, the District has readily admitted that it erred in calculating initial baseline allocations for Reclaim facilities, which were too high. In addition there is much evidence that actual emission reductions achieved by Rule 1610 (the car scrapping program program) could not be confirmed, according to the District's own inspector. Since errors are to be expected and actually happen in the District's pollution trading programs, they must be evaluated in order to determine whether errors in project assumptions could cause significant impacts.

3-15 cont.

In addition, in order to be compliant with state law (specifically, 17 CCR Sect. 91507), the District must "provide for enforceable credit calculation protocols and procedures that contain the following elements: (1) the calculation method to determine the amount of reductions being generated as credits, including formulae accounting for emissions rate, operating period, activity level, and technical uncertainty." The District has not provided any such calculation method that accounts for technical uncertainty, in violation of the above-mentioned regulation.

An example of compounding error sources is the replacement of a marine diesel engine with an engine certified to meet applicable emission standards. If the error in calculation of diesel engine emissions are too high, and the new engine emissions certification has another error such that its emissions are determined as lower than actual emissions, the total error will be cumulative. Such errors are not necessarily random, and therefore can't necessarily be expected to average out. In this case, illegitimate emissions credits would be generated, causing an increase in air emissions. The District must evaluate such potential emissions determination errors for all sources included in the project.

Air impacts related to increased electricity usage were not evaluated

3-16

This project will cause the increased use of electricity, as electric engines are the contemplated alternative to diesel-fueled engines under some of the proposed rules. The additional electricity demand, and resulting generation, will cause increased emissions at power plants. Appendix F of the Draft EA provides some numbers for estimated electric usage caused by the different proposals. However, there was no analysis quantifying increased emissions at power plants due to this increased electrical usage, nor an analysis of technical uncertainty and errors in the calculations provided. These should be provided. It is also an oddity of the program that a large amount of the credits being generated will likely be used by power plants.

This will allow power plants to avoid reducing emissions through purchasing credits instead of directly reducing emissions at the facility. Yet, the project itself will cause a further increase in power plant emissions due to increases in electricity generation. This is a strange feedback loop which should be analyzed. It is even possible that the increased electrical usage could cause an increase in other diesel-generated power. For example, some office buildings are applying for permits to use diesel-powered generators for back-up power because of power outages caused by the deregulation crisis. If the project increases the need for electrical generation, there is no guarantee that that additional generation will come from natural gas-powered power plants with pollution controls. The additional generation could come from dirtier distillate fuel powered plants or diesel powered electricity generation, which could wash out any gains of the project.

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Alternatives to the project

The project did not evaluate some important alternatives. For example, many of the voluntary reductions represent laudable projects (independent of trading concerns), since they involve elimination of diesel engine pollution, which is highly toxic. One alternative to the project, which should be evaluated, is a District requirement for such phase-out of diesel engines independent of trading programs. This would not generate additional credits, but force additional emissions reductions in the Basin that are real, thereby helping the District reach attainment of Clean Air Act standards. (In fact, during earlier discussions with the District, CBE proposed including reductions from alternatively-fueled marine vessel engines and from hotelling operations in the SIP. The District chose not to include them.)

Another alternative to the project which should be evaluated is a scenario where additional power plant construction is limited to actual needs for generation. ISO (Independent System Operator) officials have stated that a large percentage of plants were shut down for non-emergency maintenance during periods of power outages. These officials have admitted that the power outages were exacerbated, if not caused by, downtime of existing power plants, and that there appeared to be enough existing power plants to meet the needs during outages, if those plants had just been operating. During the times of the outages ISO officials estimated that if these plants had been in operation, there would have been an extra 25% margin of safety in power generation capacity across the entire state. This is a huge margin. The issue of power plants down for non-emergency maintenance is an issue which is under investigation, because it is a situation which was caused by deregulation. Prior to deregulation, sufficient generation operation could be required and generators could not withhold power in this manner. After deregulation, the ISO was not given the authority to require that sufficient generators remain in operation.

3-17

All the precepts of deregulation are now being re-evaluated, and are in flux. There is state law under consideration which could change the form of requirements for staying in operation. No matter how many new power plants are built, blackouts could still occur if sufficient power plants are not required to be in operating at any one time.

Under these circumstances, rather than the District generating unlimited credits in the anticipation of huge increases in power plant construction and increased production at existing plants, the District should evaluate actual needs for increased generation taking into account all existing plants. Then the District should limit potential credit generation to provide only for a limited amount of power generation expansion. At this time, the District appears to be artificially manipulating the credit market in a way that stimulates unbridled power plant growth. The District should evaluate an alternative to the project that allows for a limited increase in the number of credits to accommodate only those power plant expansions that are necessary for meeting energy needs.

The District should also evaluate clean energy alternatives to the project. For example, agricultural pumps provide a very logical application for solar energy. Agricultural pumps are generally operated during the day. This is the same time that sun is available, and consequently

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3-17 cont.

solar pumps don't require battery storage for solar energy at night. They provide a practical and simple application of clean energy. Such an alternative to the project could result in significant emission reductions due to the avoidance of increased demand on power generation from the electric motors on the pumps. This increased electrical use causes increased emissions at power plants. This and other clean energy alternatives should be evaluated.

Paying to pollute

3-18

The District's study of the Mitigation Fee program is the least documented part of the project. It allows facilities to avoid emissions reductions by paying a fee. The District states that it will use the fees to fund emissions reductions, but does not identify potential candidates for achieving these emissions reductions. The potential for this program to result in actual reductions is dependent upon a clear protocol for achieving them. This protocol and the technical uncertainty associated with it must be provided, in order to have a complete project description, and in order to clearly identify whether the project will cause impacts. The District does state that the mitigation fee provisions do have the potential to cause such an impact – delays in facilities implementing other pollution controls, making it all the more important to clearly define how emissions reductions would be achieved through this program.

Signed:

Julia E. May
CBE Lead Scientist

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EXHIBIT A

Source: All Sources : News : News Group File, Most Recent 90 Days
Terms: "reclaim" and "pollution" (Edit Search)

Los Angeles Times April 17, 2001, Tuesday,

April 17, 2001, Tuesday, Home Edition

SECTION: Metro; Part B; Page 1; Metro Desk

LENGTH: 1429 words

HEADLINE: INNOVATIVE SMOG PLAN MAKES LITTLE PROGRESS;
AIR QUALITY: AFTER EIGHT YEARS, THE SOUTHLAND'S PROGRAM ALLOWING FIRMS TO TRADE **POLLUTION** CREDITS HAS FALLEN WELL BELOW EXPECTATIONS. IDEAS TO FIX IT ARE MIRED IN CONTROVERSY.

BYLINE: GARY POLAKOVIC, TIMES ENVIRONMENTAL WRITER

BODY:
It was supposed to be a revolutionary way to clean up the environment, a business-friendly strategy to slash industrial emissions without the heavy hand of government.

But the Southland's market basket experiment has been a serious disappointment.

The Regional Clean Air Incentives Market, or **RECLAIM,** has fallen well short of expectations. Eight years into the program, smog cuts have been minimal, companies are failing to meet **pollution** reduction targets, and proposals to rescue the operation are mired in controversy.

Manufacturers, power plants and refineries have reduced emissions by a scant 16%--much less than was anticipated by this time. Businesses were given 10 years to eliminate about 13,000 tons of **pollution** annually, but as the program nears its end they have eliminated just 4,144 tons, according to projections by the South Coast Air Quality Management District.

Over the course of the program, the AQMD has received a trickle of applications from companies to upgrade **pollution** control capacity. Air quality officials say that if the number of retrofits doesn't dramatically increase, the program will fail.

So little progress has been made that the AQMD is now telling businesses to slash their air **pollution** at more than twice the rate they have over the last seven years. Meanwhile, the agency estimates that industry will emit an extra 3,373 tons of health-threatening pollutants into the air this year, 14% more than it is allowed under the program.

Business representatives are divided in their reactions to the program.

"We're going to see the benefits of **RECLAIM.** It's just taking a little longer than we expected," said Bill Quinn, vice president of the California Council for Environmental and Economic Balance, which represents business and labor groups.

But some companies are resisting pressure to reduce emissions. Some seek to eliminate the penalty they risk if they pollute beyond their limits. Others would like to escape the program entirely by paying a fee of $ 7.50 per pound of **pollution,** no matter how much smog they make. Many businesses are insisting on a fresh infusion of credits in return for cleaning up

cars, boats and trucks instead of factories, smelters and refineries.

RECLAIM "hasn't done as well as the regulations it replaced," said Mike Scheible, deputy executive officer for the state Air Resources Board. "I don't think it has worked yet to achieve the emission-reduction goals that it set out to do. The reductions we've anticipated have been delayed and won't be achieved for a couple more years."

The program was launched in 1993 as the first market-driven system to clean urban air and quickly became a model for others around the world. The Los Angeles-area program, which relies on a system of trading **pollution** credits, was supposed to cut industrial **pollution** by stimulating technological innovation and reducing burdensome new costs on businesses.

Nearly 400 companies participate, including Walt Disney Co., ExxonMobil Corp. and Northrop Grumman Corp.

Each facility receives a certain number of credits representing a pound of **pollution.** Companies that do not pollute to maximum allowable levels can sell credits to firms that emit more than their limits. The total credit supply shrinks about 8% annually for a decade, thus trimming **pollution.**

The program was seriously compromised when power producers in the Los Angeles region operated far beyond **pollution** limits last year. Power companies gobbled emissions credits as they increased production to keep the lights on. That caused a **pollution** credit shortage.

The market price of a credit soared as demand outstripped supply. A credit for one pound of nitrogen oxide gas that cost an average of 25 cents in the early years of the program climbed to more than $ 50 late last year. Nitrogen oxide contributes to ozone and haze, the main ingredients in smog.

Local air quality officials and business advocates say the program was working fine until the electricity crisis.

But critics, including the U.S. Environmental Protection Agency, the state air board, environmentalists and some scholars, disagree. They say the energy crisis revealed structural flaws in the program that were bound to surface sooner or later. "The simplistic explanation as to why **RECLAIM** failed is the market was much more volatile than people expected and that is due to the electricity situation, an anomaly, an unmanageable spike rippling through the market. But that's not the whole story," said Tom Canaday, environmental engineer for the EPA.

Local air quality officials acknowledge that, from its inception, the program was embedded with powerful disincentives to cut smog. That is because they seeded it with too many credits, about 40% more than real-world emissions. Credits were so plentiful and cheap for so long that companies grew addicted to buying them instead of spending more for **pollution** controls. The system crashed last year when manufacturers returned to the marketplace expecting to find more cheap credits, but instead discovered that power companies had bought most of them, driving up prices for the few that were left over.

All the while, air quality officials did not push business to install controls and instead trusted them to make wise choices. Indeed, that was the very goal of the program.

"For seven years, the program did absolutely nothing," said an EPA official familiar with it. "Businesses got used to cheap credits. Nobody did what they were supposed to do: responsible planning."

RECLAIM was born during an economic downturn when business groups demanded a flexible alternative to traditional regulations. Many economists and conservative politicians continue

to favor market-driven programs, and such approaches are expected to figure prominently in the Bush administration's attempt to have a clean environment for less cost and red tape.

Representatives of big businesses, which control about 85% of the nitrogen oxide credits, say **RECLAIM** has saved them money while contributing to record clean air the region experienced during the 1990s. Air quality officials ascribe most of that progress to cleaner car exhaust.

