# APPENDIX C

**RESPONSE TO COMMENTS RECEIVED ON THE DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT**

CITY OF BURBANK
COMMUNITY DEVELOPMENT DEPARTMENT
275 East Olive Avenue, P.O. Box 6459, Burbank, California 91510-6459
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April 11, 2007

Michael Krause
Office of Planning, Rule Development, and Area Sources/CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765-4182

**Re: Comments on Draft Program Environmental Impact Report for 2007 Air Quality Management Plan**

**VIA ELECTRONIC MAIL AND U.S. MAIL**

Dear Mr. Krause:

The City of Burbank has reviewed the Draft Program Environmental Impact Report (EIR) for the 2007 Air Quality Management Plan (AQMP) prepared by the South Coast Air Quality Management District (AQMD) and respectfully submits the following comments.

In general, the City of Burbank believes that it is critical for the AQMP and EIR to include practical actions and mitigation measures that demonstrate realistic attainment of air quality goals. The actions and measures must not be unrealistic approaches based on assumptions. When programs are found to be unrealistic and attainment is further delayed as a result, cities throughout the region continue to suffer the effects of poor air quality. The City of Burbank is concerned about the consequences and penalties that may result from an inadequate AQMP and urges the AQMD to ensure that the document takes a pragmatic approach to improving air quality with actions that are achievable. 1-1

It is the AQMD's responsibility to identify realistic measures within the AQMP and avoid actions that will lead to delays in air quality benefits. The City of Burbank supports placing some of this responsibility upon local governments to the extent feasible. The South Coast Air Basin has the worst air quality in the country, and the City of Burbank is often cited as having air quality among the worst in the region. Burbank therefore has a vested interest in seeing that air quality goals are attained as quickly and efficiently as possible. The City of Burbank is prepared to assist in achieving regional air quality goals to the extent possible and to assist in the implementation of the AQMP through local measures and programs as appropriate. 1-2

If you have any questions or concerns, please call me at (818) 238-5250.

Sincerely,
Community Development Department

Greg Herrmann
Chief Assistant Community Development Director/City Planner

# COMMENT LETTER NO. 1

## CITY OF BURBANK
**April 11, 2007**

**Response 1-1**

The SCAQMD staff understands that the City of Burbank is concerned about the potential impacts of poor air quality on the region and shares the same concerns. The proposed plan contains an aggressive and comprehensive strategy to attain both PM2.5 and ozone standards in a timely manner. Implementing AQMP control measures will require substantial efforts from all stakeholders, including the cities in the region, in order to make real progress in attaining the state and federal ambient air quality standards (AAQS). Staff will work with all stakeholders to implement the plan, monitor the progress and make necessary adjustments.

**Response 1-2**

The SCAQMD appreciates the support expressed by the City in achieving regional air quality goals and developing local air quality measures and programs. As noted in the 2007 AQMP PEIR (see Chapter 2), implementation of 2007 AQMP strategies will require a cooperative partnership with government agencies at the federal, state, regional and local level. There are several control measures that local governments can take a leadership role in implementing, such as EGM-01 (emission growth management), CTS-03 and CTS-04 (consumer products), MCS-03 (energy conservation), BCM-03 (fireplaces), etc. SCAQMD staff is looking forward to working with City of Burbank staff to further develop and implement air pollution control strategies that will improve air quality in the region.

CUPA CULTURAL CENTER
Pala Band of Mission Indians

March 22, 2007

South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765-4182
ATTN: Steve Smith, Ph. D.

Re: Consultation, Draft 2007 air Quality Management Plan

Dr. Smith,

The Pala Band of Mission Indians recently established a tribally recognized Tribal Historic Preservation Office to address consultation issues surrounding historic preservation. We have received your notification of the project as above. This letter constitutes our response on behalf of Robert Smith, Tribal Chairman.

We have consulted our maps and have determined that the project as described is not within the boundaries of the recognized Pala Indian Reservation. It also is beyond the boundaries of territory that the Tribe considers its Traditional Use Area. Therefore, we have no objection to continuation of project activities as currently planned and we defer to the wishes of Tribes in closer proximity to the project area. However, if the project boundaries are modified to extend beyond the currently proposed limits, we do request updated information and the opportunity to respond to your changes.

2-1

We appreciate involvement with your initiative and look forward to working with you on future efforts. If you have questions or need additional information, please do not hesitate to contact Joseph M. Nixon at 1 (760) 891 3592 or at e.mail jnixon@palatribe.com.

Cordially,

Joseph M. Nixon, Ph. D., RPA
Cultural Resource Coordinator
Pala Band of Mission Indians

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35008 Pala Temecula Road
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Pala, CA 92059

760-742-1590 [phone]
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# COMMENT LETTER NO. 2

## CUPA CULTURAL CENTER
**March 22, 2007**

**Response 2-1**

The SCAQMD appreciates the comments from the CUPA Cultural Center, Pala Band of Mission Indians and understands that the 2007 AQMP would not occur within the boundaries of the recognized Pala Indian Reservation.

5308 Stonewood Dr.
Riverside CA 92506
22 March 2007

AQMD
Attn.: Mr. Michael Krause (c/o CEQA)

Subject: March 2007 Draft Program Environmental Impact Report

Comments are referenced to Page Numbers, Figures, Tables, etc.

Page ES-2 Current Control Strategy

It is hard to believe that implementation of some parts of the AQMP can not be initiated before final approval. 3-1

Page ES-8 Air Quality

The impacts to the environment of construction is understandable. What secondary emissions are due to changes in consumer products? 3-2

Page ES-12

It is hard to imagine how the AQMP could have significant impacts on Biological Resources, Cultural Resources, Geology and Soils. The growth of population and vehicles could affect these ... but not AQMP provisions. 3-3

Pages ES-20 and ES-21 in Table ES-2 Energy

Any objections to the use of wind machines to generate electricity and then hydrogen should be discussed. 3-4

Pages ES-22 and ES-23 in Table ES-2 / Hazards & Water Quality

Since many more batteries will be used in hybrid vehicles and both PM Filters and Catalytic devices in heavy trucks and locomotives, the disposal, cleaning and recycling of these should be covered in more detail. (See ARB OFFRD-2 / SCOFFRD-03) 3-5

Page ES-25, Table ES-3, CMB-03

How can Solid/Haz Waste be related to Space Heaters?

3-6

Page ES-27, Table ES-3, CTS-05

Should a specific year for meeting VOC standards be noted, or will standards be set for each year?

3-7

That will be all for now, but I plan to review as much of the report as possible by the end of March.

Thank you for the opportunity to participate.

Yours truly,

Don Bo

(951) 686-9981

# COMMENT LETTER NO. 3

## DAN BLOSE
**March 22, 2007**

**Response 3-1**

The 2007 AQMP contains several early action measures that are currently being developed without the need for final approval. For example, the SCAQMD Board approved the consumer product certification called for under CTS-03 and ARB-04 Cleaner In-Use Off-Road Equipment regulation will be heard by CARB in May 2007. In addition, CMB-03 was originally scheduled to be considered by the Governing Board in April, 2007, although it has been rescheduled to a later date to allow additional stakeholder input.

**Response 3-2**

The potential impacts associated with construction activities associated with implementation of the 2007 AQMP control measures are evaluated in Chapter 4 of the PEIR (see pages 4.1-15 through 4.1-19). The potential secondary emissions associated with consumer products are evaluated in Chapter 4 of the PEIR and include secondary impacts associated with using lower VOC materials (see pages 4.1-27 through 4.1-50).

**Response 3-3**

The impacts on biological resources, cultural resources, and geology and soils summarized on page ES-12 of the PEIR describe cumulative impacts from implementing SCAG's transportation control measures (TCMs), which are part of the 2007 AQMP. The cumulative impacts include the impacts associated with the 2007 AQMP as well as other regulatory control programs and implementation specifically of the 2004 Regional Transportation Plan (RTP) (i.e., the TCMs). Transportation projects/TCMs include the construction of additional freeways, roads, High Occupancy Vehicle (HOV) lanes, and additional mass transit solutions (including the Maglev – a high speed magnetic electric train). Therefore, the cumulative analysis includes TCMs that are part of the 2004 RTP. The conclusion of the Final EIR prepared for the 2004 RTP were summarized in the cumulative analysis in the 2007 AQMP. The 2004 RTP Final EIR concluded that remaining impacts on biological resources, cultural resources, and geology and soils were potentially significant following mitigation.

**Response 3-4**

Wind power is discussed in Chapter 3, Subsection 3.2.4.4 – Wind Power, however since the 2007 AQMP does not directly propose additional wind power generating facilities, any "objections" or impacts from wind power generating facilities were not analyzed in the AQMP. Historical objections to wind machines include impacts to biological resources (i.e., bird deaths) and aesthetics. Hydrogen as a fuel is discussed in Chapter 3,

Subsection 3.2.3.6 – Hydrogen as a Transportation Fuel, and Chapter 4, Subsection 4.2.4.4 – Alternative Fuels, including the concerns related to hydrogen use.

**Response 3-5**

The potential waste impacts from spent battery, PM10 filter and catalyst disposal, as well as the cleaning and recycling of air pollution control devices are analyzed in more detail in Chapter 4, Subsection 4.5.4 (pages 4.5-6 through 4.5-13).

**Response 3-6**

CMB-03 could result in the replacement of old burners and wood burning appliances with newer, lower emission burners, U.S. EPA certified wood burning heaters, etc., thus, potentially generating solid wastes from the replaced equipment.

**Response 3-7**

There are no ambient air quality standards for VOCs. Rather VOCs are precursors, along with NOx emissions, to ozone or PM2.5 formation. Therefore, VOC emissions are controlled to reduce ozone and PM2.5 concentrations. The expected year of compliance with state and federal standards for criteria pollutants, including ozone, are shown in the PEIR, Chapter 2, Table 2-18 (see page 2-51).

**Western States Petroleum Association**
Credible Solutions • Responsive Service • Since 1907

**CATHERINE H. REHEIS-BOYD**
Chief Operating Officer and Chief of Staff

April 17, 2007

Michael Krause
Planning, Rule Development and Area Sources (CEQA)
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Mr. Krause:

# WSPA COMMENTS ON THE DRAFT PROGRAM EIR FOR THE DRAFT 2007 AQMP

The Western States Petroleum Association (WSPA) appreciates this opportunity to comment on the Draft *Program Environmental Impact Report for the 2007 AQMP*, March 2007. In general, our comments are intended to point out apparent inconsistencies, and incomplete or inaccurate statements. We hope our feedback provides you with constructive information you can use in the final EIR.

1. Proposed AQMP Control Strategy

The discussion of the overall AQMP control strategy in the DPEIR notes that, "Without an adequate and fair-share level of reductions from all sources, the emissions reduction burden would unfairly be shifted to stationary sources that are already stringently regulated." (Page ES-3 and Section 2.5.) WSPA submits that, while we support this concept, the proposed 2007 AQMP contains numerous control measures that will impact stationary sources (including petroleum industry facilities), that are indeed already stringently regulated. We note that, while the AQMD has not yet determined the cost-effectiveness of any of these measures, it remains to be seen if any of these measures will, in fact, be determined to be cost effective. This is even more apparent when, as seems to be almost universally recognized, all of the "low-hanging fruit" at stationary sources has been picked. The goals could represent targets that are considerably past the point of diminishing returns. 4-1

Furthermore, it is particularly troublesome that there are no claimed emission reductions associated with some of the proposed control measures (e.g., 2007FUG-01, 2007MCS-06, etc.). These control measures seem to have no valid environmental purpose, and only create the potential for even higher costs for stationary sources. 4-2

2. Energy Trends

A. The DPEIR contains apparently conflicting statements, and expresses conflicting goals, regarding the future demand for petroleum-based fuels. (Examples of some of these apparent conflicts are shown on the attachment.) 4-3

B. The DPEIR reports that "... lower quality crude oil is more difficult to refine into lighter products, such as motor and aviation gasoline", and states that "Refineries have minimum crude oil quality requirements that are determined by the processing units in the plant." Although these statements are true, in the interest of a complete and accurate description, it should also be reported that refineries in the Los Angeles area are typically configured to efficiently process many lower quality crudes (i.e., lower gravity, and higher sulfur content). 4-4

3. Alternative Transportation Fuels:

There are extensive discussions in the DPEIR regarding alternative fuels; however, WSPA notes that some conflicting statements are made (several of which are noted below). Although WSPA and its members believe that alternative fuels have a legitimate and necessary role to play with respect to the California economy's future needs for transportation fuels, the various potential fuels noted by the SCAQMD in the DPEIR are not – either singly or collectively – necessarily a panacea.

Further, as the SCAQMD expressly recognizes, "The combination of gasoline reformulation and advances in automotive emission control technology appears to be making the exhaust emission levels required by California's low-emission vehicle standards achievable without relying on the use of alternative fuels." (Section 4.2.4.4)

A. The DPEIR makes several comparisons, with respect to the degree of hazard, between alternative fuels and gasoline. The general conclusions are that, "... the hazards posed by the conversion to alternative clean fuels appear no greater than those posed by conventional fuels, particularly when compared to gasoline", and "... hazard impacts ... were determined to be less than significant when users of alternative fuels comply with existing regulations and recommended safety procedures." (Pages 4.3-20 and 4.2.-33, respectively.) 4-5

   There is no real foundation for reaching these conclusions. In fact, there are three fallacies in this reasoning:

   - There are plenty of consumers of gasoline who do not necessarily comply with existing regulations and recommended safety procedures, but in spite of this shortcoming, and in spite of the fact that nearly 16 billion gallons of gasoline

were sold in California during 2006, there are very few serious consequences (e.g., fires, explosions, etc.) of its use.

- It stands to reason that consumers will know much less about alternative fuels than they do about gasoline. For example, how many consumers will understand that hydrogen burns with a "... nonluminous flame that is difficult to see"? (Page 4.3-18)
- There is no basis for assuming that consumers of alternative fuels will comply with existing regulations and recommended safety procedures applicable to those fuels.

4-5 cont.

B. There are seemingly contradictory statements expressed in the DPEIR (and in the control measures in the AQMP) with respect to ethanol and E-85 as alternative transportation fuels. Ethanol and E-85 are listed as alternative clean transportation fuels and are correctly described as motor fuels for which there are decades of experience. (Section 3.2.3.4)

And, of course, ethanol is in common use as an oxygenate in gasoline sold in California. However, control measures ARB-ONRD-03/SCFUEL-01 are described as requiring the reformulation of gasoline for the purpose of removing ethanol.

4-6

WSPA submits that all these issues that we have identified need to be addressed before the DPEIR is finalized and considered by the District's Governing Board for approval.

Please feel free to contact me at (916) 498 7752 or, Jodie Muller at (310) 808-2143 if you have any questions about these comments.

Sincerely,

Attachment 1. Citations from the DPEIR regarding Energy Trends.

| | Issue | Statement in the DPEIR | Section / Page |
|---|---|---|---|
| 1 | Energy Trends. | "One of the key areas of concern in the energy sector is reducing the amount of petroleum based fuels in the District." | ES-5 |
| | | "The 2007 AQMP is expected to result in long-term benefits associated with a reduction in the use of petroleum-based fuels." | ES-17 |
| | | "... no significant impacts on petroleum fuels are expected." | Table ES-2 |
| | | "No significant impacts on petroleum fuels associated with the 2007 AQMP were identified because of anticipated reduction of future demand ..." | Pg. 4.2-13 |
| | | Compared to... "The 2007 AQMP could result in significant hazard impacts at refineries due to modifications to produce additional fuels." | Table ES-2 |
| | | "General growth in the District is expected to result in a substantial increase in the use of petroleum fuels between current conditions and 2030." | §4.2.4.3, and Table 4.2-5 |

# COMMENT LETTER NO. 4

## WESTERN STATES PETROLEUM ASSOCIATION
**April 17, 2007**

**Response 4-1**

The 2007 AQMP PEIR addresses the potential environmental impacts associated with the control measures identified in the 2007 AQMP. A cost-effective analysis, while an important part of rulemaking activities and rule adoption, is not part of the PEIR. Cost-effectiveness information for many of the AQMP control measures is included in the Draft Socioeconomic Report for the 2007 AQMP, which was released to the public in April, 2007. As control measures are evaluated for implementation, some may be determined to not be cost-effective and eliminated or not adopted. However, at this point in time the PEIR must evaluate the potential environmental impacts of the proposed control measures in order to provide complete public disclosure of potential impacts.