Companies saved an estimated 41% on compliance costs under **RECLAIM** compared to traditional regulations, although most of the savings occurred because **pollution** controls were delayed for so long.

At the Arco refinery in Carson, engineers searching for ways to reduce emissions under **RECLAIM** recently turned smog into cash. They rerouted propylene gas, a byproduct of oil refining, from boilers into a processing plant where they converted it to plastic pellets for water bottles, patio furniture and strawberry crates, reducing about 500 tons of pollutants annually.

"Now the polypropylene plant is a revenue-generating plant," said Susan Livingston, environmental manager for British Petroleum.

In trying to fix the program, AQMD officials face a difficult balancing act: They want to help lower credit prices by removing the power plants from the program. But if the credits become too cheap again, companies won't have any financial incentive to reduce emissions. It's the same scenario that made the program ineffective in the first place.

The agency's governing board meets May 11 to consider amendments to the program.

The agency is already planning to require 36 of the biggest polluters to begin submitting plans detailing how and when they will install additional **pollution** controls. Among those targeted are California Portland Cement in Colton, the Los Angeles Department of Water and Power, and Equilon Enterprises, which operates a refinery in Wilmington. Industry initially balked at the demand, but relented after air quality officials dropped a federal enforcement requirement.

The AQMD governing board also approved a regulation last month to allow companies to clean up heavy-duty diesel engines in exchange for emission credits for use at factories. The EPA has not approved similar rules by the AQMD, and state air quality officials frown on the practice.

Barry R. Wallerstein, executive officer of the AQMD, said proposed changes to **RECLAIM** should help restore confidence and improve the performance of the program.

"I don't think we're looking at Humpty Dumpty," he said. "The sorts of changes we are proposing will fix the difficulties the program has experienced over the last year. This is a bump in the road, a perturbation, and with rule amendments we will be back on the path of achieving the design objectives."

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The Daily News of Los Angeles April 22, 2001 Sunday, Valley Edition

April 22, 2001 Sunday, Valley Edition

SECTION: NEWS; Pg. N1

LENGTH: 1180 words

HEADLINE: SMOG ON THE HORIZON;
ENERGY CRISIS, SUMMER HEAT LIKELY TO BRING FILTHY

BYLINE: Dana Bartholomew, Staff Writer

BODY:
Smog - the hidden price of California's energy crisis - will worsen this summer and Los Angeles likely will **reclaim** its standing as the city with the worst air in the nation.

Air quality officials said running power plants full time and increased use of diesel generators to keep factories and large businesses operating during blackout periods will worsen the smog problem.

If the extra generating plant emissions combine with an abnormally hot summer, Los Angeles will likely see its worst air quality in years.

Under those conditions, people "could see hazier-looking air and they might see more days over the health standards," said Bill Kelly, spokesman of the South Coast Air Quality Management District in Diamond Bar.

The AQMD predicts Los Angeles could suffer its first Stage I smog alerts since 1998. Such alerts advise all residents to avoid rigorous exercise and for those with heart and lung diseases to stay indoors.

"In certain places in our area, particularly east, under certain weather conditions, there could be a noticeable impact on people," Kelly said.

Blame the state's energy crisis. The Southland's 14 power plants have worked full steam ahead since January to assist the state energy crisis. They've spewed 2,045 tons of nitrogen oxides in three months - more than double the smog-inducing emissions from the same time last year, according to preliminary AQMD reports.

Emissions from the region's 350 smokestack industries are also up.

This summer may be even worse, clean-air guardians say, as power plants are expected to run every turbine to juice the state's beleaguered energy grid. As many as 5,000 factory diesel generators may also rumble to life to counter more than 30 days of expected blackouts.

Where such stationary generators once ran an hour a month for testing and were limited to 200 hours a year, the **air district** has extended the limit to 500 hours to help alleviate the energy crisis. Pollution from such generators, said AQMD Executive Officer Barry R. Wallerstein, is 100 times that of a power plant.

Los Angeles could be king of the air pollution, a distinction it shed last year to Houston.

"If it weren't for the electricity crisis - and I am not a man who generally likes to wager - I would have said that we weren't going to take the pollution crown back from Houston," Wallerstein said this week during an interview at the Daily News.

Now, he said, "I'm a little bit more nervous."

Critics worry that lax standards for power plants and the liberal use of the area's diesel generators will erode public health. Nitrogen oxides are blamed for causing lung-searing smog. Diesel soot, a carcinogen, is blamed for stunting lung capacity in children.

"L.A. smog - the relaxation of pollution standards because of the energy crisis, will have an effect on public health," said Andrea Van Hook, spokeswoman for the American Lung Association of Los Angeles County. "It is a concern of the association because NOx and particulate matter can trigger asthma attacks in people who have asthma."

Weather will be key.

Sunlight and nitrogen oxide mix to make smog, and though national climatologists predict a slight chance of a hotter-than-normal summer that could lead to more smog, local meteorologists said the crystal ball is murky.

"It's sort of like the stock market," said National Weather Service meteorologist Eric Hilgendorf, based in Oxnard. "Current trends are no indication of future progress."

But the prospect of higher air pollution is a setback to the **air district,** which appears likely to stumble short of its 10-year goal to cut industrial emissions in half by 2003 to comply with federal clean air laws.

Vehicles contribute 87 percent of the 882 tons of smog-inducing emissions produced in Los Angeles each day. Industry produces 13 percent, of which 3 percent was caused by power plants last summer, according to the AQMD.

Just doubling power plant waste to 6 percent, even with the installation of catalytic converters on most plants before midsummer, could tip the balance into unhealthy air, regulators say.

"We expect that the power plants will operate even more than they did last summer with increased demand from air conditioners," said Carol Coy, deputy executive officer of the AQMD program to reduce industrial smog. "We think they're going to have to run the 'peakers' (portable generators) this summer - and they're enormous polluters."

The agency's Regional Clear Air Incentives Market, or **RECLAIM** program, was once hailed as a business-friendly model to cut industrial emissions.

But the program has come under attack for reducing emissions only 19 percent in seven years. The **air district** seeks an additional 40 percent reduction by 2003.

The system allowed smokestack industries such as power plants to buy and sell smog "credits." Those that cut emissions could transfer pollution rights to other companies as smog targets were gradually reduced.

But critics say the system allowed many companies to forestall installing pollution control equipment. And when the energy crunch hit last year, power plants purchased most of the credits and sent prices soaring.

Businesses paying through the nose for energy are now digging in their heels at being told to install pricey pollution control systems at the forefront of a possible recession.

"Our take is that stationary (emissions) sources have always received the brunt of regulation," said California Manufacture and Technology Association spokesman Gino DiCaro. "Maybe we'd better go after mobile sources" such as cars and trucks.

The association, with more than half of its 800 industrial members based in the Los Angeles area, has been quietly pushing for the right to use diesel generators as a safeguard against blackouts.

"But diesel is a dirty word right now," DiCaro said. "Nobody wants to talk about it. These diesel generators can get us through the summer."

The air district board will meet on May 11 to rule on a proposal to take power plants out of the **RECLAIM** system to lessen the price of power and pollution credits.

The Los Angeles Department of Water and Power and AES Energy, two of the area's top energy producers who have paid millions to pollute during the energy crisis, would instead pay into a special fund to help reduce smog.

"We're trying to clean up," said DWP Director of Strategic Planning Angelina Galiteva, whose "Green Power" practices have nudged 70,000 Angelenos to conserve energy through such means as solar power. "We feel we have a hot summer ahead of us and we're doing our part for conservation."

Conservation, everyone agrees, is the key to keeping the lights on and breathing healthier air.

"The power plants have us over a barrel," said Tim Carmichael, executive director of the Clean Air Coalition. "Our lifestyles are so energy thirsty we're down to two options ... more power plants and more pollution, (or) we look at our homes and businesses and how to conserve."

Staff writer Joseph Giordono contributed to this report.

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The Orange County Register April 2, 2001, Monday

Knight Ridder/Tribune News Service
The Orange County Register

April 2, 2001, Monday

SECTION: DOMESTIC NEWS

KR-ACC-NO: K515

LENGTH: 1436 words

HEADLINE: Bidding high for pollution credits

BYLINE: By Chris Knap

BODY:
Southern California power plants pumped nearly three times more air pollution than they were allowed last year - damaging efforts to meet clean-air goals and driving up electricity prices for consumers statewide, records and interviews show.

The South Coast Air Quality Management District limited power generators to 2,334 tons of oxides of nitrogen, a smog component known as NOx. Instead, the power plants emitted 6,000 tons, much of it from plants in Huntington Beach and Long Beach.

Most of the power plants polluted legally by buying NOx credits from other businesses that already had cleaned up. But the demand for credits made the credits expensive and scarce. In total, 16 Southern California power plants spent $111 million on pollution credits and paid $31 million in fines when the credits ran out, according to the AQMD.

The total cost to consumers was at least $142 million, and some experts say it might even have been higher.

The monetary costs of California's power crisis are well known. Consumer rates have risen an average of 39 percent this year. Less well known are the costs to the environment as generators run 40-year-old plants longer and harder to keep the lights on. The excess NOx pollution from power plants last year was equivalent to half a million more cars on Los Angeles freeways.

Power companies say more pollution is one of the tradeoffs to avoid blackouts. Regulators and environmentalists say over-pollution could have been avoided if power companies had heeded warnings in past years and added emission controls.

Industry leaders, environmentalists and regulators agree the energy crisis has stalled the Regional Clean Air Incentives Market, once considered a model clean-air program. **RECLAIM** was intended to let businesses make cost-effective decisions and still reduce smog.

Last year it didn't do either.

"Overall, **RECLAIM** was an opportunity wasted," said Jim Caldwell, technical director for John White Center for Energy Efficiency and Renewable Technology, a nonprofit think tank in Sacramento. "The theoretical promise of market-based solution is going to be devifed for a

long time by the failure of this program." Pollution increased. Southern California generators, refineries, steel mills and asphalt plants spent more than $208 million on pollution credits and fines, 13 times more than the yearly cost of installing pollution controls, according to the **air district.**

The spike in demand for pollution credits created a speculator's market. Credits that once traded for pennies sold for as high as $50 a pound - $100,000 a ton in January.

For some manufacturers it became more profitable to close and sell credits.

Case in point: California Steel Industries, near Fontana, shut down its furnace for eight days in December and sold its remaining credits. Brett Guge, a vice president, said the company calculated it could make more selling credits than rolling steel.

"Certainly these are some extraordinary circumstances that have occurred relative to the electricity crisis," said Barry Wallerstein, the South Coast **air district's** executive officer. "It has had an effect on the **RECLAIM** program that no one could have foreseen."

Air regulators are trying to find a solution. They'll decide next month whether power plants should be taken out of the clean-air market. The new rules would let them pollute for a mitigation fee of $15,000 a ton - one-sixth the cost of buying pollution credits - but require them to install controls as soon as possible.

Environmentalists are skeptical.

"In our view the more you let these companies off the hook, the greater delay there will be in installing controls," said Gail Ruderman Feuer, senior attorney for the Natural Resources Defense Council. "They are being allowed to pollute like crazy, and it's a huge problem."

Generally the Los Angeles basin's air has improved since the late 1970s, when some years had 200 days of unhealthy air. But improvements have slowed. In 1999 the basin's smog exceeded federal health standards on 41 days. Last year there were 40 days, the smallest improvement in eight years.