**Response 4-2**

Proposed Control Measure FUG-01 affects a variety of VOC emissions sources including, but not limited to, oil and gas production facilities, petroleum refining and chemical products processing, storage and transfer facilities, marine terminals, and other sources, where VOC emissions occur from fugitive leaks in piping components, wastewater system components, and process and storage equipment leaks. Operators at most of these facilities are required under SCAQMD and federal rules to maintain a leak detection and repair (LDAR) program that involves individual screening of all of their piping components and periodic inspection programs of equipment to control and minimize VOC emissions. The current LDAR program has been successful in reducing fugitive VOC emissions from a variety of sources. FUG-01 seeks to enhance the effectiveness of the existing LDAR program by taking advantage of the latest technology, called optical gas imaging (Smart LDAR), using an infrared camera that readily detects and displays an image of a VOC leak in a manner that is less time consuming and labor intensive than existing detection systems. The control measure would be implemented in two phases: Phase I would consist of a pilot program, followed by Phase II, during which full implementation would be expected. Although no emission reductions have yet been quantified for this control measure, FUG-01 is expected to provide emission reductions through better and more accurate monitoring. In addition, the use of the Smart LDAR is expected to be less time consuming and labor intensive than the current LDAR program, which could provide cost savings to affected stationary sources. Emission reduction estimates will be provided as part of the rulemaking process and developed prior to rule approval.

Activities associated with startup, shutdown, and turnarounds are known to be sources of excess emissions at stationary sources. MCS-06 would reduce emissions during equipment startup, shutdown, and turnaround. Opportunities for emission reductions from these activities potentially would apply to refinery operations as well as other

industries. Examples of possible areas for improvement include better engineering and equipment design, diverting or eliminating process streams that are vented to flares, and installation of redundant equipment to increase operational reliability. As demonstrated under SCAQMD Rule 1118 – Control of Emissions from Refinery Flares, better vapor control can reduce the need to flare and the related emissions. Emission reduction estimates will be provided as part of the rulemaking process and developed prior to rule approval.

**Response 4-3**

The SCAQMD disagrees that the energy statements referenced in the attachment are conflicting. Some of the statements reflect the generally energy trends, assuming projected growth in the basin (i.e., existing or baseline conditions), while others summarize the conclusion of the 2007 AQMP on energy resources.

ES-5 summarizes the existing energy setting as follows:

> One of the key areas of concern in the energy sector is reducing the amount of petroleum based fuels in the district. Consumption of these fuels is a major factor in the amount of criteria pollutants in southern California. Alternative fuels play an important role in the strategy to reach attainment in the region. Renewable energy resources include: biomass, hydro, geothermal, solar and wind.

Pages ES-2, ES-17, and 4.2-13 summarize the 2007 AQMP impacts on petroleum-based fuels, i.e., expected to result in an overall reduction in the use of petroleum-based fuels.

Table ES-2 reflects the conclusion of the hazards analysis in the PEIR, which are related to control measures that would require modified fuels or alternative fuels including ARB-ONRD-03/SCFuel-01, SC-ONRD-01, SCFUEL-02, ARB-ONRD-4/SCONRD-03, ARB-OFFRD-1, and SCLTM-02. For clarification, Table ES-2 will be revised as follows:

> "The 2007 AQMP could result in significant hazard impacts at refineries to produce modified or alternative fuels."

The statement in §4.2.4.3 summarizes the impact of general growth, without implementation of 2007 AQMP, i.e., general growth is expected to result in a substantial increase in the use of petroleum fuels between current conditions and 2030. However, as explained in the next paragraph of §4.2.4.3, implementation of the 2007 AQMP is expected to result in a decrease in the future increased demand for petroleum fuels because of the anticipated increase in demand for alternative clean fuels.

**Response 4-4**

Your comment is noted and Subchapter 3.2.2.3 will be revised to reflect the comment that refineries have been configured to process lower gravity, higher sulfur content crude oil.

**Response 4-5**

The SCAQMD disagrees that there are conflicting statements in the Draft PEIR. Nor does the PEIR indicate that the use of alternative fuels provides a "panacea" to either the use of petroleum fuels or their environmental impacts. It is recognized that, in a number of applications, conventional petroleum fuels will continue to be used because of the long life cycles of some types of combustion equipment, in particular, diesel engines. However, large penetration of clean-fueled equipment is necessary to attain the AAQSs and protect public health from exposure to diesel particulate exhaust from diesel engines.

The PEIR provides a list of the hazards posed by the use of alternative fuels (including methanol, CNG, LNG, LPG, hydrogen, EV and hybrid vehicles) that may be higher than those posed by the conventional fuels (see pages 4.3-20 through 4.3-21 and Table 4.3-6), which provides a summary of the hazards discussed for each alternative fuel in the PEIR from pages 4.3-11 through 4.3-23). A detailed hazard analysis is provided for each type of alternative fuel on pages 4.3-11 through 4.3-23 of the PEIR, which provides the foundation for the conclusions cited in the comment.

The commentator provides no evidence that "plenty of consumers of gasoline" do not complying with existing regulations and safety procedures. Similarly, no information or other data are provided substantiating the opinion expressed in this comment that there are greater hazards associated with the use of alternative fuels. Similar to what current users of gasoline and diesel fuels experienced years ago, users of alternative fuels will have a learning curve, not only to comply with existing regulations, but to follow safety procedures in handling alternative fuels. The current lack of knowledge or familiarity in the dispensing of alternative fuels is no reason to not use these fuels in the future. Thus, the DPEIR concludes correctly that potential hazard impacts from using alternative fuels will be reduced to less than significant through complying with existing regulations and recommended safety procedures.

**Response 4-6**

SCAQMD is aware of the historical use of ethanol and E-85 as transportation fuels. ARB-ONRD-3 would modify California's reformulated gasoline program to offset VOC emissions due to the increased evaporative emissions due to fuel system permeation associated with the use of ethanol. This rulemaking activity is currently underway and is intended to mitigate the fugitive emission increases associated with the use of ethanol. This control measure would not necessarily eliminate the use of ethanol, but would control evaporative emissions from the fuel system, i.e., better emissions control. SCFUEL-01 would go beyond the requirements of ARB-ONRD-3 and also cap the sulfur content of gasoline at 10 ppm. These measures are not inconsistent with greater use of ethanol and E85, provided evaporative emissions are controlled. Thus, the SCAQMD disagrees with the opinion expressed in this comment that there are contradictions in the AQMP regarding the use of ethanol.

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April 17, 2007

*By Telecopier and U.S. First Class Mail*

Michael Krause
Office of Planning, Rule Development and Area Sources/CEQA
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, California 91765-4182

*Re: Comments on the Draft Program Environmental Impact Report for the 2007 Air Quality Management Plan*

Dear Mr. Krause:

This letter is submitted on behalf of the County of Orange ("County") in its capacity as the owner and operator of John Wayne Airport, Orange County ("JWA") located in Costa Mesa, California. This letter contains the County's written comments on the Draft Program Environmental Impact Report ("Draft EIR") for the proposed 2007 Air Quality Management Plan ("2007 AQMP"), issued by the South Coast Air Quality Management District ("SCAQMD" or "District"). The County appreciates the opportunity to provide comments on the Draft EIR.

Our comments on the Draft EIR are intended to serve the following principal objectives:

1. First, we appreciate the opportunity to continue to work constructively and cooperatively with the SCAQMD in evaluating and developing realistic airport emission reduction strategies for the proposed 2007 AQMP and analyzing the potential environmental impacts of the proposed measures. We hope that our past comments on the 2007 AQMP, our comments in this letter, and our continued cooperation in this process will allow us to make meaningful contributions toward resolving and addressing the difficult and complex airport regulatory issues associated with air quality in the Basin. 5-1

2. Second, we are concerned with the failure of the Draft EIR to carefully evaluate and address the impacts of the proposed regulations on the air transportation industry and the potentially significant environmental impacts that may result from their adoption. There are important questions and issues which must be addressed in the EIR which have not been addressed, including the accuracy of the baseline emissions inventory, the potential transportation and traffic impacts of proposed control measures, and the cost effectiveness of any regulatory strategy with respect to the EIR's alternatives analysis. Without careful attention and 5-2

response to these issues, the District will be unable to structure appropriate and effective air quality regulations, which might consequentially affect the operations of the air carrier airports in the Basin and minimize the productivity of those regulations. 5-2 cont.

3. Third, and finally, the EIR fails to comply with several requirements mandated by the California Environmental Quality Act ("CEQA") (PUB. RES. CODE §§21000, *et seq.*). Although we believe that the EIR is inadequate as written and that the document will have to be supplemented with additional discussion and analysis, these CEQA requirements warrant comment and discussion at this time. 5-3

## I. GENERAL COMMENTS

### A. EMISSION INVENTORY

In our written comment letter on the 2007 AQMP, JWA expressed concern with the accuracy of the baseline emissions inventory for general aviation at the Airport. We also expressed concern about the projections for future aircraft activity (both general aviation and commercial aircraft) at the Airport. As indicated in our March 30, 2007, comment letter to the District, the projections regarding fleet mix and the number of operations per aircraft engine type appear to be inaccurate and do not take into account the runway and facility constraints at the Airport. This inaccuracy is magnified by the fact that it is difficult, if not impossible, to determine the aircraft type, engine type, type of operation, flight track, and other factors utilized in calculating the baseline emissions for general aviation aircraft.

With respect to the future projections provided, the Airport has reviewed the SCAQMD's projection of annual average emissions for aircraft and would like to emphasize the difficulty in following how the modeling was performed, and in determining the figures used. The information provided in the Appendices fails to clarify how the analysis was conducted and there appear to remain a number of inaccuracies and inconsistencies in the numbers provided. The information provided is inadequate and does not provide an adequate public disclosure of how the annual average emissions were determined. A fully revised discussion should be presented in the 2007 AQMP and the County recommends that the Draft EIR be revised to accommodate such a discussion. 5-4

Essentially, it appears that the 2007 AQMP projects more general and commercial aviation operations than the Airport could physically handle given the facility, runway, and airspace constraints at the Airport. In addition, and as you know, the Airport is under certain legal constraints with respect to future operations that will not allow the Airport to operate at the level projected in the 2007 AQMP. Prior to the continued development and approval of any regulatory strategies, the aircraft fleet and operations numbers must be revised to accurately reflect the physical and legal constraints that exist at the Airport and the Draft EIR must be revised to be consistent with the revised projections. 5-5

Finally, the technical documentation supporting the conclusions in the 2007 AQMP has many discrepancies that prevent reviewing agencies and the public from arriving at the same conclusions as the SCAQMD. The inventories, in particular, seem mismatched to the numbers used in the modeling and are inconsistent with one another. In addition, the numbers used appear to be inconsistent with the actual data provided to the District with respect to JWA's current and projected future operations. Again, revision is required to accurately reflect the baseline and projected future activity levels at JWA.

5-5 cont.

Another key and continuing concern relating to the use of a baseline to measure emissions reductions is the current failure of this method to provide some type of "credit" to the Airport for the significant emission reduction measures that have already been implemented and are currently being implemented to reduce air quality impacts associated with airport operations. These measures already provide: (i) more efficient fuel operations and consumption; (ii) the ability to manage aircraft operations in a more efficient manner; (iii) a reduction in the fugitive dust generated by aircraft activity at JWA; (iv) an improvement in traffic circulation within the vicinity of JWA; and (v) the possibility for use of alternative fuels. A number of additional infrastructure improvements are currently being implemented by JWA that will provide additional and substantial air quality benefits. In order to maintain equity and to avoid inadvertently "penalizing" those who voluntarily implement significant air quality reduction measures, the 2007 AQMP should provide some type of "credit" to "sources" for these efforts.

5-6

In sum, the Draft EIR must be revised to include a discussion regarding the accuracy and completeness of the existing data that it has relied upon for the emissions inventories and for the estimated projected reductions in airport generated trips that could occur through implementation of the proposed control measures. In addition, if the projected reductions stated in the 2007 AQMP will not be used by the District as the performance standards for proposed measures, the Draft EIR must be revised to accurately indicate what performance standards or objectives the District will adopt for the air transportation industry. The Draft EIR must also be revised to include a discussion of whether some type of "credit system" should be provided for airports that have already implemented significant emission reduction measures.

5-7

**B. AIR QUALITY IMPACTS**

The Draft EIR concludes that there will be no significant impacts to transportation and traffic. (Draft EIR, pages 4.7-11 thru 4.7-12.) Specifically, the Draft EIR concludes that "[a]dopting the proposed 2007 AQMP is not expected to substantially increase vehicle trips or vehicle miles traveled in the district." (*Id.* at page 4.7-11.)

In the case of airports, this conclusion may not be true. As we have previously discussed with the District, any regulation by the District which may affect the operational capacity of one or more of the airports in the Basin might be perceived as providing air quality impact reductions at the constrained airport, but this does not mean that there has been a net air quality benefit in the Basin generally. If passenger traffic is reduced at one airport in the Basin because of regulatory constraints, then that traffic may be served at another basin airport, or the displaced

5-8

passengers may choose to drive to their ultimate destination. For environmental purposes, the significant repercussion from either alternative (*i.e.*, reliance on a different airport or road travel) is that the displaced passengers will have to incur an additional number of regional vehicle miles traveled ("VMT"). This will worse traffic congestion, and the concomitant negative impacts on air quality associated with high VMT readings.

5-8 cont.

The Draft EIR does not analyze these potentially significant transportation and traffic issues or the concomitant air quality impacts. The Draft EIR must be revised to include a discussion and detailed analysis of these potential impacts. In addition, the Draft EIR should be revised to include a discussion of whether the proposed regulations that may apply to airports in the Basin will "balance" the air traffic among the Basin airports in a manner which best serves air quality objectives.

One of the significance criteria identified for transportation and traffic impacts is whether air traffic will be substantially altered. The Air Transportation Association ("ATA") has previously indicated that implementation of many of the control measures that continue to be pursued will have a significant impact on the ability of air carriers to provide service in the Southern California Basin. This potential substantial alteration of air traffic has not been addressed in the Draft EIR. The Draft EIR must be revised to discuss and analyze this significant impact.

5-9

### C. Potential Inconsistencies Between Existing and Proposed New Control Measures

Many of the long term control measures identified by the 2007 AQMP to be considered by the California Air Resources Board ("CARB") for implementation continue to: (1) pursue approaches to reduce emissions from ground support equipment ("GSE"); (2) reduce off road mobile emissions; and (3) require fleet and facility modernization. We continue to be concerned about these long term control measures for the reasons set forth below.

As you know, the SCAQMD already has a number of regulatory rules governing vehicle fleets. Any future regulatory measures should be consistent with these existing regulations. In addition, airports should not be required to regulate or administer emission reduction programs for vehicle fleets or GSE that they do not own or operate. Finally, any regulatory measure to reduce vehicle emissions must necessarily take into account the mandatory parking restrictions, curbside access restrictions, vehicle and luggage inspections, and related security measures that have been implemented at the Airport over the past several years. The Draft EIR, or the 2007 AQMP for that matter, does not address any of these concerns.

5-10

### D. Mitigation Fee Program

In addition to these concerns, one of the suggested control measures is the use of a mitigation fee program as a substitute for previously proposed commercial aviation measures. We have discussed at length, with both the District and the U.S. EPA, our concern regarding the

5-11

role of the airport proprietor with respect to the administration of air quality emission strategies at airports in the Basin. As you know, we have expressed strong opposition to the measures previously proposed by the District. The airports are not in favor of becoming the air quality "enforcers" for all airport users. In addition to our concern regarding the airport proprietor's exact role and obligations under any "mitigation fee program" that may be considered, we are concerned as to what, if any, penalties airport proprietors might be subjected to if one of their airport users fails to provide the required mitigation fee in connection with their operation(s).

We also have serious doubt, particularly after adoption of the Airport Noise and Capacity Act of 1990 (49 USCA §2151, *et seq.*) ("ANCA"), as to whether airport proprietors generally have sufficient residual regulatory authority to act effectively as the agencies implementing and enforcing any "mitigation fee program" imposed by the District. At a minimum, the District should receive adequate assurances from the Federal Aviation Administration ("FAA"), the Department of Transportation ("DOT"), and any other relevant federal authorities that airport proprietors do, in fact, have sufficient regulatory authority to allow them to make meaningful implementation choices, and which would allow them to enforce local regulations to achieve whatever mandates are imposed on them by the District.

5-11 cont.

We recognize that the U.S. EPA and the District have significant budget, staffing, and aviation expertise limitations. Understandably, this makes it very appealing for the District and the U.S. EPA to adopt a mitigation fee program that places monitoring and enforcement obligations on the local airport proprietor. The problem is that local government in California, including airport proprietors, are generally under even more severe budgetary and staffing limitations than the U.S. EPA. Certainly, the airport proprietor should not be required to take any type of enforcement against any airlines or other aircraft owners who do not comply with the mitigation fee program requirements.

Finally, we continue to have a fundamental disagreement with the District regarding the extent of the District's authority to regulate airports. Specifically, we continue to believe that, to the extent the District attempts to regulate aircraft related emissions, directly or indirectly (as is the case with the mitigation fee program), any such regulation would constitute a constitutionally impermissible local intrusion into a federally preempted field of regulation. (*People of State of Cal. v. Dept. of Navy* (1977) 431 F.Supp. 1271, 1281; *Washington v. General Motors Corp.* (1972) 405 U.S. 109.) The District's attempted indirect regulation of airport related emissions through a fee program is an impermissible and unconstitutional intrusion into an area which is pervasively and exclusively controlled by federal law and federal authority. (*City of Burbank v. Lockheed Air Terminal, Inc.* (1973) 411 U.S. 624, 633.) The FAA similarly has suggested in previous correspondence to the District that the District lacks any regulatory authority to directly or indirectly affect or control aircraft operations at Basin airports for air quality purposes and questions whether the airport proprietor has the authority to regulate airport pollution.[1]

5-12

[1] *See*, letter from the FAA Assistant Chief Counsel dated March 5, 1993, a copy of which can be provided to the District upon request.

Irrespective of these legal constraints regarding this type of control measure, the 2007 AQMP has not defined the proposed "mitigation fee" control measure in a manner that allows the Draft EIR to discuss this measure and its potential environmental consequences consistent with the requirements of CEQA. The 2007 AQMP must be revised to address the concerns and issues raised in our March 30, 2007, comment letter to the District and the Draft EIR must be supplemented to provide information regarding this proposed control measure once it is more carefully and fully defined.

5-13

**E. SOCIOECONOMIC ANALYSIS**

In our comments of March 30, 2007, we emphasized the requirement that the District determine that the 2007 AQMP is a cost-effective strategy that will achieve attainment of the state standards by the earliest practicable date. We further noted the requirement that the 2007 AQMP include an assessment of the cost effectiveness of available and proposed measures and a list of the measures ranked from the least cost-effective to the most cost-effective. Without this analysis, it is impossible to determine whether the overall costs associated with regulations affecting airports in the Basin are justified in terms of expected emissions reductions. Although the 2007 AQMP provides a preliminary analysis of the cost effectiveness of *some* of the regulatory measures, this preliminary analysis does not adequately address the public policy concerns which the District must consider. In addition, the cost effectiveness of other proposed regulatory measures, including the mitigation fee program for federal sources, are not discussed. In fact the District acknowledges that the cost effectiveness of the proposed mitigation fee program "has not yet been determined." When will the cost-effectiveness analysis be completed? Will the public have an opportunity to provide comments on this analysis?

5-14

A cost analysis must be prepared which analyzes the full costs of any possible regulatory program on the airports and airline industry in terms of the increase in tons of emissions reduced versus program and improvement costs. In addition to the program and improvement costs, the cost effectiveness analysis must take into account the effect any emission reduction strategies will have on new entrant air carriers, and the importance of maintaining a competitive airline environment in the Basin. A regulatory scheme which would inhibit competition would probably result in significantly higher air fares to and from the Basin than other parts of the county, which could in turn have a seriously negative effect on the local economy. This issue must also be taken into account when addressing the cost effectiveness of the proposed measures. Once the analysis has been complete, the analysis should be circulated for public review and comment.

Certainly, it is imperative that before any further environmental analysis is conducted regarding any of the measures provided in the 2007 AQMP directed toward airports and airlines, the District must prepare appropriate and complete analyses of the cost effectiveness of all of the proposed measures as mandated by California law. Particularly, before the District provides further information regarding the ranking of proposed measures, it is important for the District to take a "hard look" at this issue and to provide the airports in the Basin with information which measures the full costs of *any* and *all* possible regulatory programs in terms of the increase in emission reduction costs versus program and improvement costs.

## II. SPECIFIC COMMENTS

1. The Draft EIR indicates that the Draft EIR is a program EIR "because it examines the environmental effects of the proposed control measures that will ultimately be issued as rules or regulations and promulgated as part of a continuing ongoing regulatory." (Draft EIR, pages 1-4 thru 1-5.) Although a program EIR may properly focus on "broad policy alternatives and program wide mitigation measures," as well as "regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole" (Cal. Code Regs. §§15168(b)(4), (d)(2)), the agency should adopt performance standards or objectives that can then be translated into site specific measures or regulations when site-specific CEQA analysis is prepared. The Draft EIR fails to comply with this requirement. 5-15

   Although the 2007 AQMP has identified a number of control measures for the airport and airline industry, the Draft EIR, in many cases, fails to discuss any performance standards and objectives for these measures. Have performance targets been established for these control measures? The EIR must address any performance targets that have been established so that they can be translated into specific control measures for the airport and airline industry.

2. CEQA Guidelines require an EIR to contain a discussion of the areas of controversy known to the lead agency, including issues raised by agencies and the public and issues to be resolved, including the choice among alternatives and whether or how to mitigate the significant effects. (Cal. Code Regs. §15123(b)(2)(3).) Although the Introduction provides a brief discussion regarding "areas of controversy," this discussion is incomplete and must be revised. Specifically, this section must include those issues raised by the Airport in connection with its comment letter submitted on the AQMP including, but not limited to, issues relating to the accurateness of the baseline data used and the cost effectiveness of the measures proposed. 5-16

3. According to information provided in the Draft EIR, the District will be requesting a voluntary "bump up" from the U.S. EPA to "extreme" non-attainment status for ozone in order to extend the attainment date. Presumably, if the request is granted, the District will be authorized to implement additional/various measures, known as "black box" measures, to improve air quality. The Draft EIR should be revised to explain how the environmental impacts can be adequately and accurately assessed prior to a decision from the U.S. EPA regarding attainment status. 5-17

4. As currently written, it is difficult, if not impossible, to locate the 2007 AQMP proposed control measures within the environmental impact discussion sections. The Draft EIR should be revised to directly address each of the proposed control measures in the environmental impact analysis section. 5-18

5. The Draft EIR states that "[a]lthough the 2007 AQMP is expected to result in an increase in the use of natural gas, the increase is expected to be less than significant as sufficient natural gas resources are available." (Draft EIR, page ES-20.) As indicated in our March 30, 2007, comment letter regarding the Draft 2007 AQMP, according to information we have reviewed, it appears that if the new natural gas standards are imposed, twenty to thirty percent of the gas company's natural gas supply would be non-compliant. The Draft EIR should be revised to provide documentation of sufficient natural gas availability.

   In addition, if the use of natural gas is expected to increase, the EIR must include a discussion of the hazards, including the increase in use of compressed natural gas. Although natural gas can be directly shipped via pipelines to the compressor station, rather than by on-road delivery trucks, earthquakes can disrupt natural gas supplies for extended periods of time. Vehicles and facilities, if powered by natural gas; therefore, could be taken out of service as a result of the unavailability of fuel just at a time when they are needed most to restore critical services and maintain the County's infrastructure. The Draft EIR should expand its discussion of issues associated with the use of CNG in mobile sources.

5-19

6. The 2007 AQMP's emissions inventories use 2002 as the base year. The Draft EIR should be revised to explain why 2002, and not a more recent inventory base year, has been used as the baseline. An explanation is especially warranted in light of the fact that the Draft EIR expressly states, on page 3.1-15, that "[o]ver the years, significant improvements have been made to quantify emission sources upon which control measures are developed."

5-20

7. Table 4.1-3 identifies control measure SCLTM-02 twice, and describes the control measure differently on each occasion. The Draft EIR should be revised to remedy this discrepancy.

5-21

8. In general, many of the mitigation measures contained in the Draft EIR fail to comply CEQA. The mitigation measures fail to provide a clear analysis, thus impermissibly precluding the meaningful public participation contemplated by CEQA. Agencies should not rely upon mitigation measures of unknown efficacy in concluding that significant environmental impacts will be avoided or lessened to a degree of insignificance. (*See, Mira Monte Homeowners Ass'n v. San Buena Ventura County, et al.* (1984) 165 Cal.App.3d 357, 365.)

   The mitigation measures provided are often vague, not enforceable as currently written, or cite compliance with local, state or federal laws or regulations. Compliance with such measures is not considered "mitigation" under CEQA. Additionally, much of the impact analysis appears to be based upon a "best-case" analysis, since it is assumed that agencies would choose what SCAQMD considers the most appropriate control option, although the Draft EIR consistently contends that the AQMP provides other agencies with

5-22

flexibility to choose control measures from a menu of options. Much of the impact analysis is not based upon a reasonable analysis which assesses potential impacts resulting from implementation using the entire menu of options. This overstating of the mitigation, or overly optimistic analysis, inappropriately skews the analysis in violation of CEQA. The impact analysis and mitigation measures should be further examined in a revised and recirculated Draft EIR that is both comprehensive and accurate.

5-22 cont.

9. Table ES-3, from which excerpts are set forth below, should be revised to accurately reflect whether each of the control measures may result in a significant impact on the environment. As the table is currently drafted, much of this information is either missing or inaccurate. The Table appears to simply summarize the findings of the Initial Study, and more is required at this stage of environmental review. The Draft EIR's analysis must be supported by substantial evidence; and, at this time, the Draft EIR's reliance on such evidence, if any, is not apparent. Revision is required, as indicated below in italics.

5-23

- **CMB-04: Natural Gas Fuel Specifications**
  - Reason Not Significant: Control technologies do not generate significant impacts and changes in the operating practices have no identified impact. *The determination that changes in the operating practices have no identified impact is not supported by substantial evidence in the record. Additional analysis must be provided.*
  - Potential Impacts: NONE. *See comment, above.*

5-24

- **MCS-01: Facility Modernization**
  - Reason Not Significant: Blank. *Information must be provided regarding why certain identified impacts are not significant.*
  - Potential Impacts: Secondary Air; Energy; Water; Solid/Hazardous Waste. *Additional information must be provided regarding the impacts identified and the significance of these impacts.*

5-25

- **EGM-02: Emission Budget & Mitigation for General Conformity Projects**
  - Reason Not Significant: Speculative. *Further information must be provided regarding the speculative nature of this impact. A lead agency's decision that the impact caused by project implementation is not substantial must be supported by substantial evidence. (Cal. Code Regs. §15064(f). The evidence is only substantial where it includes" facts, reasonable assumptions predicated upon facts, and expert opinion support[ed] by facts." (Id. at subd. (f)(5). The conclusion in this Draft EIR is not visibly supported by any evidence, but is barren and without justification.*
  - Potential Impacts: NONE. *See comment, above.*

5-26

- **MOB-01: Mitigation Fee Program for Federal Sources**
  - Reason Not Significant: Speculative. *See comments provided above for EGM-02.*
  - Potential Impacts: NONE. *See comment, above.*

5-27

- **SCOFFRD-01: Construction/Industrial Equipment Fleet Modernization; SCOFFRD-04: Emission Reductions from Airport Ground Support Equipment; and SCLTM-02: Further Emission Reductions from Off-Road Mobile Sources**
  - Reason Not Significant: Blank. *See comments, above.*
  - Potential Impacts: Secondary Air; Energy; Solid/Hazardous Waste. *Same comments as provided above.*

5-28

## III. CONCLUSION

It is crucial that we understand the administrative and procedural process for discussing and presenting possible regulatory strategies during the rulemaking process due to the serious ramifications implementation of the 2007 AQMP may have on operations at JWA. We would like to continue to work closely with the District in formulating any regulatory strategies relating to airport and aircraft emissions. In the meantime, if you have any questions regarding the issues addressed in this letter, please do not hesitate to contact us at your convenience.

Very truly yours,

Lori Ballance

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# COMMENT LETTER NO. 5

## GATZKE, ET. AL. REPRESENTING COUNTY OF ORANGE
**April 17, 2007**

**Response 5-1**

To attain the air quality standards by the mandated dates, it is necessary for all stakeholders, including the County of Orange, to aggressively move forward with emission reduction ideas and strategies. The SCAQMD, therefore, appreciates the comments and participation provided on behalf of the County on the 2007 AQMP.

**Response 5-2**

The SCAQMD disagrees with the opinion expressed in this comment that the Draft PEIR "failed carefully evaluate and address the impacts of the proposed regulations on the air transportation industry. First, the 2007 AQMP does not contain regulations, it contains control measures that may ultimately be promulgated as rules and regulations. When control measures go through the rule promulgation process, they will undergo a more focused project-specific analysis of potential environmental impacts.

This comment provides a summary off issues and concerns raised in more detail in later comments. Responses to the issues and concerns raised in this comment have been responded to in detail in Responses 5-4 through 5-29.

**Response 5-3**

The SCAQMD disagrees with the opinion expressed in this comment that the Draft PEIR fails to comply with portions of CEQA. The Draft PEIR complies with all relevant CEQA requirements. Responses to the issues and concerns raised in this comment have been responded to in detail in Responses 5-4 through 5-29.

**Response 5-4**

Baseline aircraft emissions in the 2007 AQMP were developed for each airport based on an analysis conducted by a consultant under contract with the SCAQMD in 2005/2006. The emissions, assumptions, and methodology used can be found in the report "Development of the 2002 Aircraft Emission Inventory and Projected Activity and Emissions for 2010, 2020, and 2030" available from the SCAQMD. Future projections of aircraft emissions were done using growth projections provided by SCAG and are referenced in the report. The SCAQMD staff has no reason to believe the forecasts are inaccurate. SCAG has an extensive public process to develop projects for each airport. However, since emissions inventory development is a dynamic process and can always be improved, the SCAQMD and SCAG staffs are open to further discussion on the aircraft emissions at some future date in order to improve the inventory. Runway and facility constraints at the airport will be discussed during the rulemaking process when

specific rule requirements are promulgated and affects on the airport can be analyzed more accurately. As a result, revisions to the PEIR cannot be made at this time because no new information is currently available that would result in modifications to the aircraft emissions inventory.

**Response 5-5**

See Response 5-4 regarding the emission inventory for airports. To the extent relevant and practical, any environmental analyses for future regulations affecting airport operations will tier off of the PEIR prepared for the 2007 AQMP pursuant to CEQA Guidelines §15152. Any new information or impacts identified as part of future regulations will be incorporated into that environmental analysis document as necessary.

**Response 5-6**

The baseline aircraft emissions inventory for John Wayne Airport, as well as other airports, estimates the emissions from aircraft only. Other sources of emissions such as ground support equipment, fugitive dust, on-road vehicle activity, etc., are not included in the emissions inventory contained in the report referenced in the response to comment 5-4. These sources of emissions are captured elsewhere in the emissions inventory development process and are not always specifically identified as being attributable to the airport. For this reason it is not appropriate to factor in emission reduction strategies to the aircraft emissions inventory at each airport. However, infrastructure improvements that directly affect aircraft emissions, such as electrification of aircraft gates, were factored into the baseline and projected emissions inventories for aircraft and will likely be considered as part of any future rule promulgation process.

**Response 5-7**

See Response 5-4 and 5-6 regarding the emission inventories for airports. Any credit generation system would require credit generation protocols, which would have to be established in collaboration with U.S, EPA and CARB, as well as relevant stakeholders. Further to qualify as a credit an emission reduction must be excess, verifiable, and enforceable. No credit generation protocols are currently under development.

**Response 5-8**

The SCAQMD staff continues to believe that the conclusion in the Draft EIR is valid because the proposed project would not result in an increase in vehicle trips or vehicle miles traveled in the district. The 2007 AQMP relies on transportation and related control measures developed by SCAG. These transportation control measures include strategies to enhance mobility by reducing congestion through transportation infrastructure improvements, mass transit improvements, increasing telecommunications products and services, enhanced bicycle and pedestrian facilities, etc. Specific strategies that serve to reduce vehicle trips and vehicle miles traveled, such as strategies resulting in greater reliance on mass transit, ridesharing, telecommunications, etc., are expected to

result in reducing traffic congestion. Although population in the district will continue to increase, implementing the transportation control measures (in conjunction with the Regional Transportation Plan) will ultimately result in greater percentages of the population using transportation modes other than single occupant vehicles. As a result, relative to population growth, existing traffic loads and the level of service designation for intersections district-wide would not be expected to decline at current rates, but could, depending on future population growth, possibly improve to a certain extent. Therefore, implementing the AQMP could mitigate the effects of population growth by ultimately provide transportation improvements and congestion reduction benefits.