Oxides of nitrogen are one of the top three pollutants keeping the region from meeting federal air-quality regulations. NOx combines with hydrocarbons to form smog, and with other gases to create particulates that can scar the lungs.

Most NOx emitted in the Los Angeles basin comes from mobile sources: Cars, trucks, planes, even schoolbuses. Gas-fired home furnaces are part of the problem, too. But businesses with natural-gas furnaces or boilers are major polluters that can be cleaned relatively cost-effectively, regulators say.

In the early 1990s, power plants in Orange, Los Angeles, Riverside and San Bernardino counties faced rules requiring them to install pollution controls in 1994. With the state in recession, Southern California Edison and others complained this would hurt their business. They asked for a more flexible approach.

The **air district** complied.

It gave each industrial polluter an NOx allowance that would decline each year. Initial allocations were generous, since the **air district** didn't want to be accused of curbing business.

Although other regions have adopted similar approaches, the clean-air market was a groundbreaking program when it was drawn up.

In the first year, 1994, the pollution allocations were 15,000 tons higher than actual emissions. Credits sold for 25 cents a pound. Power plants canceled plans to install catalytic scrubbers.

"Power plants delayed installing pollution controls with the full understanding that by 1999 the number of credits available would equal the emissions," said Mohsen Nazemi, an air district compliance officer. "This was predicted in the annual reports given out every year."

As power companies began running old boilers overtime in 2000, the price of credits jumped 1,000 percent.

AES, which has plants in Huntington Beach, Long Beach and Redondo Beach, had the most unused generator capacity, most of it with no pollution controls. When they began running those generators full time, they were hit hard.

"We went to go see the district back in June, well before we were going to be out of compliance, and said, 'There's gonna be a train wreck, what should we do?'" said Mark Woodruff, president of AES Southland.

"To comply would have required shutting down a large amount of generation. That would have triggered rolling blackouts."

AES eventually emitted 2,553 tons of NOx last year, according to the records, compared with an allocation of 1,023 tons. After running out of credits, AES paid a record $17 million fine.

AES executives said some of the blame lies with Southern California Edison, which sold them the plants in 1998. But Edison CEO Steve Frank said the utility operated those old boilers only 20 percent of the time, during peak periods, when RECLAIM began. "We had more than enough NOx credits to cover those plants."

Dozens of smaller companies from other industries have been caught by the high costs of NOx emissions. Fines are pending against a half-dozen smaller businesses, including a textile mill and two metal manufacturers.

No one knows the cost and impact of the pollution problem. Although the fines and cost of credits amounted to $142 million, some experts say the cost to consumers might have been as high as $1 billion, because of the way the power market worked.

President George W. Bush has criticized California's environmental regulations, saying they have exacerbated the energy crisis. Regulators find that frustrating, since the goal of the clean-air market is to comply with federal standards.

"We have been very flexible," said Wallerstein, the air district chief. "There is no conflict between air quality and keeping the lights on. ... Or maybe I should say, we've been able to minimize the conflict."

Wallerstein said pollution from power plants will likely exceed the air district's limit again this year. Next year, and beyond, he believes, the NOx goals will be met.

Tom Canaday, the federal Environmental Protection Agency engineer who monitors the basin's progress, said no one benefits when power plants must buy credits at $100,000 a ton.

"My hope is that we can look back two years from now and say that was an anomaly, we dealt with it, and now RECLAIM is going along fine. It was just a bump in the road and not the environment falling to pieces," he said.

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Los Angeles Business Journal April 2, 2001

April 2, 2001

SECTION: No. 14, Vol. 23; Pg. 5 ; ISSN: 0194-2603

IAC-ACC-NO: 73091134

LENGTH: 964 words

HEADLINE: Power Crisis Prompts Relaxation of Air Quality Rules; Brief Article

BYLINE: FINE, HOWARD

BODY:
Regional air quality officials, responding to the state's energy crisis, have undertaken a piecemeal rollback of several environmental regulations, and that is sparking the ire of local environmentalists.

"The district has undertaken a relaxation of environmental standards that we don't think is necessary," said Tim Carmichael, executive director of the Coalition for Clean Air. "They are letting polluters off the hook from previous commitments."

Among the regulations being eased are those related to the "**Reclaim**" emission credit-trading program, and rules on the use of backup generators.

"We are taking a wide range of steps to provide flexibility for Southern California to meet its energy needs while at the same time ensuring protection of the environment," said Barry Wallerstein, executive officer of the South Coast Air Quality Management District.

The AQMD decisions come amidst a turbulent political backdrop. Gov. Gray Davis and other state officials have put considerable pressure on environmental agencies to ease up on rules and procedures so new power generation can be brought on line before the expected summer power crunch.

Meanwhile, in Washington, President Bush and several members of his administration have blamed strict environmental rules for contributing to the current energy crisis and have indicated they are unwilling to impose any additional emission standards on power plants.

Environmental groups, caught off guard by the rapidly escalating power crisis, have been slow to respond to the criticism and thus far have been unable to stop local, state or federal officials from easing up on environmental rules.

That was evident at the two most recent monthly meetings of the AQMD's 12-member board at the agency's Diamond Bar headquarters, where environmentalists protested in vain against the agency's moves.

Those moves have included:

* Granting AQMD executive officer Wallerstein the power to waive rules governing the use of back-up diesel generators, allowing the devices to operate for up to 500 hours a year, instead of 200 hours.

* Exempting power plants from the AQMD's emission credit-trading program, known as **Reclaim**, which allows operators of industrial plants to buy credits on the open market in lieu of making certain **pollution** control investments.

* Expediting the permitting process for power plants, putting them ahead of other facilities seeking permits.

* Reducing the **pollution** mitigation fees that power plants must pay if they are unable or unwilling to install additional emission control equipment. One example: allowing AES Corp.'s Alamitos power plant in Long Beach to pay an $ 11 million fee to exceed its emissions cap, while getting the same relief by purchasing credits on the open market would have cost many times that amount.

* Issuing extra credits for dust, soot and other particulate matter, so that power plants can continue emitting such pollutants without being out of compliance.

* Lifting an emissions cap on a Glendale municipal power plant so that it can increase its output.

Wallerstein described these steps as temporary, designed to get the region through the next year or two until the power crisis eases.

"Contrary to what some of our critics are saying, we have existing flexibility under the federal and state clean air laws to allow us to move forward with clean power," Wallerstein said. "At the same time, we are not altering our long-term air quality goals."

Industry representatives have welcomed the AQMD moves.

"The district acted quickly and prudently to deal with this situation," said Robert Wyman, an attorney with the downtown law firm of Latham & Watkins who represents many of the major industrial and energy facilities in the Raclaim program. "By bifurcating the **Reclaim** market, the AQMD has allowed for power plants to increase their emissions without drying up the market for **Reclaim** credits for other sources in the program."

But environmentalists don't see it that way.

"The AQMD is a political entity, and right now, they are responding to panic-driven elected officials in Sacramento," said the Coalition for Clean Air's Carmichael. "Instead of clearing the way for more power plants, they should be earmarking dollars for conservation and the installation of more efficient equipment."

Carmichael said the AQMD's decision to exempt power plants from the **Reclaim** program was particularly ill-timed.

"Last year, prices of **Reclaim** credits finally rose to the point where installing **pollution** control equipment actually made financial sense," he said. "Then, as soon as that point was reached, the AQMD goes and pulls the plug and the prices go down so that no one else in the program has incentive to install controls."

The AQMD's **Reclaim** program director, Carol Coy, said prices for emission reduction credits did indeed go down after the power plants were exempted, but they have since gone back up to levels reached last summer. She said an approaching deadline for meeting **Reclaim**

targets has left the credits in short supply, driving their prices back up.

Carmichael said that his other major concern is with the easing of operating restrictions on back-up diesel generators.

"If they stick to the 500-hours-a-year limit, that's OK. But my fear is that we're going to have businesses saying, 'This is an emergency situation,' and that the limit will be extended way beyond 500 hours. And those generators are highly polluting."

Carmichael said he would rather see the AQMD and state agencies give tax credits for installation of energy-saving equipment. "We ought to be spending $ 10 in conservation for every $ 1 we spend building new power plants or buying additional generators."

IAC-CREATE-DATE: April 16, 2001

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EXHIBIT B

A CBE COMMENT

Prepared by
JIM JENAL, CLEAN AIR PROGRAM DIRECTOR

and
RICHARD TOSHIYUKI DRURY, STAFF ATTORNEY

on behalf of
CITIZENS FOR A BETTER ENVIRONMENT

to the
CALIFORNIA AIR RESOURCES BOARD

on
The Regional Clean Air Incentives Market — RECLAIM

MARCH 2, 1994

CBE COMMENT # 94-006

CBE Comment # 94-006 ARB's Hearing on RECLAIM

Key Concerns —

- RECLAIM is Not Equivalent to the 1991 AQMP
- RECLAIM's Alleged 'Emission Caps' are a Myth
- RECLAIM is Vastly Over-Allocated and Getting Worse
- RECLAIM is Not Enforceable
- RECLAIM Will Result is Severe Job Losses
- RECLAIM Will Delay Attainment of Healthful Air
- RECLAIM Impermissibly Replaces BARCT with Aggregate Reductions
- RECLAIM is Unwise, Unwarranted, and Illegal

Recommendations —

- RECLAIM Must Be Rejected and the 1991 AQMP Reinstated on a Revised and Sufficiently Expeditious Schedule to Recover Time Lost on RECLAIM.

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CBE Comment # 94-006 ARB's Hearing on RECLAIM

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CBE Comment # 94-006 ARB's Hearing on RECLAIM

Overview

Citizens for a Better Environment (CBE) — a non-profit environmental health advocacy group with fifteen-thousand members throughout the state of California — has been tracking the development of the so-called Regional Clean Air Incentives Market (RECLAIM) since its inception. During the past year, CBE produced substantial written comments on the proposed RECLAIM rules and environmental assesement; those comments are attached as appendices B and C. Further, CBE actively participated in the public hearing process associated with RECLAIM's development and encouraged members of the public to speak out on the program, generating more than five thousand letters to the SCAQMD Governing Board in opposition to RECLAIM's adoption.

Despite these efforts, last October the Governing Board turned a deaf ear to the cries of the public and adopted the program presently before you. Now it is up to the California Air Resources Board to determine if RECLAIM measures up to the requirements of state law.

Despite the cheerleading of your staff, the facts are clear — RECLAIM is illegal and must be disapproved.

Specific Comments

Rather than reiterate the arguments raised in our prior comments, this document will address the specific points raised in the staff report dated February 8, 1994.[1]

Executive Summary

The role of the ARB in reviewing RECLAIM is to determine whether the program complies with state law.[2] Unfortunately, the tone adopted by ARB staff in the executive summary is that of advocate, rather than analyst. For example, the staff gushes that "RECLAIM is a watershed development in air quality control" that "offers an orderly system for reducing emissions across the board."[3] At the very least it remains to be seen whether RECLAIM is a watershed or a washout. Many observers of RECLAIM's development, including some early supporters, have abandoned the program as being unworkable, unwieldy, and fatally flawed. Yet the staff report provides no indication that such considered opposition exists. By adopting such a partisan stance the staff has

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1 Public Meeting to Consider Approval of the South Coast Air Quality Management District's Regional Clean Air Incentives Market, February 8, 1994, at 1. (Hereinafter "staff report.")