The control measures that would impact airports (e.g., SCOFFRD-04) are control measures for sources under state and federal jurisdiction. Therefore, it is expected that the control measures would be implemented on a statewide or nationwide basis. The control measures would not be implemented differently at different airports in the basin so that one airport in the basin has more constraints than another airport in the basin. None of the AQMP measures are expected to reduce operational capacity at airports. Also, please note that none of the control measures are aimed at, or would foreseeably result in reducing the number of airplanes or passengers at any airport. SCOFFRD-04 is expected to reduce emissions from airport ground support equipment through electrification and new emission standards and does not impact aircraft.

**Response 5-9**

The 2007 AQMP includes two control measures that apply to the airline industry SCOFFRD-04 – Emission Reductions from Airport Ground Support Equipment and SCLTM-02 – Further Reductions from Off-Road Mobile Sources (which could include aircraft). The control measures that would impact airports (e.g., SCOFFRD-04) are control measures for sources under state and federal jurisdiction. Therefore, it is expected that the control measures would be implemented on a statewide or nationwide basis, so that air traffic into southern California would not be disproportionately impacted. . SCOFFRD-04 is expected to reduce emissions from airport ground support equipment though electrification and new emission standards, and does not impact aircraft. There is no evidence that either of the two control measures proposed that may affect the airline industry would adversely impact air traffic. Also, see Response 5-8.

**Response 5-10**

Any future regulation requiring additional reductions from ground support or other off-road equipment will not conflict with existing fleet regulations. Because the SCAQMD has very limited and prescribed authority over mobile sources, any future fleet rules would necessarily be consistent with existing fleet rules. However, it is likely that fleet operators of affected equipment will be subject to the restrictions, not airports. Finally, when promulgating rules and rule amendments, California Health and Safety Code §40427(b)(4) requires the SCAQMD to make a finding of consistency, that is, "…the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes,…"

**Response 5-11**

Control Measure MOB-01 - Mitigation Fee Program for Federal Sources, envisions the development of a federal program (through U.S. EPA rulemaking) whereby federal source such as aircraft operators would pay a fee based on their emissions. The collected monies would be channeled to the SCAQMD and used for funding projects that achieve equivalent or greater emission reductions from similar sources. SCAQMD staff thinks it is premature to assume that airport operators would be the sole "enforcer" of such a fee program. It should be noted that no emission reductions from Control Measure MOB-01 have been estimated and, as such, any reductions achieved from this measure will constitute the "black box" reductions or reduce below what is necessary from other sources for attainment demonstration. The implementation of the mitigation fee program is for the federal agency to either have the federal source pay for emission mitigation fees or provide direct federal funding to the SCAQMD for emission controls. In addition, this measure becomes unnecessary if the U.S. EPA adopts stringent emission reduction regulations for aircraft and other sources under the jurisdiction of the federal government.

**Response 5-12**

To the extent measure OFFRD-11 calls for rules regulating aircraft engine use during ground operations to reduce emissions, the SCAQMD disagrees that federal aviation laws divests EPA or the SCAQMD from enacting such a rule. With regard to the Federal Aviation Act, the commentator relies on the Supreme Court's decision in City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) to assert that any proposed use restriction would run afoul of FAA plenary authority to regulate aircraft operations. However, courts have recognized that reading Burbank to preempt all local regulations directed toward aircraft facilities, is simply much too broad of a reading of Burbank. See Gaustafson v. City of Lake Angelus, 76 F.3d 778, 784 (6th Cir. 1996). Instead, the question that must be examined is whether the local regulation conflicts or impedes the objectives of federal law. Id. at 786.

The commentator identifies several statutory purposes from the Federal Aviation Act that she claims bar any attempt by EPA or the SCAQMD to regulate aircraft use – management of navigable airspace, protection of individuals and property on the ground, air traffic control, and the FAA's right to acquire and manage air navigation facilities. However, the SCAQMD believes that operational changes to reduce emissions can be made that do not conflict or impede any of these activities or otherwise create safety and security concerns. In this regard, the strategies suggested under this measure – single or reduced engine taxiing, derated takeoff power, and reduced use of reverse thrust – are derived directly from FAA guidance, "Air Quality Procedures for Civilian Airports and Air Force Bases," FAA-AEE-97-03. Presumably, FAA would not have recommended that these measures be adopted by commercial airports if they interfered with aircraft operations in contradiction of the Federal Aviation Act.

In addition, courts have recognized that in federal statutes with competing purposes must be harmonized to give both effect to the greatest extent possible. See *Iowa, Chi. & E.R.R. Corp. v. Wash. County, Iowa,* 384 F.3d 557, 560 (8th Cir. 2004) (recognizing that the federal Interstate Commerce Commission Termination Act must be read in pari materia with other federal laws); *Fla. E. Coast Ry. Co. v. W. Palm Beach,* 266 F.3d 1324, 1331 (11th Cir. 2001) (same). Thus, to the extent that OFFRD-11 will further the goals of the Clean Air Act, and can be implemented without negatively impacting aviation safety and operations, they are not preempted or otherwise prohibited under the Federal Aviation Act.

In this regard, the Clean Air Act does not prohibit state and local governments from adopting use restrictions. Under the Clean Air Act, preemption of state and local authority to establish engine emission standards generally does not include preemption of the ability to impose use or operational restrictions. *Engine Manufacturers Association v EPA,* 88 F 3d 1075 (D.C. Cir. 1996). Section 233 of the Clean Air Act preempts state and local regulation of any "standard respecting emissions of any air pollutant from any aircraft or engine thereof." This statute has already been held not to preempt requirements that do not affect the design of the aircraft engine. *People of the State of California v. Department of the Navy,* 431 F. Supp. 1271, 1283 (N. D. Cal. 1977) (Section 233 "focuses, preemptively, upon standards for aircraft engine emissions in a way which implies modification of the engine that either prevents creation of certain emissions (via internal alteration) or prevents those emissions from leaving the engine (via external attachment of antipollution devices, etc."). The use limitations discussed in OFFRD-11 do not affect engine design and, therefore, do not run afoul of Section 233. To the contrary, the measure implements allowable use restrictions that will assist the SCAQMD, California and EPA in meeting their federally mandated obligation to reduce air pollution in the South Coast Basin. As such, it must again be noted that the FAA acknowledges that federal Clean Air Act obligations extend to airports, and it is that agency that recommends implementation of the restrictions proposed in OFFRD-11. See "Air Quality Procedures for Civilian Airports and Air Force Bases," FAA-AEE-97-03, at 1-4.

The commentator also contends that the Federal Aviation Act does not provide EPA such authority. This comment will be referred to EPA for their review. However, it would seem to follow that if a local use regulation was not preempted, such regulation would also stand if adopted by EPA.

The Airline Deregulation Act is not applicable to the extent this measure calls for action by EPA, because it only preempts state and local regulation, not regulation by EPA. To the extent this measure calls for action by the SCAQMD, the Airline Deregulation Act preempts regulations "related to the price, route, or service" of an air carrier. 49 U.S.C. section 41713. The limitations discussed in this measure do not in any way affect the price or routes of an air carrier. Therefore, the question is whether the regulations would "relate to" airline services. A regulation can "relate to" services if it either "expressly references" them or "has a forbidden significant effect" on them. *Gary v. The Air Group,*

Inc., 397 F 3d 183, 186 (3rd. Cir., 2005). On the face of it, a rule requiring single engine taxiing, or the other cited requirements, does not affect airline services. Presumably, if such requirements adversely affected airline services, FAA would not have recommended them for adoption by civilian airports. Moreover, even if there is some effect, the rule is not necessarily preempted; "some state actions may affect [airline services] in too tenuous, remote or peripheral a manner to have preemptive effect." (Gary, supra, 397 F. 3d at 186, citing *Morales v. Trans World Airlines, Inc*., 504 U.S. 374, 390 (1992). The SCAQMD believes it is possible to draft a regulation which does not have a "significant effect" on airline services, so that the measure is not preempted on its face.

**Response 5-13**

The Draft EIR indicates (see pages 4.0-1 through 4.0-4) there are several control measures proposed in the 2007 AQMP for which there is insufficient information regarding compliance options or how they would be implemented to determine the potential impacts. These control measures require investigation or pilot testing to determine appropriate control technologies. They may even require further development of technologies that is currently unknown. Further, in some cases control options may be available, but these are unknown at this time. For example, the control measures that would impose fees (i.e., FLX-01, EGM-02, EGM-03 and MOB-01) do not indicate how the fees would be used. However, it is reasonable to expect that the fees collected can assist in implementing other AQMP control measures by providing economic incentives. Impacts from these other control measures have already been analyzed in the Draft PEIR. They could be used for educational purposes or purchasing control equipment. Because the control measure is general in nature, it is difficult to determine what, if any, impacts could be expected. Therefore, the impacts of the control measures identified in Table 4.0-2 of the Draft EIR are considered speculative and no further environmental analysis is necessary or required (CEQA Guidelines §15145). To the extent the commentator is suggesting that there will be adverse environmental effects resulting from federal impacts from airports, that too is speculative since the amount of any fee is as yet unknown and the SCAQMD has not been provided any data regarding airport or airline generating costs or revenues.

**Response 5-14**

Table 6-5 in the Proposed Modifications to the Draft 2007 AQMP provides a Cost-Effectiveness Ranking of the control measures that can be quantified with costs. Table 3-11 of the Socioeconomic Report shows the cost of the 2007 AQMP to the air transportation industry. Implementation of control measure SCOFFRD-4, which regulates ground support equipment, could cost the air transportation industry approximately one million annually, on average, which is 0.01 percent of the air transportation industry's output or 0.04 percent of the total cost of the AQMP. Furthermore, the cost-effectiveness of this control measure is estimated at $2,400 per ton and is considered to be very cost effective, especially relative to other control measures and rules adopted by the SCAQMD in the recent past. Thus, significant cost impacts on airlines are not expected.

There is no emission reduction claimed for Control Measure MOB-01, which contains the mitigation fee program. The cost-effectiveness of the mitigation fee program will be evaluated at the time of its implementation.

**Response 5-15**

CEQA includes provisions for program EIRs in connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, including adoptions of broad policy programs, as distinguished from those prepared for specific types of projects (e.g., land use projects) (CEQA Guidelines §15168). The EIR for the 2007 AQMP is a program EIR because it examines the environmental effects of proposed control measures that will ultimately be issued as rules or regulations and promulgated as part of a continuing ongoing regulatory program.

A program EIR allows consideration of broad policy alternatives and program-wide mitigation measures at a time when an agency has greater flexibility to deal with basic problems of cumulative impacts. A program EIR also plays an important role in establishing a structure within which CEQA reviews of future related actions can effectively be conducted. This concept of covering broad policies in a program EIR and incorporating the information contained therein by reference into subsequent EIRs for specific projects is known as "tiering" (CEQA Guidelines §15152). A program EIR will provide the basis for future environmental analyses and will allow project-specific EIRs to focus solely on the new effects or detailed environmental issues not previously considered. If an agency finds that no new effects could occur, or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR and no new environmental document would be required (CEQA Guidelines §15168(c)[5]).

The comment implies that one of the requirements of a Program EIR is that, "…the agency should adopt performance standards or objectives that can then be translated into site specific measures or regulations when site-specific CEQA analysis is prepared." CEQA Guidelines §15168 contains no such suggestion, but instead refers to broad policy programs, etc., as already indicated in previously in this response. The degree of specificity required in an EIR corresponds to the degree of specificity involved in the underlying activity described in the EIR (CEQA Guidelines §15146). Because the level of information regarding potential impacts from control measures recommended in the AQMP is relatively general at this time, the environmental impact forecasts are also general or qualitative in nature. In certain instances, such as future ambient air quality concentrations, impacts are quantified to the degree feasible. Therefore, SCAQMD staff disagrees with the comment that the Draft EIR fails to comply with the CEQA requirements for the preparation of Program EIRs.

The 2007 AQMP identified two control measures that apply to the airline industry SCOFFRD-04 – Emission Reductions from Airport Ground Support Equipment and SCLTM-02 – Further Reductions from Off-Road Mobile Sources (which could include

aircraft). The 2007 AQMP has developed goals and target performance standards (emission reductions) for each control measure (see the 2007 AQMP Appendices IV-B-1 and IV-B-2). The methods to achieve some of the performance standards are currently unknown. If the 2007 AQMP is approved, the control measures will be crafted into a proposed rule that will establish specific standards and methods to achieve the standards. At that time, rule-specific impacts can be determined and additional CEQA review will be required.

**Response 5-16**

The commentator is specifically directed to Table 1-1 of the Draft PEIR identifies the areas of controversy. The baseline emissions inventory is listed as one of the areas of controversy. Cost effectiveness is not an issue addressed in the PEIR, so it will not be included in Table 1-1.

**Response 5-17**

The environmental analysis in the PEIR assumed the SCAQMD will request a bump up to extreme and that the request will be granted by EPA. The PEIR evaluated the existing emissions baseline and the carrying capacity of the Basin, neither of which will change, regardless of whether a bump up to extreme is requested or granted. In order to demonstrate attainment of the eight-hour ozone standard, long-term emission reductions above and beyond those achieved from short-term and mid-term measures by the SCAQMD, CARB, SCAG, and U.S. EPA are required by the 2023 timeframe. To the extent that the impacts associated with implementation of the long-term measures are known, they have been addressed in the PEIR. Because the level of information regarding potential impacts from control measures recommended in the AQMP is relatively general at this time, the environmental impact forecasts are also general or qualitative in nature. In certain instances, such as future ambient air quality concentrations, impacts are quantified to the degree feasible.

The emission levels (carrying capacity) allowed to achieve the federal ambient air quality standards for ozone and PM2.5 have been identified. The specific methods to achieve some of the emission reductions (i.e., long-term measures) are currently unknown. If the 2007 AQMP is approved, the control measures will be crafted into a proposed rule that will establish specific standards and methods to achieve the standards. At that time, rule-specific impacts can be determined and additional CEQA review will be required, consistent with the concept of tiering in CEQA Guidelines §15152. See also Response 5-15.

**Response 5-18**

A table is provided at the beginning of each impact section in Chapter 4 that summarizes the control measures being evaluated and their potential impacts. For example, in subsection 4.1 Air Quality Impacts, Table 4.1-3 (pages 4.1-10 through 4.1-14) is provided that summarizes the control measures with potential air quality impacts. A

similar table is provided in each subsection in Chapter 4. Detailed impact analyses are discussed in each subsection in Chapter 4. The results of the analyses are summarized in Table ES-2.

**Response 5-19**

With regard to control measure CMB-04, one of the gas companies indicated that: [1]

> "*Rocky Mountain supplies delivered across the Kern River Transmissions System have exceeded the 1360 standard in every month beginning in 2003…..These supplies represent approximately twenty percent (20%) of the supplies delivered into the southern California region."*

Another gas company personnel indicated that:[2]

> "*While a small number of customers in the SoCalGas service have used higher Wobbe Index gas, they are not located in the South Coast Air Basin*"

Based on the gas quality data for 2000-2004 from SoCalGas, that hotter gas is primarily delivered to the six counties north of the district. The Wobbe Index (WI) of the gas delivered to the metropolitan areas within the district did not exceed 1353 Btu/scf during that period, which clearly demonstrates that existing operating practices implemented by the gas suppliers did successfully maintain the WI below 1360 Btu/scf.

The ultimate goal of CBM-04 is essentially to preserve this status quo, and not to limit the current <u>existing</u> 20 percent supplies from the Rocky Mountains. However, to maintain the status quo**,** CMB-04 intends to require very few suppliers who plan to deliver large volumes of <u>new</u> imported LNG, with WI as hot as 1385 Btu/scf, to apply existing operating practices to the maximum extent possible to maintain the WI at or below the status quo of 1360.

The PEIR already analyzes the hazards impact from the usage of compressed natural gas in Chapter 4.3 (Hazards Impacts) and considers the increase use of natural gas in Chapter 4.2 (Energy Impacts).

Current evidence is not sufficient to conclude that there would be significant impacts from adopting CMB-04. However, available information indicates that natural gas imported into the district that exceeds a Wobbe index of 1360 could increase NOx emissions relative to the existing natural gas supplies. Staff will continue working closely with the gas companies, stakeholders and public to further analyze the potential impacts of CMB-04, as well as precisely quantify the potential of emission increases, costs and cost effectiveness.

[1] Sempra's comment letter to the District, dated March 30, 2007
[2] Testimony of Mr. Stewart of SoCalGas in front of the PUC

**Response 5-20**

Emissions inventories developed for the 2007 AQMP use 2002 as the base year and projected emissions in the years 2014, 2020, and 2023. Additional emission inventories for other interim years (i.e., 2005, 2008, 2010, 2011, 2017, and 2030) are also developed. The inventory years are required to comply with federal and state Clean Air Act requirements. The 2002 base year emissions inventory reflects adopted rules and regulations with current compliance dates as of 2002; whereas, future baseline emissions inventories are based on project growth and adopted rules and regulations with both current and future compliance dates. Therefore, air quality improvements that have occurred after 2002 have been incorporated into the emissions inventories for other years.

**Response 5-21**

For clarification, the first reference to the SCLTM-02 in Table 4.1-3 will be removed in the Final EIR. The emission reductions from aircraft engines are included in SC-LTM-02, Further Emission Reductions from Off-Road Mobile Sources, as explained in Table 2-12 of the EIR (see pages 2-39 and 2-40).

**Response 5-22**

The SCAQMD staff disagrees with the opinion expressed in this comment that the mitigation measures are vague, not enforceable, and fail to comply with CEQA. The commentator fails to provide specific detail on which mitigation measures are vague or unenforceable.

Significant impacts associated with the 2007 AQMP were identified for air quality impacts during construction activities and hazards associated with refinery modifications. Mitigation measures were imposed, that are typical of mitigation measures imposed by the SCAQMD, and the analysis concluded that the potentially significant air quality and hazard impacts were expected to remain significant. Therefore, for these two environmental resources the SCAQMD clearly did not "rely upon mitigation measures of unknown efficacy in concluding that significant environmental impacts will be avoided or lessened to a degree of insignificance." The mitigation measures for air quality during construction activities and hazards at refineries have been imposed on a variety of projects within the South Coast Air Basin, have proven to be effective in reducing emissions during construction activities and hazards at refineries, have been the subject of mitigation monitoring plans, and have been enforced through permit conditions on SCAQMD permits, when the SCAQMD is the lead agency. Therefore, the mitigation measures have clearly not overstated the impact of the mitigation measures (i.e., the impact is still significant), are not vague (have been defined in detailed mitigation monitoring plans), and have been enforced by the SCAQMD on previous projects.

For several environmental resources, including water quality impacts associated with wastewater discharge and the potential for impacts associated with the disposal of spent batteries, potentially significant impacts were identified and mitigation measures

imposed, so that the potentially significant impacts were mitigated to less than significant. In both cases, similar mitigation measures have been imposed as part of other AQMPs and other projects, and no problems in implementing the mitigation measures have been identified. Further, no comments have been received that disagreed with the conclusion of the EIR regarding implementation of these mitigation measures. Therefore, no changes to the proposed mitigation measures in the 2007 AQMP EIR are required.

It should be noted that, in general, a proposed project is generally assumed to comply with local, state and federal laws and regulations. Mitigation measures are imposed when there are requirements over and above existing laws and regulations that could potentially minimize significant impacts.

**Response 5-23**

Table ES-3 is a table that summarizes the conclusions of the environmental analyses contained in Chapter 4 and was not designed to provide "substantial evidence" regarding the impacts analysis. Rather Table ES-3 summarizes the conclusions and provides a simple summary of the EIR, pursuant to CEQA Guidelines §15123. Substantial evidence with regard to the analysis of environmental impacts, mitigation measures, and conclusions can be found in Chapters 4 and 5

**Response 5-24**

Currently, some of the existing natural gas supplies to California do exceed a WI of 1360 Btu/scf. However, based on gas quality data for 2000-2004 from Southern California Gas Company, that hotter gas is primarily delivered to the six counties north of the district. The WI of the gas delivered to the metropolitan areas within the district did not exceed 1353 Btu/scf during that period, which clearly demonstrates that existing operating practices implemented by the gas suppliers can successfully maintain the WI below 1360 Btu/scf.

The ultimate goal of CBM-04 is essentially to preserve this status quo. CMB-04 has no intent to curtail or regulate existing gas supplies. However, to maintain the status quo**,** CMB-04 intends to require very few suppliers who plan to deliver large volumes of new imported LNG, with WI as hot as 1385 Btu/scf, to apply existing operating practices to the maximum extent possible to maintain the WI at or below the status quo of 1360.

Staff will continue working closely with the gas companies, stakeholders and public to further analyze the potential impacts of CMB-04, as well as precisely quantify the potential of emission increases, costs and cost effectiveness.

**Response 5-25**

See Response 5-23. The "not significant" column in Table ES-3 is only provided for control measures with no clear identified impacts, as described in Section 4.0 and are

listed in Table 4.0-1. The EIR evaluated potentially significant air quality, energy, hydrology/water quality, and solid/hazardous waste impacts for MCS-01. The impact analyses for MCS-01 on each of these resources is discussed in Chapter 4, Subsection 4.1 (Air Quality), Subsection 4.2 Energy, Subsection 4.4 (Hazards), and Subsection 4.5 (Solid/Hazardous Waste). Substantial evidence as to whether the impacts are or not significant can be found in these subsections.

**Response 5-26**

The reasons that EGM-02 are considered to be speculative are provided in Chapter 4, Subsection 4.0 (see page 4.0-3). Control measures that would impose fees do not include how the fees would be used. Because control measure EGM-02 if general in nature, it is difficult to determine what, if any, impacts could be expected from this control measure. Therefore, the impact of implementing EGM-02 is considered speculative and no further environmental analysis is required (CEQA Guidelines §15145).

**Response 5-27**

It is assumed that the potential impacts of mitigation fees on the federal sources (i.e., airports) would occur based on how the fees are to be used, i.e., emission reduction projects funded by the fees. The use of the fees for mitigation projects is speculative. MOB-01 is also considered speculative for the same reasons identified for EGM-02 (see Response 5-26).

**Response 5-28**

See Response 5-23 and 5-25. The "not significant" column in Table ES-3 is only provided for control measures with no clear identified impacts, as described in Section 4.0 and are listed in Table 4.0-1.

The EIR evaluated potentially significant air quality, energy, hydrology/water quality, and solid/hazardous waste impacts for these three control measures01. The impact analyses for the three identified control measures on each of these resources is discussed in Chapter 4, Subsection 4.1 (Air Quality), Subsection 4.2 Energy, Subsection 4.4 (Hazards), and Subsection 4.5 (Solid/Hazardous Waste).

**Michael Krause**

**From:** watkinshill@juno.com
**Sent:** Tuesday, April 17, 2007 4:18 PM
**To:** Michael Krause
**Cc:** rblock31@charter.net; watkinshill@juno.com
**Subject:** Comments on Draft EIR for 2007 AQMP

April 17, 2007
To: Mr. Michael Krause
AQMD Office of Planning, Rule Development, and Area Sources/CEQA mkrause@aqmd.gov.

From: Richard Block & Leonard Nunney
Friends of Riverside's Hills.

Re: Comments on Draft EIR for 2007 AQMP

Please consider the comments below on the Draft EIR, submitted on behalf of ourselves and Friends of Riverside's Hills, a public interest group.

We are grateful for the work that AQMD staff is doing to protect Southern Californians' health and quality of life. We hope that a strong 2007 AQMP will be adopted and pursued with vigor.

We note that the DEIR states at page 3.1-2 that "Health-based air quality standards have been established by California and the federal government for the following criteria pollutants: ozone, CO, NO2, PM10, PM2.5, SO2, and lead. The State has also set standards for sulfate and visibility. These standards were established to protect sensitive receptors from adverse health impacts due to exposure to air pollution.
The California standards are more stringent than the federal standards and in the case of PM10 and SO2, far more stringent." However, with respect to PM10, the DEIR seems to ignore the more stringent state standards. Further stringent consideration needs to be given to reducing PM10 in accord with state standards. 6-1

In order to move toward such reduction, more consideration needs to be given to the impacts generated by fugitive dust caused by soil disturbance in grading for development and in disking for weed abatement. Just last week, during strong winds, especially on Thursday, huge clouds of dust swirled about in my neighborhood in Riverside, sharply reducing visibility over a wide area. The severity of the dust was certainly contributed to by the large areas in Western Riverside County that have been graded in preparation for development but without proper soil stabilization, and by other large areas that have been annually disked for weed abatement and never properly stabilized.

Contributing to the problem is the inadequate AQMD enforcement of its Rule 403 on fugitive dust. The law requires that all feasible measures be adopted, and one such measure would be actual and adequate enforcement of Rule 403, including clamping down on public agencies (including the City of Riverside and the County of Riverside) that send notices to property owners requiring them to disk or mow their property but fail to include information in their notices that disking is in most circumstances prohibited and they should instead mow. Even worse, these same agencies regularly hire contractors who disk in violation of Rule 403. 6-2

A major problem with soil disturbance is not just the dust at the time of grading or disking, but the much larger impact during windstorms months or years later, if the area is left unstabilized, particularly in the case of areas that are disked annually (or even more frequently in some cases) for weed abatement, resulting in the complete breakdown of the soil. And yet even a casual observer can drive around the Riverside area and see many large sites where disking has occurred without any program of soil stabilization (say by repeated watering or by revegetation).

A proposed new control measure is BCM-02, the localized control program for PM emission hot spots. This program relies on the cooperation of local agencies, and yet at present local agencies are often the major violator of rule 403. How will the AQMD ensure compliance with BCM-02, rule 403, and other similar measures? The failure to enforce these measures is a massive environmentally significant cumulative impact on the local air quality. One of us (LN) recently testified on this failure to enforce rule 403 to the AQMD Board when it met in Riverside, and we have documentation of the failure of the City of Riverside to comply with rule 403 for City-contracted weed abatement. 6-3

With regard to grading for construction, with its concomitant air quality impacts, a major problem is the tendency of 6-4

developers of hilly sites to largely level the site. A good example is a tentative tract map proposed in the City of Corona, TTM 32386 (which would have been approved February 7, 2007 except for a long letter in opposition from Friends of Riverside's Hills' attorney). For only 49 single-family lots, this development proposed moving one million cubic yards of dirt (now reduced to a claimed 680,000 cubic yards, still an enormous amount) in an area of 45 acres to be graded. The fact that Corona was prepared to approve this development with a Negative Declaration shows the need for more active involvement by AQMD in enforcing its rules (in particular Rule 403) and proactive involvement to educate cities and counties as to their duties.

6-4 cont.

Moreover, there needs to be a development fee in connection with the air quality impacts caused by developments. EGM-01 seems a good start. The DEIR, at page 2-24, states "staff prepared the following approach: AQMD will put forth a plan that contains a control measure which will establish emission limits for new or redevelopment projects and will involve the selection of mitigation measures from a menu of technically feasible mitigation options." Elsewhere, the DEIR indicated that EGM-01 would include a development fee. But I have heard that because of opposition, the fee, or perhaps the entire EGM-01, has been dropped. This is alarming. The DEIR shows a potential substantial reduction in PM through EGM-01. The health needs of children, seniors and those with lung or heart disease, and the law, require that all feasible measures be taken to reduce air pollution. A developer fee is one such feasible measure. EGM-01 needs to be strengthened and enforced, not weakened or dropped.

6-5

Another major source of air pollution comes from automobiles halted at grade crossings by passing trains. The Riverside County Transportation Commission has data showing the rapidly increasing rail freight traffic in the County, with projections showing that within a few years grade crossings on the major rail lines in the area will be blocked by passing trains for a substantial portion (a few hours, as we recall) of each day. Inasmuch as there only seems to be a source of funding available to build grade separations at relatively few of these grade crossings in the next decades, significant increases in population, and thus cars, in the Inland Empire will result in significant additional pollution from these cars (and trucks) idling at grade crossings. Moreover, in view of limitations on the transportation infrastructure, the traffic congestion, and thus air pollution, will increase more than linearly with the increase in population in this, the most heavily polluted, area. These and other air quality impacts of population growth in the Inland Empire, needs to be analyzed in the EIR. It is not enough to rely on the SCAG projections of population growth. AQMD needs to provide leadership in seeing that any such growth is controlled by the need to protect the health of those already resident in this area. This needs to be considered in the AQMP and DEIR.

6-6

Thank you for your consideration.

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# COMMENT LETTER NO. 6

## FRIENDS OF RIVERSIDE HILLS
**April 17, 2007**

**Response 6-1**

The 2007 AQMP has been designed to comply with the federal Clean Air Act (CAA) requirements for non-attainment areas to prepare State Implementation Plan (SIP) revisions for the federal eight-hour ozone and particulate matter less than 2.5 microns in diameter (PM2.5) standards, while making expeditious progress toward attainment of state standards (see EIR, Subchapter 2.5). The eight-hour ozone attainment plan must be submitted to the U.S. EPA by June 2007 and the PM2.5 attainment plan is due by April 2008. The SCAQMD has elected to submit the PM2.5 attainment demonstration concurrently with the eight-hour ozone attainment demonstration because many of the control strategies that reduce PM2.5 precursor emissions (e.g., NOx) are also needed to help attain the eight-hour ozone standard. The 2007 AQMP includes all feasible control measures that have been identified and recognizes that additional emissions reductions over and above those identified in the 2007 AQMP will be required to meet the federal eight-hour and PM2.5 ambient air quality standards. Additional control measures beyond those in the 2007 AQMP and beyond what are currently known or considered feasible will be required to comply with state ozone and PM2.5 standards. The California Clean Air Act require the expeditious progress toward attainment with state standards and the 2007 AQMP outlines all known strategies that would achieve emission reductions and is in compliance with state, as well as federal, requirements. As stated in the EIR, Subsection 1.7 – Project Objectives, one of the objectives of the 2007 AQMP is to comply with the California Clean Air Act requirements, which includes progress in attaining all state standards, including the standards for PM10 For a list of control measures that would further control PM10 emissions, see the BCM measures in Appendix IV-A of the 2007 AQMP.

**Response 6-2**

The SCAQMD appreciates your concerns regarding fugitive dust emissions and compliance with SCAQMD Rule 403. Enforcement of Rule 403 is not part of the currently proposed 2007 AQMP. Enforcement of all SCAQMD rules and regulations, however, is important to assist the SCAQMD with attaining state and federal standards. The SCAQMD enforces Rule 403 on all agencies, companies, and individuals, as applicable. The SCAQMD staff appreciates anyone that observes a possible violation of Rule 403 to call its hotline at 1-800-CUTSMOG on a 24-hour basis. Inspectors are assigned to the complaint, the complaint is investigated and actions to stop or prevent fugitive dust emissions are taken, as appropriate.

**Response 6-3**

SCAQMD staff is currently working with the County of Riverside on local dust control measures that would also implement, in part, BCM-02. All rules are implemented by the SCAQMD are made enforceable through specific rule requirements, standards, and limitations. Enforcement actions are taken when specific rule requirements are exceeded. The SCAQMD would enforce any new rules as it currently enforces all existing rules. If any citizen complaints are received, SCAQMD inspectors investigate the complaint.

**Response 6-4**

The SCAQMD is not provided notice of all development projects in the Basin and it would be impossible to review all development projects. However, if the commentator is aware of a project that the SCAQMD should review, the SCAQMD's CEQA section should be contacted. The SCAQMD does not take positions for or against land use projects, but evaluates the CEQA documents prepared by local lead agencies to determine if the air quality analyses conform to acceptable analysis methodologies and that adequate mitigation measures have been identified. Once the lead agency approves the project and development commences, the developer is required to comply with the requirements of the Rule 403, as applicable.

The SCAQMD enforces Rule 403 on all agencies, companies, and individuals, as applicable. The SCAQMD appreciates anyone that observes a possible violation of Rule 403 to call its hotline at 1-800-CUTSMOG on a 24-hour basis. Inspectors are assigned to the complaint, the complaint is investigated and actions to stop or prevent fugitive dust emissions are taken, as appropriate.

**Response 6-5**

EGM-01 – Enhanced CEQA Air Quality Review and Mitigation Through SCAQMD Regulation, is included in the 2007 AQMP, but has been revised to eliminate the developer fee. The goal of EGM-01 is to reduce emissions related to new residential, commercial, industrial, and institutional development, including redevelopment. As currently proposed EGM-01 would require discretionary permit applications filed with local jurisdictions that are subject to CEQA, as applicable, to submit an Air Quality Analysis along with their CEQA documents. Projects meeting the established criteria would also be required to reduce their emissions by selecting a series of mitigation measures for a menu of options provided by the rule.