2 Health & Safety Code § 39616(d)(1). All subsequent statutory citations refer to the Health & Safety code.

3 Staff report at 1.

seriously undermined its credibility and called into question the validity of its conclusions.

Staff has salted their report with numerous unsubstantiated claims such as "the mere existence of RECLAIM has also contributed favorably to the state's business climate."[4] Upon what objective data is that statement based? Given that the staff elsewhere refers to the "sustained economic malaise" in the region,[5] it is hard to understand the justification for such a claim. Rather, it comes off as yet more cheerleading from those who are supposed to be policing the District.

However the staff's most egregious misrepresentation occurs in the assertion that "though there is widespread agreement that RECLAIM should be fully implemented and tested, some feel that any risk is unacceptable."[6] Apparently staff missed the public hearings on RECLAIM where *the majority of speakers opposed adoption of the program*. Not one environmental, health, or community-based organization supported RECLAIM's adoption — not CBE, not the Coalition for Clean Air, not the Labor/Community Strategy Center, not the American Lung Association, not the Natural Resources Defense Council — none of them. Even environmental organizations that favor pollution trading in concept uniformly denounced RECLAIM due to its numerous deficiencies. Among the industry groups testifying at the RECLAIM hearing, the vast majority opposed the program's adoption. Thus one is compelled to ask, whose opinions comprise this "widespread agreement" to which the staff report alludes?

Further, it is not that we feel that "any risk is unacceptable," as the staff would suggest, but rather that we know that the threat to public health posed by RECLAIM renders approval of the program unconscionable. The staff's creation of a straw man to portray the opposition's well reasoned concerns does more to discredit the staff's analysis than it weakens our arguments.

RECLAIM is unacceptable because it fails to meet the clear requirements of state law. CBE hopes that this Board will go beyond the wishful thinking expressed by your staff and consider this program as written. We are confident that if you do, you will join us in rejecting RECLAIM.

Background

AFFECTED FACILITIES

The staff report misstates the trend associated with RECLAIM participation. As adopted, RECLAIM included 387 facilities (after the District's Governing Board voted to exclude three municipal electric utilities). However, contrary to the staff's assertion that

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4 Id.

5 Staff report at 10.

6 Staff report at 1.

"many may voluntarily join the program"[7] *a number of facilities are petitioning the District's Hearing Board to get out of RECLAIM.* At least one company, Dow Chemical — not exactly an unsophisticated environmental player — has already been exempted out of the program. A significant number of hearings are pending before the Hearing Board, both for the purpose of total exemption as well as allocation increases.[8]

EMISSION CAPS

Facility specific "emission caps" are one of the most misleading myths associated with RECLAIM. The simple fact is that under RECLAIM, no facility is *ever* required to reduce its emissions. As long as a company is willing to acquire the necessary credits it may continue its emissions at any level — even substantially *higher* than its initial allocation.

While the staff report doesn't discuss it, the RECLAIM rules allow credits to be generated from other, non-RECLAIM universe sources.[9] For example, under Rule 1610, credits generated from scrapping old cars can be sold to RECLAIM facilities. These credits are of questionable value as the actual emissions from the scrapped vehicle are never measured; yet RECLAIM will allow them to be converted into real emission increases when sold to RECLAIM sources. Thus, for example, a claimed emission decrease of 100 pounds from scrapping a car which in fact might have never been driven enough to emit that amount, will be absolutely converted into 100 pounds of pollution when sold in the NOx market. Such backdoor credits further erode the ability of RECLAIM to clean the nation's dirtiest air.

COMPLIANCE PROTOCOLS — *ANY* LIMIT *ANY* TIME?

The staff report blithely overstates the ability of the District to determine compliance under RECLAIM by claiming that "[i]f any limit is exceeded at any time, the facility is in violation of its RECLAIM permit."[10] While technically correct, the question is whether *anyone* could actually make such a determination. The District, as previously documented by ARB staff,[11] is already woefully inadequate in its ability to enforce its

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7 Staff report at 4.

8 As of this writing, at least 10 companies will be seeking hearings during the first two weeks of March alone. Included in this list are such RECLAIM supporters as Texaco, UNOCAL, and Mobil.

9 District staff refused to consider mobile source credits as a "backdoor" source for RECLAIM facilities since the cost per ton for NOx credits via mobile sources was considered prohibitively expensive. However that determination ignores the fact that many cars will be scrapped for their VOC credits (e.g., to avoid compliance with Rule 1142) and the NOx credits will come along for free.

10 Staff report at 5.

11 See, Perspectives on Progress: Results of Field Inspection Studies and Analysis of Key Data Indicators from the Enforcement Program of the South Coast Air Quality Management District 1989–1992, California Air Resources Board, July 1993.

existing (and presumably well understood) rules. Recent District staff layoffs have further eroded enforcement abilities. To suggest that RECLAIM will somehow be *more* enforceable is wishful thinking at best. This Board should demand a more critical analysis from ARB staff.

SELECTIVE ILLUSTRATIONS

The staff report provides two figures that are intended to give the impression that RECLAIM performs as well as the rules that it is replacing. CBE contends that the illustrations provided are misleading as they leave out the intervening years of 1995 – 1999. According to CBE's calculations, RECLAIM will actually allow for greater emissions in each of those years than would the 1991 AQMP.[12]

Staff Evaluation

EQUIVALENCY

Contrary to the assertion of the staff, RECLAIM is not equivalent to the 1991 AQMP (the Plan) as that term was intended when AB 1054 was adopted. Indeed, even ARB staff agrees with this assertion. In his letter to the District dated June 10, 1993, Mike Scheible of ARB staff asserted correctly that "RECLAIM is less effective than the 1991 AQMP for every year before 2003, and may be less effective than current rules. RECLAIM reduces NOx emissions at a much slower pace than the rate contained in the AQMP."[13] He goes on to state that "RECLAIM delays the final compliance dates, by an average of seven years, for NOx reductions at sources subject to rules 1109, 1110.1, 1110.2, 1134, and 1146.1," noting that these rules would require full compliance by December 31, 1995. Further, according to the Scheible letter, electric utilities also "have a relaxed compliance date, of two to three years."[14]

While the District made a minor modification to RECLAIM's rate of reduction between 1994 and 2000, the program still lags behind the reductions promised to the public when the 1991 AQMP was adopted. Under AB 1054 the program is therefore illegal and cannot be approved by this Board.

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12 See, CBE's Comments on Revised RECLAIM Rules and Environmental Assessment, September 7, 1993, at 4-5. (Attached hereto as Appendix C.) See also discussion of equivalency, below.

13 "Suggested Revisions to RECLAIM Allocation and Trading Rules," letter from Mike Scheible, ARB staff, to Jim Lents and Pat Leyden, SCAQMD staff, June 10, 1993 at 3. (Hereinafter "Scheible letter" and attached hereto as Appendix A.)

14 Id.

CBE Comment # 94-006 ARB's Hearing on RECLAIM

As can be seen in Figure 1 which follows, RECLAIM's emissions exceed the 1991 AQMP for every year of the program except 2003.[15]

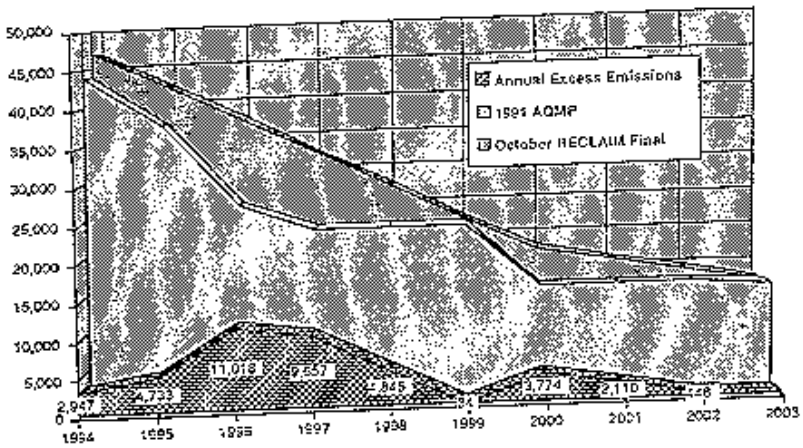

FIGURE 1. RECLAIM'S EXCESS EMISSIONS

District staff has attempted to define away their problems with equivalency by "dumbing down" the impact of the Plan that this Board approved. Such sophistic sleight of hand ignores the clear command of AB 1054 that a program like RECLAIM must result in equivalent or greater emission reductions "compared with current command and control regulations and future air quality measures that *would otherwise have been adopted as part of the district's plan for attainment.*"[16] Neither the District nor the ARB is permitted to redefine, *ex post facto* and without benefit of public comment, the measures that the Plan would have implemented absent the effort expended upon RECLAIM's development. Rather, the program must be evaluated against those measures that were in the Plan as conditionally approved by this Board. Against such a standard RECLAIM clearly fails the equivalency requirement of state law and therefore cannot be approved.

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15 NB: Figure one illustrates RECLAIM's excess emissions as of the October adoption date. Since that time, RECLAIM's allocations for 1994 have increased by more than 5% for cycle one companies, thus making an already untenable situation even worse. See Table 1 in the section on over-allocation, below.

16 § 39616(c)(1) (emphasis added).

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OVER-ALLOCATIONS

Compounding the equivalency problem is the issue of over-allocation of RECLAIM credits (RTCs) in 1994. The staff report acknowledges this concern when it concedes that RECLAIM's allocation calculation "produces total allocations for NOx and SOx in 1994 that exceed the cumulative levels actually emitted by RECLAIM facilities in 1991 or 1992."[17] Indeed this over-allocation amounts to 16% for the NOx market according to the staff report.[18]

The staff report glosses over this give-away by suggesting that RECLAIM "provides for greater certainty of compliance with established AQMP targets."[19] CBE is not assured, particularly given the present District tendency to allow ever greater starting allocations. The District has established a computerized "bulletin board system" that allows the public to peruse RECLAIM's current allocations. Based on CBE's analysis of this data downloaded from this official District source on February 28, 1994, NOx allocations for the facilities that comprise "cycle one" have increased more than 5% since the District's Governing Board approved the program in October! The data is summarized in the following table:

1994 Allocations (tons)		Allocation Increases — October to February		
Current	October	Total Tons > October	Tons/day	% increase
19,720	18,751	968.98	2.6547	5.17%

TABLE 1. RECLAIM'S OVER-ALLOCATION EXPANSION.

Nearly 1,000 tons of additional pollution will be added to South Coast skies due to re-allocations that have taken place since adoption. For the most part these increases occurred without public scrutiny and without benefit of public comment. Yet it is the public that will be forced to breathe this poison that the District has unilaterally decreed permissible.

Further, as the ever-mounting wave of requests for Hearing Board variances works its way through the system, the over-allocation problem can only get worse — as no company is appealing to have their allocations reduced.

Thus even at the outset, RECLAIM is a program out of control, and the only way to protect the public's health is to pull the plug before irreparable harm is done.

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17 Staff report at 9.

18 This admission makes it even harder to fathom the illustrations in the staff report that somehow suggest that RECLAIM outperforms the AQMP.

19 Staff report at 10.

The staff concedes that RECLAIM "could result in a near-term minor delay in emission reductions from RECLAIM facilities, relative to what might have been realized if existing rules were implemented on their established compliance schedules."[20] That admission should effectively end the discussion of this program, as it is a concession of illegality under AB 1054.

Staff, however, is undeterred by this failing and instead asserts that "this effect is temporary, will not persist beyond the first few years of the program, and will be offset by the greater reductions achieved under RECLAIM." The staff's assertion is patently false for three reasons. First, the magnitude of the over-allocation problem is greater than staff acknowledges and is continuing to grow. Second, the excess emissions allowed under RECLAIM, compared to the approved 1991 AQMP, continue for every year of the program until 2003. Finally, no "offset" can take place since, by definition, RECLAIM cannot produce greater reductions than the AQMP given that its 2003 endpoint is defined to be identical to the AQMP. Thus RECLAIM starts off allowing more emissions than what actually took place in the Basin during either 1991 or 1992, and lags behind the 1991 AQMP for each and every year of the program except the last.

This discrepancy literally will allow millions of pounds of additional pollution into the air. That pollution will be inhaled by the people who live in this region — and many of them will get sick, and some of them will die. There is no public health justification for this program and this Board must find it illegal, unwise, and unacceptable.

ENFORCEMENT & MONITORING

Contrary to the staff's assertions, CBE believes RECLAIM fails to provide comparable enforcement and monitoring, thus it is illegal. The staff report concedes that the use of emission factors for calculating emissions from smaller sources is not desirable; indeed, because of the inherent errors built into such estimations, the enforceability of the program is greatly reduced.[21]

Of course, one approach that would have greatly improved the enforceability of the program would have been to limit its scope to only those facilities large enough to warrant the use of continuous emission monitors (CEMs). That suggestion was made by CBE and others to the District Governing Board but it was rejected.

In light of the District's demonstrated inability to adequately enforce its existing rules (as previously identified by ARB staff), this Board would be wise in taking steps to limit the complexity of the RECLAIM reporting universe. The simplest and most effective approach, of course, would be for this Board to reject RECLAIM entirely. Short of that,

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20 Id.

21 Staff report at 12. See, CBE's Comments on Draft RECLAIM Rules and Environmental Assessment, June 25, 1993, at 6-9. (Attached hereto as Appendix B.)

CBE would urge the Board to narrow the scope of the program to those facilities emitting more than 100 tons per year of either NOx or SOx.

JOB LOSS

CBE believes that RECLAIM will accelerate job losses in the Basin, and contends that a very simple mechanism for preventing such losses has been repeatedly ignored by the District. Accordingly RECLAIM is illegal under AB 1054.

While the staff report finds that RECLAIM will not result in greater job losses than would have happened under the existing rules, that assertion overlooks a fundamental aspect of the program — RECLAIM pays marginal companies to go out of business. By vesting all participating companies with credits at the start of the program — before any expenditures are made for monitoring equipment — a marginal company is given a choice: take the credits and cash-out, or stick around, try to master an extremely complicated regulatory arena, and pay for the required monitoring equipment. This choice provides a powerful incentive for marginal companies to shut their doors and flee the Basin, taking their jobs with them.

The staff report accepts the District's calculations regarding projected job impacts without ever directly addressing this issue. Two simple steps could have been taken to prevent such possible effects, but both were rejected. First, the size of the RECLAIM universe could have been limited to facilities with emissions greater than 100 tons per year. Such facilities are unlikely to be motivated by the costs of compliance with RECLAIM nor are they daunted by a complicated regulatory scheme. Second, shutdown credits should be confiscated by the District, at least for credits that were initially allocated for free (as opposed to credits a facility had purchased). Otherwise companies leaving the Basin are given a pollution windfall courtesy of the District.[22]

If the District were serious about preventing job losses induced by RECLAIM it would have adopted both of those suggestions. Its failure to do so underscores RECLAIM's "dirty little secret" — the program is expected to provide cheap credits to polluters by allowing them to cash-in on companies that go out of business. Such a dependence is illegal under AB 1054 and should not be allowed.

PROGRESS TOWARD ATTAINMENT

Under state law, RECLAIM may not "in any manner delay, postpone, or otherwise hinder district compliance with" the California Clean Air Act (CCAA).[23] The staff report contends that the Plan approved by this Board in October of 1992 met the Plan's requirements. While CBE disagrees as to the adequacy of the 1991 Plan, it is clear that

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22 The District has taken pains to attempt to define RTCs as something other than a property interest in order to avoid potential constitutional "takings" issues. Assuming that definition survives judicial scrutiny there would be no legal impediment to confiscation of RTCs.

23 § 39616(c)(5).

RECLAIM falls short of the reductions that the Plan would have attained — as indeed ARB staff concedes.

RECLAIM's excess (and ever growing) allocations in 1994 coupled with a slower rate of reduction and greater uncertainty as to actual emission reductions guarantees that the program will delay, postpone and hinder compliance with CCAA standards. Accordingly the program is illegal and must be rejected.

BARCT REQUIREMENTS

California law requires "the use of best available retrofit control technology for existing sources" of poilution.[24] BARCT is defined as "an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source."[25] Thus, under California law, districts are required to determine the maximum degree of emission reduction achievable for each class or category of pollution source and to then require that such an emission limitation be applied to all such existing sources of pollution expeditiously.

The impact of this legal obligation is clear — for each class or category of pollution source, the most stringent achievable reduction must be determined and applied. Yet under RECLAIM, some existing sources of pollution will *never* be required to apply *any* emission reductions whatsoever. RECLAIM asks the breathing public to exchange guaranteed emission reductions that would have been secured by identifying and requiring achievable controls on existing pollution sources, for the vague assurance that somehow, on an aggregate basis for the Basin as a whole, an equivalent level of reduction will occur. That is not what the law demands.

The staff report claims that the BARCT provisions in state law "do not restrict the manner by which compliance with an emission limitation is to be determined."[26] CBE disagrees. The clear intent of the law is to require all existing sources to reduce their emissions to the maximum degree achievable. RECLAIM's failure to comply with that requirement renders it illegal.

The ARB Must Prepare a Subsequent EIR.

Because of the substantial changes that have been made to the RECLAIM program between the time of the last draft and final environmental impacts reports (EIR), it is clear that the ARB, as a responsible agency, must prepare and circulate for public comment a subsequent EIR (SEIR). When a project is changed substantially after certification of the final EIR (FEIR), a new EIR must be prepared. *Concerned Citizens of*

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24 § 40440(b)(1). Best available retrofit control technology is commonly referred to as BARCT.

25 § 40406.

26 Staff report at 19.

Costa Mesa v. 32nd Dist. Agric. Assoc., 42 Cal. 3d 929 (1986). This California Environmental Quality Act (CEQA) requirement applies to both lead agencies, and to responsible agencies, such as the ARB. CEQA §§ 21166 and 21092.1; CEQA Guidelines § 15162.

RECLAIM has changed substantially since the drafting of the FEIR, and since the time of the District's adoption of the program. As mentioned above, three city utilities have been excluded from the program, despite their inclusion in the analysis in the last available EIR. Perhaps most significantly, the District has increased initial RECLAIM allocations for cycle one facilities by 5% over the October allocations contained in the last EIR. This means even more pollution will be entering the Los Angeles skies and the lungs of South Coast residents than was described in the last EIR and than was considered by the District Board. As a responsible agency within the meaning of CEQA, the ARB must prepare and circulate a subsequent EIR considering this additional pollution and its potential environmental and public health impacts, as well as any other significant changes which have been made to the RECLAIM program since the last EIR.

Conclusion

The report prepared for this Board by its staff has unfortunately adopted a partisan tone, cheering on a program that should be analyzed in a more dispassionate manner. Even so, the report admits in numerous places that RECLAIM is deficient in ways that render it illegal. Unfortunately, despite those admissions, the staff report concludes that RECLAIM should somehow be approved, warts and all.

CBE disagrees. While we fundamentally oppose the notion of *marketing* the very poison that reduces the lung capacity of children by as much as 25% here in the Los Angeles basin, CBE would encourage this Board to consider that RECLAIM is so fundamentally flawed that even supporters of pollution trading have abandoned it. We urge you to do likewise and to reject RECLAIM as unwise, unwarranted, and illegal.

In order to put the South Coast Air Basin back on track toward achieving healthful air in our lifetime, this Board should direct the District to bring back the shelved AQMP control measures on a newly revised and expeditious schedule.

Appendix A — Letter from ARB's Mike Scheible to SCAQMD's Jim Lents and Pat Leyden, June 10, 1993.

Letter Not Included

Appendix B — CBE's Comments on Draft RECLAIM Rules and Environmental Assessment, June 1993.

Letter Not Included

Appendix C — CBE's Comments on Revised RECLAIM Rules and Environmental Assessment, September 1993.

Letter Not Included

COMMENT LETTER 3
Communities for a Better Environment
April 27, 2001

3-1 The commentator states that the SCAQMD failed to modify the project to address the grave concerns raised in CBE's 2/23/01 letter to the SCAQMD commenting on the Initial Study for the proposed project[1]. It is assumed that this comment refers to CBE's request invoke the penalty provision in Rule 2015(b)(6). As noted in the SCAQMD's response, the White Paper examining the causes of the RTC price increases did not find that program compliance or enforcement aspects had any causal role in the RTC price increases. Instead, it was the confluence of RECLAIM emissions matching allocations; together with the unanticipated increased demand for RTCs in the power industry that caused the price increases. As a result, the proposed project is designed to address the underlying reasons why the RTC price increases occurred. Through the recent efforts that went into developing the RECLAIM White Paper, SCAQMD staff identified likely causes that led to such high demand and prices for RTCs. The proposed amendments to the RECLAIM program are designed to reduce the demand for RTCs by affected facilities and stabilize RTC prices.

The SCAQMD has not summarily dismissed CBE's concerns as mere opinion. All concerns that the SCAQMD could address without being speculative were addressed. For example, based on the comments received on the Initial Study, the Draft EA considered the potential for both localized and regional impacts from the influx of additional MSERCs and ASCs into the RECLAIM market. The Draft EA also analyzed whether or not the proposed project would cause or contribute to an exceedance of the ambient air quality standards and the potential for delays in achieving the RECLAIM program endpoint.