**Response 6-6**

Implementation of the 2007 AQMP's strategies requires a cooperative partnership of government agencies at the federal, state, regional and local level. At the federal level, the U.S. EPA and other agencies are charged with reducing emissions from primarily federally controlled sources such as commercial aircraft, trains, marine vessels and other sources through establishing emission standards for example.

At the state level, CARB is responsible for motor vehicle emissions and consumer products. At the regional level, the SCAQMD is responsible for the overall development and implementation of the 2007 AQMP. The SCAQMD is specifically authorized to reduce emissions from stationary, indirect, some area sources and has limited authority to reduce emissions from mobile sources.

At the local level, local governments serve an important role in developing and implementing clean air strategies for their own operations as well as projects subject to their permitting. SCAG also provides assessments for conformity of regionally significant projects with the overall AQMP, and is responsible for the adoption of the RTIP. The RTP and current RTIP are included in the AQMP. To the extent eliminating grade crossings is included in the RTIP, this is included in the AQMP. SCAG has the expertise and experience in providing estimates of the population increases in the region. The state law (Health & Safety Code §40460) also requires the SCAQMD to use SCAG's demographic projects for SIP planning purposes. It is important that the population growth of the region be included as part of the 2007 AQMP, in order to assure that sufficient emission reductions are achieved to reach attainment of the ambient air quality standards. If population growth was not included, the AQMP would likely under estimated the emission reductions needed and would not achieve attainment of ambient air quality standards by applicable dates. Population growth is only one example of the many data sources that are required to prepare the AQMP. Population growth, however, is more appropriately addressed by the local land use agencies in their General Plans. As such, the SCAQMD has no regulatory authority over land use decisions or planning.

Lee Wallace
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April 17, 2007

Mr. Michael Krause
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**VIA U.S. MAIL, FACSIMILE & EMAIL**

RE: Comments of Southern California Gas Company and San Diego Gas & Electric Company to the Draft Program Environmental Impact Report for the 2007 Air Quality Management Plan

Dear Mr. Krause:

Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) appreciate the opportunity to submit the following comments to the Draft Program Environmental Impact Report (Draft PEIR) prepared for the 2007 Air Quality Management Plan (AQMP).

As you may know, we have a number of concerns about the Draft AQMP, particularly the proposed gas quality measures (CMB-04 and CTY-01). As of the date of this filing, we have been working with District staff for almost four weeks in an attempt to resolve these concerns. Unfortunately, we have not yet been able to agree upon revisions to those measures. Although SoCalGas and SDG&E remain committed to further negotiations, SCAQMD's schedule for AQMP adoption requires that we submit comments on the Draft PEIR no later than today. These comments express concerns about the adequacy of the Draft PEIR under the California Environmental Quality Act (CEQA). As noted below, we believe these concerns can be addressed by changing CMB-04 into a measure that studies the impacts of future importation of natural gas and by deleting CTY-01. Because the District repeatedly has acknowledged the need for further analysis of these measures and that neither measure is required for attainment, we believe our request is wholly reasonable and appropriate. 7-1

SoCalGas and SDG&E have previously submitted extensive written comments to the administrative record in connection with the Draft AQMP and Draft PEIR, including comments to the first Draft AQMP submitted on December 1, 2006, comments on the

Notice of Preparation (NOP) submitted on December 13, 2006, and comments on the second draft of the AQMP submitted on March 30, 2007 and April 6, 2007.

We have reviewed the District's responses to our NOP comments contained in the Draft PEIR. We were disappointed by the District's responses, which did not include any factual analysis. Instead, the responses consisted almost exclusively of legal arguments lifted verbatim from the District's lawsuit seeking to overturn the California Public Utilities Commission (CPUC) decision to establish natural gas quality tariff standards for SDG&E and SoCalGas.[1] Neither the Draft AQMP nor the Draft PEIR is an appropriate vehicle for the District to litigate its case against the CPUC. The CPUC has correctly taken the position that its decision to narrow gas quality tariff standards is not a "project" under CEQA. By contrast, the District has taken the position that the adoption of the AQMP ***is*** a "project" and in connection with that project has prepared the Draft PEIR.[2] Unfortunately, the District's Draft PEIR prepared pursuant to CEQA is flawed and inadequate under CEQA. 7-1 cont.

We respectfully request, therefore, that the District respond to the comments set forth or referenced herein by providing the "good faith, reasoned analysis" that CEQA requires, rather than "[c]onclusory statements unsupported by factual information", which do not suffice under CEQA. CEQA Guidelines §15088(c). We look forward to reviewing a Final PEIR that includes the District's detailed explanations setting forth the reasons why any of our specific comments and suggestions are not accepted, including any comments and suggestions contained in this letter or in our two most recent sets of comments on the second Draft AQMP, which are attached hereto and incorporated by reference.

In our prior written comments and numerous discussions with District staff, SoCalGas and SDG&E have raised serious concerns about the potential environmental impacts of several of the proposed measures and that CMB-04 is not "feasible" as defined by CEQA.[3] These concerns translate into direct, foreseeable impacts on the environment, which should have been addressed in the Draft PEIR, but were not. In particular: 7-2

[1] *South Coast Air Quality Management District v. California Public Utilities Commission,* originally filed January 23, 2007 in the California Supreme Court and in the Court of Appeal for the Second Appellate District, and refiled on March 21, 2007.

[2] We note that the AQMP is by definition "a plan to achieve and maintain the state and federal ambient air quality standards for the South Coast Air Basin." Health & Safety Code §40460(a). The District has described the AQMP as "a comprehensive program that will lead the region into compliance with federal 8-hour ozone and PM2.5 air quality standards." Draft PEIR at 2-1. This collection of measures, which includes a proposed control measure to lower the Wobbe Index limit to 1360, is proposed specifically for the purpose of "resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (CEQA Guidelines §15378), in this case, "lead[ing] the region into compliance with federal 8-hour ozone and PM2.5 air quality standards" (Draft PEIR at 2-1).

[3] "Feasible" is defined under CEQA as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guidelines §15364.

- The Draft PEIR does not adequately analyze foreseeable air quality, energy, land use, hazardous materials and other impacts of the proposed control measures.

- The Draft PEIR fails to disclose the potential environmental impacts resulting from the lack of cost-effectiveness and the infeasibility of some proposed control measures.

- The Draft PEIR includes proposed control measures that are not feasible, yet fails to consider feasible alternatives.

7-2 cont.

Perhaps most important, the District's proposed gas quality measures (CMB-04 and CTY-01) impermissibly conflict with an order issued by a state agency – the CPUC's orders in Decision Nos. 06-09-039 and 07-02-032 – in violation of CEQA. Pub. Res. Code §21154 (*See also*, attached comments submitted on April 6, 2007 describing preemption of gas quality measures). This conflict renders the proposed measures "infeasible" as defined by CEQA due to legal factors. The District is limited to considering measures and alternatives that will not conflict with the CPUC's order, and must revise CMB-04 and CTY-01 accordingly. We further note that the District does not appear to have consulted with the CPUC with respect to CMB-04 and CTY-01, as required under CEQA, which consultation may have resulted in appropriate revisions to those control measures. Pub. Res. Code §21104.

7-3

The District currently plans to adopt the AQMP on May 4, 2007, which is less than three weeks from today. We understand that compiling the additional information required to ensure the adequacy of the Draft PEIR within such a short timeframe presents a challenge. To avoid CEQA infirmities, however, we urge the District to provide the requested information to the extent practicable and to revise the proposed measures in the Final PEIR as we have recommended in our prior submittals. More specifically, the District should:

- Provide information about the cost-effectiveness and feasibility of the proposed measures, especially CMB-01 (non-RECLAIM ovens, dryers, and furnaces), CMB-03 (space heaters), and MCS-01 (facility modernization).

- Revise CMB-04 (natural gas fuel specifications) to require further study of gas imported into the Basin, rather than establishing an unsubstantiated and infeasible, absolute limit of 1360 Wobbe Index.

- Delete CTY-01, which would reduce RECLAIM allocations to offset any potential emission increase resulting from the combustion of natural gas with a Wobbe Index higher than 1360.

7-4

- Revise CMB-01 (non-RECLAIM ovens, dryers, and furnaces) to require the District to work with stakeholders to ensure cost-effectiveness and to identify appropriate exemptions.

7-4 cont.

We note that failure to correct the inadequacies of the Draft PEIR or to revise the Draft AQMP as we have suggested will trigger recirculation of the Draft PEIR. CEQA Guidelines §15088.5. We understand that the District is under great pressure to adopt an update to the AQMP. Therefore we urge you to correct the inadequacies of the Draft PEIR in accordance with these comments.

**I. To Comply with CEQA, the Draft PEIR Must Be Revised to Adequately Address Foreseeable Air Quality, Energy, Land Use, Hazardous Materials, And Other Potential Significant Impacts.**

CEQA requires that an EIR include:

> … a detailed statement setting forth… All significant effects on the environment of the proposed project… Any significant effects on the environment that cannot be avoided if the project is implemented… Any significant effect on the environment that would be irreversible if the project is implemented… Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy… Alternatives to the proposed project…

Pub. Res. Code §21100. Unfortunately, the Draft PEIR does not describe all of the potentially significant effects or alternatives as required by CEQA. 7-5

*A. The Draft PEIR Acknowledges that Additional Analysis and Study is Required, Particularly With Respect to the Gas Quality Measures.*

In response to comments submitted on the NOP, the District repeatedly acknowledges that additional information – and even legislative authority[4] – is required before the proposed control measures can be adopted. Table 1 lists just some of the references, many of which are in the context of the proposed gas quality measures. 7-6

CEQA generally does not permit deferral of environmental analysis, particularly when the required additional analysis can be readily performed. Proposed control measure CMB-04 would impose a *specific, known* maximum Wobbe Index (WI) limit. Because the proposed upper limit is known at this time (1360 WI), the Draft PEIR must look at the potential environmental impacts of such a limit. By contrast, a measure that requires future study rather than set a specified maximum Wobbe Index could be adopted without any additional analysis at this time.

[4] The District has acknowledged that it may need to seek additional legislation to implement CMB-04. We agree that the District does not have the legal authority to adopt CMB-04. This lack of authority renders CMB-04, as currently drafted, legally "infeasible".

| Table 1: Sample of Statements in PEIR Acknowledging Need for Additional Analysis, Information or Legal Authority | |
|---|---|
| Page B-42 | "Currently, there is very limited technical information on the amount of ROG and toxic emissions from burning high WI gas." |
| Page B-43 | "The testing conducted by the SCAQMD was limited…" |
| Page B-44 | "Further analyses are required to establish inventory and emission reductions (such as determining the population that could potentially receive gas with a WI greater than 1,360, and emission estimates to determine the level of emission increase from various groups of combustion equipment)." |
| Page B-45 | "The District however may need to seek additional legislation to implement Control Measure CMB-04." |
| Page B-46 | "Because of these uncertainties in the real world experience, staff proposes to preserve the status quo until further studies have been completed." |
| Page B-46 | "If rule development is warranted, staff will conduct additional research and surveys to refine and adjust the baseline emissions if necessary and determine the emissions reduction associated with this control measure." |
| Page B-47 | "There are no technical studies, reports, or evidences [sic] that demonstrate the differential increase in NOx emissions from combustion of gas with a maximum WI of 1385 [sic] versus 1,360… Additional analyses are required to develop inventory, emissions reduction, and costs associated with this control measure." |
| Page B-47 | "The SCAQMD staff will develop a staff report and socioeconomic assessment during rule development." |
| Page B-47 | "A more detailed analysis of costs and cost effectiveness will be prepared during rule development." |
| Page B-49 | "Whether Control Measure MCS-01 ultimately applies BACT that is current at future dates, or applies a less current version of BACT at future dates will require further evaluation during the rulemaking process." |
| Page B-49 | "During the rulemaking process, the SCAQMD staff will work with stakeholders and further evaluate control strategy options." |
| Page B-49 | "This issue [useful life of equipment] will be more thoroughly analyzed during the rulemaking process." |
| Page B-51 | "Consequently, SCAQMD staff is not prepared to provide the level of details requested by the commenter. This type of information would be developed and made available during rulemaking." |
| Page B-52 | "The SCAQMD will develop a detailed technology, environmental and socioeconomic assessment during rule development. 2007 AQMP control measures are preliminary assessments used to estimate emission reductions and cost effectiveness." |

7-6
cont.

The District acknowledges that more information is required in connection with the proposed control measures. Unfortunately, in the absence of this information, the Draft PEIR is flawed and inadequate. In light of the stated need for additional information regarding gas quality specifications, the District should at a minimum convert CMB-04 into a study measure and delete CTY-01 altogether. The specific timetable (January 2008) and RECLAIM allocation reductions cannot be supported if further study is required for either.

7-6 cont.

*B. The Draft PEIR Fails to Analyze Foreseeable Significant Environmental Impacts.*

A more detailed analysis of the proposed control measures would reveal significant environmental impacts. In light of these impacts, a number of the proposed control measures must be reconsidered.

For example, the Draft PEIR does not adequately address the potential impacts of CMB-04. The Draft PEIR concludes that CMB-04, as currently proposed, will have no significant adverse environmental impacts. The Draft PEIR arrives at that erroneous conclusion without including any estimate of the environmental impacts of the measures that would be necessary to comply with the regulation contemplated by CMB-04. The Draft AQMP specifically lists four control strategies to be employed in limiting the "assumed" increase in NOx creation by raising the Wobbe number. The Draft PEIR also states that because of various options to comply with control measures, it is difficult to determine impacts of the control measures. While this statement may be true for other control measures, CMB-04 sets a specified Wobbe maximum and the Draft AQMP identifies four options for complying with the proposed control measure. Thus, it is possible to conduct the required analysis.

7-7

The Draft AQMP identifies four options for complying with a 1360 Wobbe limit: blending of lower Wobbe index natural gas, importing a high-methane LNG such as the 99+% methane gas proposed by BHP Billiton, nitrogen injection and hydrocarbon stripping. Based on our experience as California public utilities providing natural gas transmission and distribution service pursuant to regulation by the CPUC, SoCalGas have identified a number of potential impacts associated with the compliance options, as well as factors that render these options infeasible under CEQA. Those impacts are described in greater detail below.

*CMB-04: Blending is Not a Feasible Compliance Option.*

Blending is not a feasible or reliable compliance option for a number of physical and operational reasons. SoCalGas and SDG&E operate an integrated gas transmission and distribution system covering a service territory of approximately 20,000 square miles. This integrated system includes numerous interconnects to interstate pipelines, storage fields and California production within the service territory (and within the South

7-8

Coast Air Basin), and in the future will include a receipt point at its southern boundary. For these reasons, blending to ensure a 1360 Wobbe Index maximum within the South Coast Air Basin cannot be guaranteed. Even in geographically isolated locations, it is unreasonable to expect that the Wobbe Index of natural gas supplies available for blending will remain constant.

SoCalGas and SDG&E do not direct gas flows; gas flows are determined by many factors, such as the supply sources (including local production), the pipeline infrastructure, system pressure and customer demand, which varies during the day and over the year. The CPUC-approved tariffs and the rules under which the utility operates and which have been in place for many years clearly and appropriately provide allowable ranges for gas quality specification. Although SoCalGas is able to blend a small amount of gas supply in isolated locations for compliance with NGV standards, it is not possible for SoCalGas to deliver gas supplies with a Wobbe Index below 1360 to all SCAQMD customers through natural pipeline blending. Such blending cannot be done on a wide scale throughout the complex delivery network in the SCAQMD without compromising the reliability of the delivery system as a whole, reducing overall system supply and causing other gas customers not to have adequate gas supply volume, at any WI.

7-8 cont.

More importantly, SoCalGas and SDG&E operate an "open access" system pursuant to the orders of the CPUC. As such, the utilities are ***required*** to accept customer gas at various receipt points, so long as the gas complies with the gas quality specifications established by the CPUC, which in the case of non-California production means accepting 1385 WI gas.[5] Consequently, interstate pipelines will be required to deliver supplies meeting the 1385 WI limit. Additionally, the ability to blend California production even in isolated areas is vulnerable to forces outside the utilities' control. For example, in 2005, a rain-related landslide caused a pipeline rupture that affected SoCalGas' ability to deliver blended supplies in Ventura County.

For all of these operational and physical constraints, blending is simply not feasible or reliable and would create serious problems. Blending alone cannot achieve the desired Wobbe index because of the variety of the producer sources. There may be situations in which additional measures may need to be undertaken to reduce the index, and these cases have not been adequately analyzed or considered. Moreover, because of the prevalence of repair and maintenance activities and the limited number of natural gas transmission lines necessary for blending, consistent and reliable blending is simply not "feasible" as defined by CEQA.