The commentator asserts that the SCAQMD dismisses CBE's assertion that the RECLAIM program has failed and, to support this assertion, refers to "A sampling of newspaper articles" contained in Exhibit A. The SCAQMD acknowledges that there are problems with the RECLAIM program. Indeed, this is the reason for moving forward with the proposed amendments. To simply say the program has failed, however, does not take into consideration a host of complex factors that have converged simultaneously to create many of these unanticipated problems. The main factor that has contributed to the current problems with the RECLAIM program are related to the current and ongoing energy crisis in California, which is itself a complex issue. Until the problems associated with California's energy crisis surfaced, the RECLAIM program was

[1] CBE provided comments on the Draft EA for PR 1612.1 – Mobile Source Credit Generation Pilot Program (letter dated 2/23/01). Because the stated objective of PR 1612.1 was to adopt a protocol to generate MSERCs for use in RECLAIM, most of the comments in that letter were in reference to the proposed modification to the RECLAIM program. CBE also submitted a comment letter on the NOP/Initial Study for the proposed amendments to RECLAIM and the four other proposed MSERC/ASC rules (letter dated 3/05/01). The SCAQMD assumes that the commentator is referring to the 3/05/01 comment letter.

on track with regard to reducing NOx emissions from affected sources as demonstrated by the findings made by the SCAQMD's Governing Board at the October 20, 2000, Public Hearing. The SCAQMD's Governing Board made the following findings concerning the RECLAIM program pursuant to Health and Safety Code §39616(e):

a. The 1991 Air Quality Management Plan (AQMP) was designed to achieve its targeted emissions reductions by 2010. RECLAIM was designed to reduce collective emissions from the sources subject to the program to the same endpoint mass emissions they would have achieved through implementation of the control measures in the 1991 AQMP by 2003. RECLAIM emissions have been below the emissions allocations each year since the beginning of the program. Thus, RECLAIM is on track to achieve equivalent emissions reductions as would have resulted from continued implementation of the subsumed rules and control measures [§39616(c)(1)].

b. Adequate control technology and opportunities for further emissions reductions have been shown to exist for RECLAIM participants to collectively achieve their emissions goals for 2003 [§39616(c)(1)]. [This assumes that there are no constraints on obtaining control equipment and installation could occur immediately.]

c. The main costs of complying with RECLAIM are monitoring, reporting, and recordkeeping (MRR) costs; equipment and installation costs; and administrative costs. These cost factors under RECLAIM have continued to stay below those costs projected at the time of adoption. Current projections of the cost to install the necessary controls to achieve compliance with 2003 allocations are below the projections made at the time RECLAIM was adopted [§39616(c)(1)].

d. Continuous emissions monitoring systems (CEMS) are the most accurate and reliable equipment for real time monitoring of emissions. RECLAIM requires the use of mass CEMS on all major sources, which represent the vast majority of RECLAIM emissions. The subsumed rules and control measures required the use of far fewer CEMS, and most of those measured emissions concentration rather than mass. RECLAIM also includes detailed monitoring requirements for non-major sources and requires electronic reporting of emissions on a daily, monthly, or quarterly basis depending on the emission potential of the source. The inspection and enforcement program under RECLAIM is more structured and regular than under the subsumed rules and control measures. Overall, RECLAIM's MRR and enforcement requirements are more rigorous and provide more accurate and complete data than the corresponding requirements of the subsumed rules and control measures [§39616(c)(2)].

e. RECLAIM has successfully promoted, and even required, privatization of compliance and the availability of electronic data. For example, periodic

third-party source tests are required for large NOx sources, relative accuracy source tests are required for CEMS, and RECLAIM includes daily, monthly, and quarterly electronic emissions reporting. Furthermore, SCAQMD is committed to amending RECLAIM's MRR requirements to allow the use of electronic alternatives to strip chart recorders. The proposed rule amendment is currently targeted for March 2001 [§39616(c)(5)].

f. RECLAIM provides for trading of emissions reductions from a variety of non-RECLAIM sources, including Emission Reduction Credits (ERC), and emission credits generated pursuant to Regulation XVI - Mobile Source Offset Programs or pursuant to Rule 2506 - Area Source Credits for NOx and SOx. Additionally, it may become possible to generate emission credits for use in RECLAIM through the Air Quality Investment Program (Rule 2501) and/or the Intercredit Trading Program (currently under development) [§40440.1].

g. Per capita exposure to ozone in the South Coast Air Basin met the target reductions specified for year 2000 in Health and Safety Code §40920(c) several years ahead of schedule. Additionally, RECLAIM is still on target to achieve the same emissions reductions as was projected to result from implementation of the subsumed rules and control measures. RECLAIM's reductions are also more certain than the projected reductions from the subsumed rules and control measures. Thus, RECLAIM is not delaying attainment with state ambient air quality standards [§39616(c)(6)].

The above accomplishments of the RECLAIM program demonstrate that the program has achieved numerous beneficial air quality objectives. The SCAQMD disagrees with claims that RECLAIM does not reduce emissions as predicted, since emissions have been less than RECLAIM allocations through Compliance Year 1999. Nevertheless, amendments are needed to assure progress continues.

3-2 The commentator implies in comment #3-2 that the because of an initial oversupply of credits there has been no economic incentive to install pollution control equipment, implying that the program has not produced air quality benefits. As indicated in response to comment #3-1, RECLAIM emissions have been below the emissions allocations each year since the beginning of the program. Further, per capita exposure to ozone in the South Coast Air Basin met the target reductions specified for year 2000 in Health and Safety Code §40920(c) several years ahead of schedule.

In spite of the above, there are a number of issues currently associated with the existing RECLAIM program, which the commentator believes is evidence of a failed program. The proposed amendments to the RECLAIM program are in response to a number of factors. The convergence of several factors resulted in a higher demand for NOx RTCs for the 1999 compliance year. These factors include a reduction of annual allocations to the point where allocations and emissions are roughly equal, restructuring of the electric utility industry resulting in change of ownership of ten local power plants, creation of an open market for

sale of electricity, and electricity shortages during summer 2000 resulting in the need to generate more electricity than anticipated. The proposed project is, therefore, an effort to stabilize the price and availability of RTCs, while requiring, at a minimum, BARCT on power generating equipment.

Finally, with regard to "massive noncompliance" this is simply not true. Historically, from 1994 to 1999, compliance rates were high and overall emissions were less than allocations (see also the response #3-1(d)).

With regard to the 1994 CBE report included as Exhibit B, this information is not relevant to the environmental analysis of the proposed project.

3-3 The commentator agrees that higher power generation rates over the past year have "resulted in an unexpected pull on the market" The commentator then trivializes this effect by stating that the recent spike in credit prices is the result of affected facilities not installing pollution control equipment, "including a few power plants."

As part of the findings made by the Governing Board at the October 20, 2000 Public Hearing, the staff noted that adequate control technology and opportunities for further emissions reductions have been shown to exist for RECLAIM participants to collectively achieve their emissions goals for 2003, assuming there are no constraints on obtaining control equipment and installation could occur immediately. However, the fact remains that power-producing facilities have been emitting at substantially higher than historical rates due to the limited availability of electricity generation capacity in California. In many cases power generating facilities have been required to operate continuously at high rates by Cal-ISO and subsequently by the State Water Resources Agency. It is a direct function of the power generating facilities operating at higher than historical levels, thus emitting more than would otherwise be the case, and their attempt to comply with their annual allocations that have resulted in the power-generating facilities exerting a disproportionate effect on the availability and price of RTCs by buying up most, if not all, available RTCs. Even under command and control rules, specifically SCAQMD Rules 1135 and 1134, power-generating facilities would be exceeding the emission limitations specified in these rules to continue to supply electricity to the state grid in response to the Governor's Executive Order.

To address the main source of the problem of high RTC prices and low availability created by the increased need for power-generating facilities to operate at higher than historical levels, modifications to the RECLAIM program are being proposed that contain the following components. The power generating facilities are being removed from the RECLAIM trading market. This will serve to increase RTC availability to the overall trading market, thus contributing to reducing RTC prices. Further, the proposed project includes a temporary infusion of surplus and enforceable mobile and area source credits that would be dedicated to the RECLAIM program. This will also serve to reduce RTC prices, while providing emission reduction benefits as stated in the Draft EA. The proposed

project would prohibit power plants from purchasing and using RTCs to reconcile emissions for any quarter starting January 1, 2001, unless the RTC was acquired prior to January 12, 2001. Further, the proposed amendments require all electricity generating equipment, except peaking turbines, to achieve BARCT levels by January 1, 2003, and all peaking turbines must achieve BARCT levels as early as feasible, but no later than January 1, 2004. Finally, the proposed project requires non-power generating facilities greater than 50 tons per year to submit compliance plans demonstrating how they intend to comply with future allocations. Therefore, the proposed amendments adequately address the commentator's concern that non-power producing RECLAIM facilities will delay installing controls. They must submit compliance plans showing the controls they will use to meet allocations.

3-4 The commentator states that "CBE holds to all of its initial comments, as submitted in response to the District's Initial Study..." Since the commentator has provided little additional factual information, the SCAQMD's responses to CBE's 2/23/01 and 3/05/01 comment letters remain valid.

3-5 As indicated in the Draft EA, project alternatives to the proposed project were developed by modifying major components of the proposed rules or proposed amendments currently under consideration. Modifying various components of the propose project is the standard approach the SCAQMD takes when developing alternatives for all SCAQMD projects that require an alternatives analysis and provides a consistent method of identifying a range of reasonable alternatives as required pursuant to CEQA Guidelines §15126.6(a).

Although Rule 2015(b)(6) specifically refers to an evaluation and review of compliance and enforcement aspects of the RECLAIM program, this provision was not the original trigger for the proposed project[2]. In addition to responding to the energy crisis in California and its affects on the price and availability or RTCs, the proposed project implements Rule 2015(d)(1), which requires the Executive Officer to propose to the Governing Board to amend the RECLAIM program to address any specific program problems. As indicated in Chapter 2, the primary program problems being addressed by the proposed project are the high prices and low availability of RTCs. Existing enforcement mechanisms in the RECLAIM program do not address these problems and, therefore, were not evaluated. In fact, the SCAQMD is adequately enforcing RECLAIM, as evidenced by the record-breaking fines of $14 million and $17 million assessed on power producing facilities violating RECLAIM. Recent problems in RECLAIM have been caused by power producing facilities paying astronomical prices to avoid violations. This problem is not addressed by more strict enforcement.

[2] The Rule 2015(b)(6) requirement to evaluate and review the compliance and enforcement aspects of the RECLAIM program has subsequently been triggered by the Annual RECLAIM Audit Report for the 1999 Compliance Year received by the SCAQMD Governing Board at its March 16, 2001, Public Hearing.

It is unclear why the commentator believes that the effects of the pilot NOx credit generating rules are irreversible. Further, the commentator states that infusing the RECLAIM trading market with additional RTCs contradicts the SCAQMD's objective of reducing RTC prices in the near-term. It is assumed here that the commentator believes that the proposed project contradicts the objectives of the proposed project because of the potential for low RTC prices in the long term.

First, as already noted in response to comment #1-7 of CBE's 3/05/01 comment letter, the ability of stationary sources to use RTCs (including those generated from mobile or area sources) for regulatory compliance is already set forth in the provisions of Regulation XX. Since the proposed NOx credit generating rules do not alter a stationary source's ability to use credits as a means of compliance with RECLAIM, the proposed project would not alter the existing setting relative to this issue and, thus, would not be considered an impact under CEQA. The use of MSERCs in the RECLAIM credit market is an inherent part of the program. However, the proposed MSERC rules do contain time limits on their use to assure that credits remain surplus. Also, since the greatest need for MSERCs is to offset unavoidable emissions increases from power producing facilities and to provide credits for new RECLAIM facilities that are already at BACT, these credits will not cause significant delays in installing controls.

It is not anticipated that the proposed pilot NOx generating rules will have long-term effects on the program or cause RTC prices to remain low in the long term for the following reasons. The proposed NOx credit generating rules contain sunset provisions that prohibit credit generation applications after January 1, 2004. By 2003, the proposed NOx credit generating rules then require evaluations every two years to evaluate performance. Under Proposed Rule 1631, no evaluation year is specified. It has been determined that for this source category that NO_x emission reductions will no longer be considered surplus after June 30, 2005 due to implementation of Control Measure M13 – Marine Vessels in the 1997 Air Quality Management Plan (AQMP) and therefore no credits will be issued. Surplus emission reductions post 2005 may be credited towards the SIP which includes Control Measure M13.

3-6 The commentator states here that there are no limits on the number of credits that can be generated by existing and proposed credit generating rules. As a result, the RECLAIM trading market will be "flooded with credits," continues to provide no incentives for installing pollution controls and is "environmentally irresponsible."

Existing credit generation rules do not contain provisions limiting the number of credits that can be generated, but do contain a sunset provision that prohibit credit generation applications by January 1, 2004. Additionally, there are other practical considerations that limit the number of credits generated in general and by these rules in particular for the following reasons.

a. Federal law requires that credits used to comply with air pollution control rules must be surplus and enforceable. Because most stationary sources in

the district are subject to a prohibitory rule in Regulation IV or a source specific rule in Regulation XI, there are limited opportunities to generate surplus emission reductions.

b. Credit generation rules are voluntary and depend on market conditions. Because market conditions vary and the cost of generating credits is typically relative high, it is often not cost effective to spend the money to generate credits if there is no guarantee that the investment will be recouped.

The SCAQMD disagrees with the commentator's opinion that allowing credits into the RECLAIM market from the proposed pilot NOx generating rules is "environmentally irresponsible" for the following reasons. During the development of proposed Rule 1612.1, the SCAQMD worked closely with CARB, U.S. EPA, and the environmental and business communities. The effort of these parties was to ensure that, as required by federal law, the proposed credit generating rules provide real, enforceable emission reductions in excess, or surplus, to emission reductions required by existing rules and regulations or assumed or relied upon in the SIP. The following highlights some key elements of Rule 1612.1 that will largely be included in the currently proposed NOx credit generating rules, to ensure that emission reductions are enforceable:

i. Requires credit generators to submit an application, which is an enforceable document, prior to receiving credits.

ii. Contingent on credit generation and issuance, requires credit generator to demonstrate proof of delivery of the new replacement vehicle or equipment and proof of transfer of ownership of the replaced vehicle or equipment.

iii. Requires a written certification or signed declaration that the replaced vehicle or equipment has not and will not be operated in the district.

iv. Requires maintenance of quarterly records of the activity level for the project.

v. Establishes penalty requirements for the generator and user, to ensure no shortfall in emission reductions will occur.

The currently proposed pilot NOx credit generating rules contain similar provisions to those in Rule 1612.1 that will ensure that NOx credits are surplus and enforceable (see points i. through v. above). In addition, the proposed credit generating rules contain an environmental benefit provision. The analysis of potential environmental impacts in the environmental assessment does not take credit for the fact that the proposed NOx credit generating rules will also provide localized reductions of diesel emissions components other than NOx including PM10 and toxic air contaminant reduction benefits. The proposed NOx credit generating rules include program evaluations regarding their effectiveness and potential impacts (credits generated pursuant to PR 1631 would no longer be issued after July 2005). Finally, the proposed NOx credit generating rules contain sunset provisions that prohibit credit generation applications after January 1, 2004. For these reasons the proposed pilot NOx credit generating rules provide

real air quality benefits that serve to further the SCAQMD's progress in attaining and maintaining the ozone and PM10.

Additionally, the pilot credit generation programs are in many instances not cheaper than stationary source controls and, further, allow for only a few years of credit generation opportunities. Based on the above considerations, it is not expected that the RECLAIM market will be "flooded with credits" (see Table 4-9 and Appendix E). Finally, the commentator's opinion that the proposed project provides no incentive for installing pollution controls is not consistent with the BARCT requirements for power generating facilities contained in proposed Rule 2009 (refer to response to comment #3-3).

The commentator states that since ASCs generated by PR 2507 are from unpermitted sources the "aggregate emissions from theses sources is a mystery." The commentator further explains that aggregate emissions from these sources is a mystery because the SCAQMD does not know how many pollution credits may be generated from reductions at these sources. The commentator is referred to the methodology for estimating credits from this source included in Appendix E. The methodology includes the total number of sources in the district as well as an estimate of the annual participation rate. The commentator is also referred to proposed Rule 2507(f), which contains a precise area source credit generation calculation methodology that takes into consideration the following: baseline emission factor for the agricultural pump in grams per brake horsepower-hour; horsepower of the existing diesel engine; horsepower of the replacement electric motor; load factor of the existing diesel engine, load factor of the replacement electric motor, and activity level. See also response to comment #3-15. Finally, the "environmental benefit" factor in the proposed credit rules is designed to address any remaining technical uncertainty.

3-7 The commentator again expresses the opinion that the proposed project will infuse the RECLAIM trading market with "a potentially infinite number of credits." As explained in response to comment #3-6, such a scenario is not anticipated. The commentator, therefore, is referred to the response to comment #3-6.

3-8 The commentator repeats the previous assertions that the proposed project will flood the RECLAIM trading market with credits, thus, creating no incentive to install pollution control equipment. With regard to the infusion of NOx credits into the RECLAIM trading market, the commentator is referred to the response to comment #3-6. With regard to installing air pollution control equipment, the commentator is referred to the response to comment #3-3.

3-9 The commentator asserts that the inclusion of MSERCs and ASCs into the RECLAIM program violates Health & Safety Code §39616(c), which requires the SCAQMD to find that an economic incentive program will result in equivalent emissions reductions as would have occurred under command and control regulations. On its face, there is nothing in this statue that precludes including

emission reductions from mobile and area sources in the calculation of equivalent emission reductions. Such reductions would, of course, need to be surplus, enforceable, and quantifiable. SCAQMD staff has worked closely with CARB and U.S. EPA to assure that MSERCs and ASCs meet these requirements. Moreover, in interpreting any statute, such as §39616(c), it is necessary to harmonize the statutory provisions with other statutes dealing with the same subject matter. Health & Safety Code §40440.1 specifically states that an economic "incentive program adopted pursuant to Section 29616" shall allow for trading among different sources, including mobile, area, and stationary sources. (§40440.1(a).) Therefore, Health & Safety Code §39616 cannot reasonably be interpreted as prohibiting the use of MSERCs and ASCs as part of the program equivalency. The commentator is also referred to Chapter 5 of the Staff Report for the proposed amendments to the RECLAIM program.

3-10 State and federal law allows stationary sources to use mobile source credits. The RECLAIM program, including Rule 2008, was approved by CARB and EPA as complying with all state and federal laws including the Clean Air Act (CAA). The SCAQMD's authority in state law to achieve emission reductions across a spectrum of sources, "including mobile, area, and stationary, which are within the district's jurisdiction," provides for a market-based emissions trading program.

The federal CAA does not prohibit the use of mobile source credits for offsetting under New Source Review. The commentator misinterprets the language of §173(a)(1)(A), which does not specify that all offsets must be from stationary sources. Moreover, §173(a)(1)(A) does not require that each individual trade or permit gets offsets from another stationary source to demonstrate that a net reduction occurs, rather the evaluation is programmatic. The SCAQMD has demonstrated that RECLAIM, with all of its provisions, meets the requirements of the CAA.

Further, U.S. EPA has recently released its final guidance on Economic Incentive Programs (EIP). This guidance was developed pursuant to the CAA and recognizes the use of the CAA compliant programs such as RECLAIM in meeting attainment goals. The program may be used in both attainment and nonattainment areas and may include mobile, stationary, or area sources, and credits may also be used for New Source Review offsetting.

3-11 The commentator asserts that the Mitigation Fee Program for power plants and the AQIP violate the requirement for program equivalency as set forth in Health & Safety Code section 39616(c). Under the proposed rule, the AQIP may only be used if it is pre-funded, i.e., the credits are already available in the AQIP reserve before they are used. Therefore, the AQIP does not present any risk of delay in obtaining equivalent emission reductions.

The commentator's concern regarding the Mitigation Fee Program is that, in the event the program is not able to procure reductions that are equivalent to exceedances, the District will deduct the exceedance from future year allocations

two years after the exceedance. It should be noted that with or without the proposed amendments, the power plants will exceed their year 2001 allocations, since the governor's Executive Order has required air districts to remove any limits on the hours of operation for power plants. Under the existing RECLAIM rule, such emissions would need to be made up one year after the exceedances; under the proposed amendments, they could be made up in the second year. Therefore, the only effect of the proposed amendments would be to delay the requirement to make up for these exceedances for one year (one-quarter of the exceedance may be carried over for an additional year if 75 percent of the exceedance has already been mitigated[3]). At the same time, another part of the proposed amended program actually reduces the likelihood that there will be any unmitigated exceedances that need to be made up in future years. This is because real, enforceable, and surplus MSERCs and ASCs will be made available to mitigate a large share of these year 2001 exceedances.

Although the CEQA analysis used a conservative approach to estimating how may credits would be available from these programs, more recent estimates in the staff report make it more likely that any exceedances will be fully mitigated, without requiring future year deductions. However, even assuming there are some exceedances that will need to be deducted from future years, the fact that this deduction may occur at a later time than under the existing rule does not mean the program is no longer equivalent. Essentially, the amended program will result in a smaller amount of unmitigated emission, but will allow the initially unmitigated emissions that do need to be "made up" through deductions to be made up at a later date. The statute does not preclude this from occurring. The District anticipates that actually emissions will meet the RECLAIM allocation for the milestone year of 2003 as well as the PM10 attainment year of 2006. Therefore, the equivalency provisions of state law. Nevertheless, the Draft EA does make a determination that the potential delay may result in significant adverse environmental impacts and the Governing Board will therefore, be required to make the appropriate CEQA findings to justify adopting the project despite any identifiable significant adverse impacts.

3-12 The definition of BARCT requires the SCAQMD to first consider the best control technology available for the specific type of equipment being evaluated. However, much of the power generating equipment in the district were built over fifty years ago and there may be many technical restrictions in an attempt to retrofit these units with the current control technologies. The rule will allow the SCAQMD to take into account the technical feasibility and cost-effectiveness of various control options. This methodology is consistent with the approach the SCAQMD uses to evaluate BACT for minor sources. The staff report further

[3] The proposed project was modified after the release of the Draft EA to allow one-quarter of the exceedance to be carried over for an additional year if 75 percent of the exceedance has already been mitigated (the ability to delay deductions through the Mitigation Fee Program would still sunset after Compliance Year 2003). Staff has reviewed the proposed modification and has determined that it is within the scope of the alternatives analysis and does not result in a significant adverse impact not previously identified nor make a previously identified significant impact substantially worse.

clarifies the procedure that will be used by the SCAQMD to make BARCT determinations for electric generating equipment. It clearly states that the SCAQMD will consider the emission limits recommended by CARB as well as the emission rates specify in SCAQMD Rule 1134 - Emissions of Oxides of Nitrogen from Stationary Gas Turbines, and SCAQMD Rule 1135 - Emissions of Oxides of Nitrogen from Electric Power Generating System.

3-13 In keeping with the objectives of minimizing emissions from power generation, the proposed project would require facility operators to incorporate in the compliance plan a method to operate less polluting power generation units (NOx-emitting generating equipment) over dirtier units under common ownership. This provision would only apply to facilities with a total generating capacity greater than 250 megawatts. The operation method of electric generating units would list all power generating units, including turbines as peaking units, that emit NOx within a power producing facility under different groups of priority based on the emission level per net megawatt hour of electric generation. The priority grouping would cross facility boundaries if more than one power producing facility is under common ownership. Operators would be required to operate all units within the first priority group at all facilities under common ownership to the maximum extent feasible prior to operating any units in the next priority group. The commentator is referred to the Staff Report for the proposed amendments to RECLAIM for a more detailed discussion of this issue.