[5] Importantly, CEQA requires that "whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order." Pub. Res. Code §21154.

*CMB-04: Importation of High-Methane LNG is Speculative and Therefore Infeasible.*

Another compliance option identified by the District is importation of high-methane LNG, such as the 99+% methane gas proposed by BHP Billiton. This compliance option, however, is highly speculative and therefore infeasible.

To illustrate, the BHP Billiton project cited by the District has been rejected by two State agencies and cannot be expected to produce any high-methane LNG in the near-term. As of last week, necessary permits for that project had been denied by both the State Lands Commission and the California Coastal Commission. The District's reliance on this project is therefore misplaced. Moreover, according to the Sempra LNG website, the only LNG receipt facility on the West Coast, Energía Costa Azul, is fully contracted for the foreseeable future: "On Oct. 12, 2004, Sempra LNG announced the signing of a 20-year sales-and-purchase agreement with BP and its Tangguh LNG partners for 500 million cubic feet of natural gas a day. This agreement will cover half the capacity of the Energía Costa Azul receipt terminal. A few days later, Sempra LNG announced the signing of another 20-year agreement that provides Shell with the remaining half of the terminal's initial capacity."[6] 7-9

SoCalGas is not aware of *any* other sources of high methane LNG that could be made available within the Basin, let alone any other sources that could provide sufficient high methane LNG to meet customer demands. In the absence of high-methane LNG supplies, this compliance alternative is not feasible.

*CMB-04: Nitrogen Injection Would Trigger Significant Impacts Not Analyzed in the Draft PEIR.*

Injection with inert gases, primarily nitrogen, cannot reliably achieve the desired Wobbe index. The CPUC limits the amount of inert gases allowed in natural gas to 4% by volume, and interstate pipeline tariffs limit inerts to 3%. As a practical matter, these limits preclude injection. Even if the proposed control measure were feasible, based on the current draft of the proposed control measure, SoCalGas and SDG&E would have to permit and construct injection system facilities in at least five locations. Siting the injection facilities would trigger potential impacts to land use. The injection system facilities would include nitrogen production facilities and compressors to inject the nitrogen into the natural gas pipelines. The injection systems would have to be independently powered to avoid potential impacts to safety and utility services. Each of these components would result in air quality, energy, land use and other environmental impacts that are not analyzed in the Draft PEIR. Moreover, the injection system facilities would likely generate waste, which would need to be transported off-site and taken to an appropriate disposal site. The Draft PEIR does not consider the associated impacts to air 7-10

[6] *See* http://www.sempralng.com/Pages/Terminals/Energia/default.htm.

quality and hazards. Constructing these nitrogen facilities is simply not a feasible approach.

7-10 cont.

*CMB-04: Hydrocarbon Stripping is Not Feasible and Would Trigger Environmental Impacts Not Previously Analyzed.*

The District has also identified hydrocarbon stripping as a possible means to achieve its desired Wobbe Index. Hydrocarbon stripping uses a cryogenic process, which would require construction of at least two costly stripping facilities for SoCalGas and SDG&E. Siting the stripping facilities would trigger potential impacts to land use and would most likely trigger CEQA review. Each of the cryogenic facilities would require compressors and other equipment in order to operate safely and cleanly, and would create new emissions and waste products. Like the injection facilities, the stripping facilities would also have to be independently powered, because of safety and reliability needs. These public service requirements would increase emissions due to the installation of continuously operating equipment. The stripping facilities would also require flares for process upsets, tanks to store waste products, wastewater systems, loading racks for waste products, and vapor recovery systems for storage tanks and wastewater system. Each piece of equipment required for stripping would have associated fugitive emissions. Like the injection facilities, the stripping facilities would also generate emissions from trucking waste materials from each facility, which materials in turn would need to be properly disposed.

7-11

Table 2a, below, summarizes the potential emissions associated with operating five nitrogen production and injection plants and two stripping plants. We note that the actual number of facilities needed to comply with CMB-04 has not yet been determined and could exceed what is included in the table.

As shown in Table 2a, assuming only seven stations are required, the compliance alternatives identified by the District could result in more than 129 tons per year of NOx, 106 tons per year of VOC, 86 tons per year of CO, and 4 tons of PM per year.

**Table 2a:**
**Projected Emissions Generated by Compliance with CMB-04**

| | | lbs/day | | | | tons/yr | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Locations** | **Compliance Method** | **NOX** | **VOC** | **CO** | **PM** | **NOX** | **VOC** | **CO** | **PM** |
| SCAB Gate Stations (3) | Injection | 9 | 9 | 36 | | 2 | 2 | 7 | |
| Interstate/Interutility (2) | Injection | 20 | 20 | 81 | | 4 | 4 | 15 | |
| Temecula | Injection & Stripping | 110 | 28 | 128 | | 20 | 5 | 23 | |
| Blythe | Injection & Stripping | 115 | 16 | 84 | | 21 | 3 | 15 | |
| Temecula Transportation* | | 109 | 9 | 34 | 5 | 20 | 2 | 6 | 1 |
| Blythe Transportation* | | 343 | 27 | 107 | 16 | 63 | 5 | 20 | 3 |
| Fugitives from stripping plants** | | | 471 | | | | 86 | | |
| Totals | | **707** | **581** | **471** | **21** | **129** | **106** | **86** | **4** |

*Assumes 40 truck trips per day per facility or 14,600 trips per year. Heavy Duty Diesel truck emission factors are from the EFMAC 2007 (v2.3) On-Road Emission Factors posted on the SCAQMD website.

**Use similar emissions from similar sized facility in SCAQMD

Table 2b, below, compares the projected emissions associated with complying with CMB-04 against the District's CEQA significance thresholds. As shown in Table 2b, the projected emissions far exceed the District's CEQA thresholds for NOx and VOC, thus resulting in significant impacts. The potential emissions directly resulting from compliance with CMB-04 are not analyzed in the Draft PEIR.

7-11 cont.

**Table 2b:**
**CMB-04 Emissions in Excess of SCAQMD Air Quality Significance Thresholds**

| **Pollutant** | **SCAQMD Air Quality Significance Thresholds (Operation)** | **CMB-04 Projected Emissions (Operation)** |
|---|---|---|
| NOx | 55 lbs/day | 707 lbs/day |
| VOC | 55 lbs/day | 581 lbs/day |

Some of these new facilities may even have to be sited ***outside*** the District's jurisdiction, which means the District would not have any authority to require mitigation for associated impacts. The concept of one air district imposing impacts upon another air district to permit the construction and operation of a source solely to comply with a rule in that first air district is a highly problematic one, if not unprecedented. Indeed, this unusual and irregular set of consequences and the associated potential environmental impacts are not even contemplated in the Draft PEIR.

7-11 cont.

Because these impacts are direct, foreseeable and significant, the Draft PEIR should be revised to address these impacts and recirculated for public comment.

C. *The Draft PEIR Fails to Analyze Foreseeable Impacts Resulting from Discrepancies with Applicable State Policies and Impermissibly Considers Measures that Conflict with the CPUC's Order in Decision 06-09-039.*

Under CEQA Guidelines sections 15125 and 15126, an EIR must discuss any discrepancies between a proposed project and applicable plans. The Draft PEIR, however, ignores energy policies that have been adopted by the state – including the state's Energy Action Plan and the CPUC order establishing a 1385 Wobbe Index limit – and fails to analyze the potential impacts of the proposed control measures on the ability to comply with these adopted energy policies.

In 2003, the three key state agencies charged with setting energy policy came together to adopt an "Energy Action Plan" for the state. Authored by the California Energy Commission (CEC), the California Power Authority (CPA), and the CPUC and updated in October 2005, Energy Action Plans I and II identify the future actions needed to meet California's future energy needs.[7] More specifically, the Energy Action Plans "describe[ ] a coordinated implementation plan for state energy policies that have been articulated through the Governor's Executive Orders; Energy Policy Report (IEPR); CPUC and CEC processes; the agencies' policy forums; and legislative direction." Energy Action Plan II, October 2005, page 1.

7-12

The state Energy Action Plans articulate the state's "overarching goal": "for California's energy to be adequate, affordable, technologically advanced, and environmentally-sound." Energy Action Plan II, October 2005, page 2. To ensure reliable, long-term natural gas supplies to California at reasonable rates, the Energy Action Plan calls for "diversify[ing] supply sources to include liquefied natural gas (LNG)." Energy Action Plan II, October 2005, page 13. The Energy Action Plan goes on to identify key actions to achieve these goals, including: "Evaluate the appropriateness of current rules for natural gas quality."

Consistent with the state's adopted Energy Action Plan, on September 21, 2006, the CPUC adopted Decision 06-09-039, which in part establishes a Wobbe Index limit of 1385.[8] Among other things, the CPUC expressly found that "[d]iversifying California's gas supply sources is a state policy adopted in the EAP II" (Decision 06-09-039, page 176) and identified numerous potential energy supply and cost impacts that would result from an unnecessarily low Wobbe limit of 1360: "We agree with the proponents of a 1400 Wobbe Index that a 1360 maximum Wobbe would unnecessarily constrain California's natural gas supplies... At the very least, the need to condition gas for the

[7] The 2003 Energy Action Plan and 2005 Energy Action Plan II, which are available on the CPUC and CEC websites, are hereby incorporated by reference.
[8] Decision 06-09-039 is hereby incorporated by reference.

California market will add costs… We believe that the costs associated with additional conditioning will have cost impacts on California gas consumers…" Decision 06-09-039, page 156. Noting that "[p]olicies that increase natural gas supply and lower natural gas costs help to address many of California's most critical environmental challenges," the CPUC went on to describe the role that a sound natural gas policy plays in addressing the threat of climate change and implementing such transportation policies as the California Hydrogen Highway Blueprint, which "recognizes the important role of natural gas to promote use of hydrogen in the state," and promoting the use of natural gas vehicles. Decision 06-09-039, pages 156-157. Importantly, the CPUC also expressly found that a Basin-only Wobbe maximum was inappropriate, noting that "[a] regional standard in the South Coast Air Basin may be impossible to effect." *Id.*

Despite the clear state policy and order to the contrary, the District's proposed gas quality control measures would set a conflicting Wobbe limit of 1360. The District, however, is foreclosed from taking such action, and any environmental impact report prepared by the District necessarily "shall be limited to consideration of those factors and alternatives which will not conflict with such order." Pub. Res. Code §21154. The Draft PEIR must acknowledge these discrepancies and identify revisions to the Draft AQMP that will resolve these conflicts. CEQA Guidelines §§15125 and 15126.

7-12 cont.

As noted in our previous comments, the SCAQMD actively participated in the CPUC proceeding that led to D.06-09-039, having urged the CPUC to adopt a Wobbe Index of 1360. The CPUC carefully considered and balanced a broad range of concerns and policies before expressly rejecting the District's proposal and setting a Wobbe Index of 1385. Under CEQA, the District may not adopt CMB-04 and CTY-01 as currently drafted because those measures directly conflict with the CPUC's order by attempting to establish an already-rejected, more stringent maximum Wobbe limit.

Furthermore, the Draft PEIR does not disclose the environmental impacts that occur outside of District boundaries as a result of the abrogation of the CPUC-established Wobbe limit. As we have stated before, the SDG&E and SoCalGas transmission and storage system is operated on an integrated basis. The system of pipelines delivering natural gas to the Basin does not begin and end at the Basin's boundaries. Compliance with a stricter limit within the Basin would effectively require bringing all natural gas in the system – including natural gas that passes through the District but is consumed outside of the District's geographic jurisdiction – to a level below the District's maximum Wobbe limit of 1360. The resulting impacts on gas supplies in areas beyond the South Coast Air Basin must be analyzed.

The potential impacts associated with these measures are significant. As noted in our previous comments, 20 to 30 percent of SoCalGas' current natural gas supplies have a Wobbe Index over 1360. Thus, CMB-04 could adversely affect 20 to 30 percent of SoCalGas' existing natural gas supplies. This severe constraint on natural gas supplies is not analyzed in the Draft PEIR.

*D. The Draft PEIR Fails to Analyze Foreseeable Impacts to Solid/Hazardous Waste and Hazards/Hazardous Materials.*

The Draft PEIR fails to analyze the impacts associated with the facility and equipment modernization requirements on waste generation and hazards. The proposed facility modernization control measure (MCS-01) requires the replacement of equipment at the end of a pre-determined life of a piece of equipment, without regard to whether the piece of equipment actually needs to be replaced. Imposing replacement requirements regardless of wear will generate a significant amount of waste, including hazardous waste and materials that must be analyzed in the Draft PEIR. 7-13

**II. In Order for the Final PEIR to Comply with CEQA, the Draft PEIR Must be Revised To Disclose and Evaluate the Potential Environmental Impacts Resulting from the Lack of Cost-Effectiveness and from Infeasibility.**

As noted elsewhere in our comments, the District is deferring most of the cost-effectiveness and feasibility analysis of the proposed control measures until the rulemaking phase. Deferring this important analysis, however, deprives the public of a meaningful opportunity to evaluate the putative benefits of the proposed control measures, the potential environmental impacts associated with the economic burdens imposed by the control measures, and the feasibility of potential alternatives.

"Feasible" is defined under CEQA as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guidelines §15364. Under both CEQA and the Health and Safety Code, the District's proposed control measures must be evaluated through the prism of "feasibility" and "cost-effectiveness." Measures that are not feasible or cost-effective must be rejected. 7-14

Cost-effectiveness and feasibility are especially critical in the context of regulated utility services, where costs are passed on to consumers pursuant to CPUC order, and where limited energy supplies will be stretched and supplemented to meet growing future demand.

The Draft PEIR does not examine whether any of the costs associated with the proposed control measures will translate into environmental impacts, even though it is apparent that they will. For example, the proposed equipment modernization measure imposes retrofit or replacement requirements on facility equipment that has reached the end of a pre-determined "useful life," regardless of whether the equipment actually requires an upgrade. Imposing arbitrary equipment replacement requirements on facility operators will constrain their ability to pay for other, more needed upgrades and voluntary retrofits, which will in turn result in potential environmental impacts that must be quantified. As another example, compliance with the proposed gas quality measure (CMB-04) would require costly capital investments that will be borne by consumers. The

Draft PEIR must look at the environmental impacts associated with the proposed economic burdens. The proposed costs must be justified by the projected environmental benefits. The District has already acknowledged that with respect to CMB-04, no emission reductions are being claimed, despite the high costs.

7-14 cont.

**III. The Draft PEIR Includes Proposed Control Measures that are Not Feasible, Yet Fails To Consider Feasible Alternatives.**

Although not disclosed in the Draft PEIR, several of the proposed control measures are not "feasible" as defined by CEQA, as explained above. SoCalGas and SDG&E have proposed feasible alternatives that should be considered in the Draft PEIR. All of the revisions requested by SoCalGas and SDG&E are feasible. For example, we have proposed that CMB-04 be revised to require further study of gas imported into the Basin. We have also requested minor revisions to CMB-01 (non-RECLAIM ovens, dryers, and furnaces) to require the District to work with stakeholders to ensure cost-effectiveness and to identify appropriate exemptions. We have also requested deletion of CTY-01, which is a contingency measure that is not required and will not affect attainment. The District should revise the Draft AQMP and Draft PEIR to reflect the modifications requested by SoCalGas and SDG&E in the attached comments, submitted on March 30 and April 6.

7-15

**IV. The District Has Not Consulted with the CPUC and Other Agencies as Required Under CEQA.**

Public Resources Code §21153 requires that "every local lead agency shall consult with, and obtain comments from, each responsible agency, trustee agency, and any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located..." Although clearly required under CEQA, the Draft PEIR does not contain any evidence that the District consulted with or obtained comments from the CPUC, which is the public agency that has jurisdiction by law over gas quality and the proposed Wobbe Index limit of 1360. Nor is there evidence that every City and County within the Basin's borders was consulted in connection with the Draft PEIR. The District's obligation to consult with other agencies is a duty to do so affirmatively and actively. If the District has not had the opportunity to consult with all relevant agencies, then adoption of the Draft AQMP should be delayed until public agencies are afforded sufficient opportunity to comment.

7-16

**V. Unless the District Revises or Deletes CMB-04 and CTY-01, the Draft PEIR Must Be Revised and Recirculated for Public Comment.**

As discussed above, the Draft PEIR fails to analyze the potential impacts of the proposed gas specification measures (CMB-04 and CTY-01) and is therefore inadequate under CEQA. As such, the District must either revise or delete the measures from the

7-17

Draft AQMP as we have recommended or it must revise and recirculate the Draft PEIR so that it contains the required analysis.