3-14 The SCAQMD strongly disagrees with the opinions expressed in the first paragraph of the memorandum from Julia May to Suma Preesapati dated 4/27/01. First, it is asserted that the project description is not complete. There is a complete and comprehension description of the proposed project including amendments and new rules to the RECLAIM program as well as the proposed pilot NOx credit generating rules. Further, the full text of the proposed amended rules and proposed new rules were included in Appendix A of the Draft EA. With regard to the potential increased emissions, the commentator is referred to the response to #3-16. With regard to the alternatives analysis, the commentator is referred to the response to comment #3-17.

With regard to credit use, the SCAQMD understands that CBE is fundamentally opposed to the use of mobile source credits to comply with annual allocations. However, as previously explained in the response to comment #1-2 to CBE's 3/05/01 comment letter, use of mobile source credits has been an inherent component of the RECLAIM program since its adoption in October 1993. This component of the program is not affected by the proposed project.

The proposed pilot credit generation rules are voluntary and it is difficult to identify the potential generators and users of the emission credits. For the proposed rules that affect marine vessels, PR 1631 and PR 1632, the location of the generation projects will occur either within district waters, which are defined in the proposed rules to be within 25 miles from shore, or in or around the ports and harbors within district boundaries. Regarding PR 1633 and PR 2507, the

location of the projects is unknown as they may occur at distribution centers and agricultural areas throughout the district.

The table presented in the commentator's letter generally identifies the geographical area where credits may be generated and used. Credit use depicted in the table is a partial list of where credits may potentially be used. Credits may be used through the RECLAIM Reserve, which is limited to select RECLAIM facilities or purchased directly as an MSERC by any RECLAIM facility. Although general geographic areas can be identified in some cases for credit generation, such as credits for marine vessels, it is speculative to assume the geographical location of where that specific credit will be used since credits can potentially be used by all RECLAIM facilities. However, the analysis in the Draft EA demonstrated that there will not be significant adverse localized impacts. In addition, although specific users are not known at this time, harbor areas have been known to have high diesel toxic exposures due to the activities surrounding areas. Reductions in diesel exposures are beneficial to the adjacent residents.

Finally, for emission reductions that are used through the RECLAIM Reserve, the SCAQMD will conduct an annual program review to assess the amount, type, and location of credits that are generated and used. Information from the program review will be based on actual credit generation and use data. This information will be incorporated in the annual RECLAIM report and will be presented to the Governing Board. Through this process, the SCAQMD will continue to work with environmental representatives and other stakeholders to assess potential issues that may occur from credit generation and use.

3-15 Through the rule development process for PR 1631, PR 1632, PR 1633 and PR 2507, SCAQMD staff has been working with CARB and U.S. EPA to ensure that these proposed credit generation rules meet state and federal requirements. Each of the proposed rules has been carefully developed to ensure that emission reductions are real, quantifiable and surplus.

The commentator expresses the unsupported opinion that, "There will definitely be errors in each of these [credit generation] calculations," as if it were fact to support the assertion that credits from the proposed pilot NOx credit generating programs are not real or surplus. Regarding quantifiable emission reductions, each individual proposed rule specifies an emissions quantification equation to accurately calculate the amount of emission reductions that will be generated through implementation of the credit generation project. The SCAQMD disagrees with the commentator that the proposed credit generation rules include "errors in all calculations and measurements of emissions." In general, MSERCs are quantified based on the difference between the baseline and optional emission factors, multiplied by the actual activity level of the project. The baseline emission factors have been developed consistent with the 1997 AQMP, established U.S. EPA emission factors, or current rules and regulations, to ensure emission reductions are surplus. The optional emission factor accounts for the

new equipment or the displacement of diesel emissions through the use of electric power.

Under PR 1631, repowering captive marine vessel engines, the baseline and optional emission factors are based on emissions testing and engine certifications. For both the baseline and optional emission factors the proposed rule specifies emissions testing protocols that must be used to test or certify emission factors. For the baseline emission factor, the emissions testing protocol is either ISO 8178-E3 or CARB approved in-situ source testing referenced in Diesel Marine Vessel Emissions Testing Protocol, Santa Barbara County Air Pollution Control District, July 1999. For certifying new engines, the credit generator must use manufacturer's test data based on the federal test protocol referenced in 40 CFR Part 94 – Control of Emissions of Air Pollution from New Marine Compression-Ignition Engines at or Above 37 kW. These protocols are designed to quantify the amount of emissions from the existing and new engines in an environmentally protective manner. Where there is uncertainty or a range of values, the most conservative factors are selected to meet the real, surplus, and quantifiable criteria for credit generation.

Where emissions testing or certifications are not required for a baseline or optional emission factor, the proposed rules include a default emission factor that is conservative and inherently addresses the technical uncertainty. For example, the default baseline emission factors used to quantify the amount of NOx emissions from diesel auxiliary engines that are displaced from a marine fuel cell substation are consistent with the International Maritime Organization (IMO) standards for new engines. The actual NOx emissions from these auxiliary engines are expected to be higher than the default baseline emission factors. Moreover, each credit rule includes an environmental benefit factor that helps assure there will be no adverse impacts from any technical uncertainties.

The proposed credit generation rules are pilot programs, where applications must be submitted on or before January 1, 2004. Thus, by design, these proposed rules will limit the amount of credits that can be generated. The Draft EA includes the methodology and assumptions used to estimate the potential credit generation for each of the proposed credit generation rules. In general, the total number of potential sources is from the AQMP inventory, and the amount of participation is based on annual turnover for the individual source category, the potential accelerated turnover anticipated through implementation of the proposed rules, and cost-effectiveness of the proposed projects.

3-16 The commentator states that the proposed project will increase the use of electricity from replacing diesel engines with electric motors. Regardless of the potential for increased emissions from power-generating facilities, this will have no effect on the conclusion regarding air quality impacts for the following reason. The primary purpose of the proposed project is to address the increased operation of power-generating facilities to address the current energy crisis in California. Specifically, as indicated in response to comment #3-3, some of the objectives of

the proposed project is to reduce the cost and increase the availability of RTCs, while minimizing potential NOx emission reduction shortfalls. As indicated in the alternatives analysis in Chapter 5 of the Draft EA, the proposed project reduces projected NOx emission reduction shortfalls to a greater extent than does the existing RECLAIM program. Since there would be the same potential increase in NOx emissions under both the existing RECLAIM program and the proposed project, this does not affect the conclusions regarding air quality.

The commentator states further that credits generated by the proposed pilot NOx credit generating rules will be used by the power-generating facilities instead of directly reducing emissions at these facilities. As already noted in response to comment #3-3, the proposed project requires all electricity generating equipment, except peaking turbines, to achieve BARCT levels by January 1, 2003, and all peaking turbines must achieve BARCT levels as early as is feasible, but no later than January 1, 2004. While unavoidable excess emissions may be offset by MSERCs and ASCs, these credits cannot be used to delay controls, which are being required as early as feasible. Consequently, the discussion about "a strange feedback loop" is incorrect.

With regard to the possibility that there could be an increase in the use of diesel generators to provide back-up power, this is not an effect of the proposed project, but is occurring as a result of the existing energy crisis in California as acknowledged by the commentator's remark that "some office buildings are applying for permits to use diesel-powered generators for back-up power..." To the extent that the proposed project allows power-generating facilities to operate at higher than existing levels, consistent with the Governor's Executive Order, with concurrent emission reductions obtained by requiring powering generating facilities to install BARCT and reductions obtained from the Mitigation Fee Program, the proposed project is expected to reduce the demand for installation of back-up diesel-powered generators and the associated emissions.

Any increase in electricity demand resulting from credit rules was identified as insignificant. Further, since these credits are largely to be used to offset power producing facilities emissions, any increased emissions from these facilities will be less than the emissions due to replacing diesel engines.

3-17 As indicated in response to comment #3-5, the Draft EA included a range of reasonable alternatives as required pursuant to CEQA Guidelines §15126.6(a). The SCAQMD appreciates the recommendations for potential project alternatives, but CBE had an opportunity to provide recommendations for potential project alternatives earlier in the process, in the comment letter (3/05/01) on the Initial Study for example, but did not. Had this occurred, the SCAQMD could have incorporated the recommendations in total, incorporated portions of the recommendations, or explained why the recommendations were rejected (CEQA Guidelines §15126.6(c)).

With regard to an alternative requiring phasing out diesel engines instead of the proposed pilot NOx credit generating programs, the SCAQMD does not have jurisdictional authority over many of these sources. The SCAQMD is precluded from regulating marine vessels and other off-road engines and can only regulate fleet vehicles in the on-road sector. The SCAQMD has already adopted a rule requiring low-sulfur diesel. The SCAQMD is not necessarily precluded from establishing voluntary programs to generate emission reductions from these sources, however.

With regard to requiring electrification of truck/trailer refrigeration units, many of these types of vehicles conduct their business outside of the district and even outside of California. As a result, the SCAQMD may not have jurisdictional authority over these vehicles. The SCAQMD's authority is limited to fleets operating substantially in the district.

With regard to requiring phasing out diesel agricultural pumps and requiring electric motors, this is not considered to be a feasible alternative because many agricultural pumps are located in remote areas that may not be served by the electricity infrastructure. This is typically this reason they use diesel generators in the first place. Phasing out diesel agricultural pumps would leave some users with no alternative for pumping water for irrigation. The use of solar power for agricultural pumps has not been demonstrated. Staff would be interested in any information regarding this application of solar technology.

With regard to mobile sources in general, the SCAQMD has limited authority to regulate fleets with 15 or more vehicles pursuant to Health and Safety Code §§40919 and 40447.5. Based on this authority, the SCAQMD has promulgated a number of fleet vehicle rules that essentially phase out the use of diesel in public and some private fleets, with the most recent rule related to school buses, SCAQMD Rule 1195, adopted in April, 2001. The SCAQMD continues to investigate opportunities to further regulate these sources. Such alternatives, however, do nothing to achieve the main objectives of the proposed project which include reducing the cost and increasing the supply of RTCs until such time as the RECLAIM trading market is stabilized.

The commentator also suggests that an alternative be analyzed in which additional power plant construction is limited to actual needs for generation. Such an alternative is considered infeasible for a number of reasons. First, determining the need for power plant construction is outside the expertise of the SCAQMD. Further, the Health and Safety Code, which codifies the SCAQMD's jurisdictional authority under state law, does not provide the SCAQMD any authority over approval or siting of power generating facilities. Finally, as the commentator acknowledges, "All precepts of deregulation are now being re-evaluated and are in flux." Consequently, even if the SCAQMD had the authority and expertise to determine electricity needs in the district, the existing situation is so volatile that it would be very difficult to predict with any degree accuracy what the ultimate electricity need in the district would be. It should also be noted that

equipment at new power plants will be at BACT which is cleaner than existing equipment at BARCT. To the extent new units are constructed and replace older units, greater air quality benefits can be achieved.

3-18 The commentator asserts the Mitigation Fee portion of the proposed project is a pay to pollute program and "is the least documented part of the project." The Mitigation Fee implements in part the Governor's Executive Order. Further, potential impacts of this program were evaluated in the Draft EA. It was assumed for the analysis that emission reductions obtained by the SCAQMD using Mitigation Fee monies would be generated using the protocols established in the proposed pilot NOx credit generating rules and Rule 1612.1. The protocols are as set forth in the proposed credit rules, and account for any technical uncertainty within the protocols as well as the environmental benefit factor. These assumptions are incorporated into the analysis of potential adverse environmental impacts in the Draft EA.