If CMB-04 and CTY-01 remain unchanged, the District must revise and recirculate the Draft PEIR. CEQA Guidelines §15088.5 states that:

> A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement.

Our comments have raised several potential environmental impacts of the proposed gas quality measures that have simply not been considered in the Draft PEIR. Because the Draft AQMP proposes clear wording for both CMB-04 and CTY-01, it is inappropriate for the District to defer the environmental analysis of these proposed control measures until the rulemaking phase. Such deferral is not permitted under CEQA— not even in the "Program EIR" context. CEQA Guidelines §15168(a) allows for Program EIRs to be prepared generally "on a series of actions that can be characterized as one large project and are related… in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program." The Draft AQMP, however, contemplates action that is within the near term and proposes precise parameters for CMB-04 and CTY-01. For example, even though CTY-01 is a contingency measure, it states, "[b]eginning in 2008, the RECLAIM allocations will be reduced which will offset any potential emission increases due to the introduction of natural gas with a Wobbe Index greater than 1360." Similarly, CMB-04 proposes to establish a defined Wobbe Index limit of 1360 on future natural gas supplies. As a result, the District can and should evaluate the impacts of those proposed control measures at this time, rather than in a subsequent environmental impact report.

7-17 cont.

Nonetheless, the Draft PEIR fails to analyze the potential environmental impacts associated with taking the proposed actions. Without the missing analysis, the public has been deprived of a meaningful opportunity to comment on the significant impacts of the proposed control measures. Thus, the Draft PEIR must be revised and recirculated if it is to serve as the environmental clearance for CMB-04 and CTY-01.

**VI. Conclusion**

We appreciate the opportunity to provide these comments. Should you have any questions regarding our comments or require additional information, please do not hesitate to contact me at 213-244-8851.

Sincerely,

*Lee Wallace*

# COMMENT LETTER NO. 7

## THE GAS COMPANY
**April 17, 2007**

**Response 7-1**

Thank you for your intent to remain committed to further discussions and negotiations on Control Measure CMB-04 with the SCAQMD staff. Your opinion that Control Measures CMB-04 and CTY-01 should focus on future importation of natural gas is essentially in concert with the intent of the SCAQMD staff. The ultimate goal of CBM-04 and CTY-01 is to preserve the status quo. CMB-04 and CTY-01 have no intention to curtail, or regulate, existing gas supplies. However, to maintain the status quo**,** CMB-04 and CTY-01 would require very few suppliers who may deliver large volumes of new imported LNG, with WI as hot as 1385 Btu/scf, to apply existing operating practices to the maximum extent possible to maintain the WI at or below the status quo of 1360.

The reason that CMB-04 and CTY-01 do not contain emission reduction commitments or cost effectiveness analyses, and the attainment demonstration of the 2007 AQMP does not rely on these two control measures is due to the fact that the current gas quality plan will remain. These measures are needed to prevent future increases in NOx emissions from the higher combustion temperatures associated with gas that has a higher Btu content than is currently the case in the district. The inclusion of these control measures in the 2007 AQMP is to prevent emission increases beyond the AQMP's assumptions. Note that it is a current practice of many other APCDs and AQMDs in California to include control measures that need further study in their Air Quality Management Plan.[3]

In the Program Environmental Impact Report conducted for the 2007 AQMP, staff focused its analysis on the control measures that were used to demonstrate attainment. Staff will review and conduct additional detailed "Project" Environmental Assessments for each individual project during the rule development phase, and present this analysis to the public and the Governing Board for consideration. In this context, staff continues to assert that the CPUC had not adequately conducted a full CEQA analysis prior to its decision (Decision 06-09-039) for its rule (Rulemaking 04-01-025), which is related in part to the natural gas qualities.

Lastly, SCAQMD staff disagrees with the opinion of the commentator that the responses to comment previously raised by the commentator have not been adequately addressed. Staff adequately addressed all comments previously raised on CMB-04 and CTY-01 by the commentators, such as Sempra (Responses 18-1 to 18-9), American Gas Association

[3] The final 2007 8-Hour Ozone Plan adopted by the San Joaquin Valley APCD in April 2007 includes 19 measures for stationary sources with defined emission reduction commitments and 20 measures for further study that do not have emission reductions and cost effectiveness estimates. The final 2005 1-Hour Ozone Plan adopted by the San Francisco Bay Area in 2006 includes 15 measures for stationary sources with defined emission reduction commitments and 20 additional measures for further study that do not have emission reductions and cost effectiveness estimates.

(Responses 31-12 to 31-16), and Western States Petroleum Association (Responses 33-27 to 33-32) in the Responses to Comments Appendix to the Proposed Modifications to the 2007 AQMP.

**Response 7-2**

First, in the CEQA context, feasible refers generally to mitigation measures (CEQA Guidelines §15126.4(a)(1)). Currently, some of the existing natural gas supplies to California do exceed a WI of 1360 Btu/scf. However, based on gas quality data for 2000-2004 from Southern California Gas Company, that hotter gas is primarily delivered to the six counties north of the district. The WI of the gas delivered to the metropolitan areas of the district did not exceed 1353 Btu/scf during that period. This fact clearly demonstrates that existing operating practices implemented by the gas suppliers successfully maintained the WI below 1360 Btu/scf within the South Coast air basin. Therefore, it is important to recognize the feasibility of the control practices described in CMB-04.

The SCAQMD also disagrees with the opinions expressed in this comment that the Draft PEIR "fails to disclose the potential environmental impacts resulting from lack of cost effectiveness and fails to consider feasible alternatives." To provide a "worst-case" analysis of potential impacts from the 2007 AQMP, the Draft Program EIR assumed all control measures, including technology forcing measures, etc., would be implemented. To the extent environmental information was available, all control measures were then evaluated to identify potential environmental impacts resulting from their implementation. The analysis of potential impacts from implementing the control measures can be found in Chapter 4. The analysis of project Alternatives can be found in Chapter 6.

**Response 7-3**

In Decision 06-09-039, among other things, the CPUC ordered SDG&E and SoCalGas to file revised Rule 30 tariffs that contain a WI of 1279-1385 Btu/scf and a heating value of 990-1150 Btu/scf. However, recognizing that the CPUC should consider the potential impacts of high WI gas on emissions and the performance of end-use equipment, the CPUC also ordered SDG&E and SoCalGas 1) to work with producers of new sources of California gas supply to determine if any noncompliant gas would have a negative impact, and 2) to post real-time information on the WI at identified points in the pipeline system on an electronic bulletin board to alert end-users so that they can manage their operations if necessary.

In addition, in Decision 06-09-039, the CPUC also recognized that additional research needs to be conducted on system performance and reliability. The CPUC admitted that each utility must continue to study and report on the adequacy of its entire system, including local transmission, and act to ensure that it remains reliable.

In making Decision 06-09-039, it appears that the CPUC acted on a need to adopt a gas quality standard that was consistent with the best information currently available at that

time. This action of the CPUC cannot limit the SCAQMD, or even the CPUC, to further investigate additional information and seek for the best information available in a near future, during the rule development phase of CMB-04.

Since the SCAQMD contended that the CPUC had not adequately conducted a full CEQA analysis prior to rendering its decision on a rule, the SCAQMD filed a request with the CPUC for a re-hearing of Decision 06-09-039. Evidently, the Ratepayers for Affordable Clean Energy (RACE) and the City of San Diego also filed a request for a re-hearing. Subsequently, in Decision 07-02-032, the CPUC decided not to grant a re-hearing.

**Response 7-4**

To the extent cost information is currently available, a cost effectiveness analysis for the 2007 AQMP control measures is included in the 2007 AQMP Socioeconomic Report. Further, during the rule development phase of each control measure, the SCAQMD staff will conduct a full detailed CEQA analysis reviewing all environmental impacts associated with each project, as required in the CEQA Guidelines. Currently, staff has adequately conducted a "Program" EIR, which is different that the "Project" EIR in the context that it can contain less specific and detailed information, as allowed under CEQA Guidelines.

The SCAQMD disagrees with the opinion expressed in the comment that there is a need to recirculate the Draft Program EIR. The Draft Program EIR comprehensively analyzed potential adverse impacts from implementing all 2007 AQMP control measures. Further, recent minor modifications to the 2007 AQMP, in particular CARB's recently released SIP measures and SCAG's two control measures have been evaluated and concluded to be within the scope of the analysis in the Draft Program EIR. As a result, recirculation of the document pursuant to CEQA Guidelines §15088.5 is not required or necessary.

**Response 7-5**

SCAQMD staff disagrees with the opinion of the commentator that all potentially significant effects or alternatives were not described. Staff is aware of the CEQA requirements relative to preparing program EIRs and the Draft Program EIR for the 2007 AQMP complies with all relevant requirements. As noted in Response 7-1, all control measures were analyzed in the Draft PEIR and some control measures were determined to have no significant adverse impacts on the environment and, therefore, not evaluated in further detail. Staff will review and conduct additional detailed project-specific environmental assessment for each individual rule project during the rule development phase, and present this analysis to the public and the Governing Board for consideration.

**Response 7-6**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-7**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-8**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-9**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-10**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-11**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-12**

See Response 5-19 regarding the impacts associated with implementation of CMB-04.

**Response 7-13**

The SCAQMD disagrees with the opinion expressed in this comment. The Program EIR evaluates potential waste impacts associated with the early retirement of equipment in subsection 4.5.4, Early Retirement of Equipment, in the EIR. MCS-01 is not expected to generate significant quantities of waste as equipment operators will be expected to achieve BACT or equivalent emission limits at the end of useful life through equipment replacement or retrofit technology. As discussed in the 2007 AQMP, Appendix VI-A, during the rulemaking process for this control measure, a more detailed analysis will be performed to establish appropriate useful lives for various equipment categories and size ranges. Special consideration will be given to past retrofit requirements and investments made, to ensure that reasonable useful lives for various equipment types are obtained. Therefore, MCS-01 is not expected to generate significant amounts of waste.

**Response 7-14**

Prior to making its decision on a rule, the CPUC must conduct a complete CEQA analysis and consider all relevant environmental facts. The CPUC failed to do so prior to making its decision (Decision 06-09-049) on its rule (Rulemaking 04-01-025). The SCAQMD, on the other hand, has a full intention to complete a detailed "Project CEQA" analysis during the rule development of CMB-04.

It is important to recognize that the control concepts described in CMB-04 are feasible since they are essentially based on existing practices. However, the SCAQMD will continue the research on air quality effects associated with higher Wobbe index gas to determine if there is a need to reduce the potential emission increases and if rule development is warranted.

As noted in Response 7-2, to provide a "worst-case" analysis, SCAQMD staff assumed all control measures would be implemented. Rule development would necessitate further analyses and surveys to 1) determine the population that could potentially receive gas with a WI greater than 1360, 2) quantify the level of emission increase from various groups of combustion equipment, 3) assess emission reduction potential, 4) determine cost-effectiveness, and 5) analyze potential socioeconomic and adverse environmental impacts, other impacts (e.g., constraints on fuel supply, air quality modeling and impact), and alternatives. All of these analyses would be performed with input from the stakeholders and the public, and be presented to the SCAQMD Governing Board prior to their consideration of a proposed rule.

See Response 7-13 regarding the potential impacts associated with the impact of early retirement of equipment.

**Response 7-15**

See Response 5-19 regarding the impacts associated with implementation of CMB-04. See also Response 7-6 regarding the fact that the analysis in the Draft Program EIR represents a "worst-case" approach to analyzing all 2007 AQMP control measures.

**Response 7-16**

The SCAQMD staff disagrees with the opinion expressed in this comment that CPUC should be considered a responsible agency because the CPUC does not have approval authority over the 2007 AQMP itself. The CPUC may have approval authority over subsequent projects that implement the 2007 AQMP control measures, but this does not qualify it as a responsible agency for the 2007 AQMP. The CPUC was included on the list of reviewing agencies sent to the State Clearinghouse. This means that the State Clearinghouse sent it copies of the NOP/IS and Draft PEIR, which afforded these agencies the opportunity to comment of the NOP/IS and Draft PEIR. No comments were received from the CPUC on either the NOP/IS or Draft PEIR.

**Response 7-17**

Since the 2007 AQMP does not require the emission reductions from CMB-04 and CTY-01, and rule development for CMB-04 and CTY-01 has not yet been started, staff did not have to conduct a "Project CEQA" for these control measures. Staff has prepared an adequate "Program CEQA" for the 2007 AQMP. As noted in Response to 7-2, recirculation of the Draft Program EIR is not required or necessary.

OCTA



April 17, 2007

Michael Krause
Office of Planning, Rule Development and Area Sources/CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4182

Dear Mr. Krause:

Thank you for the opportunity to comment on the Draft Program Environmental Impact Report (PEIR) for the 2007 Air Quality Management Plan (AQMP). The Orange County Transportation Authority (OCTA) previously submitted comments regarding several control measures proposed as part of the Draft 2007 AQMP and would like to take this opportunity to reiterate its concern about the potential impacts of those measures on local transportation projects.

In Section 1.6 of the PEIR, Table 1-1 lists control measure EGM-01, Emission Reductions from New or Redevelopment Projects, as an "Area of Controversy" due to the potential impact of mitigation fees on housing costs. We understand that the concept of mitigation fees has been removed from EGM-01 in the Proposed Modifications to the Draft 2007 AQMP. However, OCTA would like to ensure that EGM-01 will not apply to transportation improvements, including projects classified as Transportation Control Measures in the Regional Transportation Plan and Regional Transportation Improvement Program. 8-1

Regionally significant transportation projects and associated emissions are already included in the AQMP as part of the Regional Transportation Plan component. The projects, and related construction emissions, are accounted for as part of the on-road mobile source budget. If regionally significant transportation projects are also subject to EGM-01, emission benefits from such projects would be double-counted in the AQMP. 8-2

As noted in its February 28, 2007 comment letter on the Draft 2007 AQMP, OCTA is concerned that EGM-01, as written, could delay the implementation of transportation improvement projects, leading to additional congestion and increased emissions. OCTA recommends that the South Coast Air Quality Management District revise EGM-01 to explicitly remove transportation improvements from the scope of the measure, eliminating the potential for double-counting the emission reductions provided by these projects. 8-3

*Orange County Transportation Authority*
*550 South Main Street / P.O. Box 14184 / Orange / California 92863-1584 / (714) 560-OCTA (6282)*

Chapter 4.7-13 of the PEIR states that the proposed 2007 AQMP "is not expected to generate any significant adverse project-specific impacts to transportation or traffic systems." This statement assumes that control measures such as FUG-03, Emission Reductions from Cutback Asphalt; OFFRD-01, Construction and Industrial Fleet Modernization, and MCS-02, Urban Heat Island, will not impact OCTA's ability to construct and maintain transportation facilities in a timely and cost-effective manner. OCTA remains concerned with any control measure that would prohibit or delay road construction or repairs during the smog season, or lead to a shortage of clean construction equipment needed to implement transportation improvement projects.

8-4

Thank you again for the opportunity to comment on the Draft Program Environmental Impact Report for the 2007 Air Quality Management Plan. OCTA requests that the District address these concerns and recommendations in the Final 2007 AQMP. Please contact Michael Litschi, Section Manager of Long-Range Strategies, at (714) 560-5581 with any questions.

Sincerely,

Kia Mortazavi
Director, Development

ATL:ml

# COMMENT LETTER NO. 8

## ORANGE COUNTY TRANSPORTATION AUTHORITY
**April 17, 2007**

**Response 8-1**

The SCAQMD staff has an ongoing commitment to work with SCAG to fully explore methods that address VMT related issues. Additionally, as stated in the EGM-01 Control Measure, applicability to regional transportation projects will be examined further during the rule development process.

**Response 8-2**

The proposed control measure is intended to result in emission reductions in addition to the baseline emissions or in addition to existing measures in order to meet the region's clean air goals. Staff is aware of the potential of double-counting emission reductions and will take that into consideration as the control measures are developed. Staff will continue to evaluate areas where additional cost-effective and technically feasible emission reductions may be identified.

**Response 8-3**

Please see Response 8-1 with regard to revising EGM-01 to remove transportation improvements.

**Response 8-4**

The SCAQMD recently completed a Reasonably Available Control Technology (RACT) analysis (in July, 2006) for the 8-hour ozone ambient air quality standard. In that analysis, SCAQMD staff concluded that there were other states had adopted seasonal controls on the use of cutback asphalt. In the RACT submittal to U.S. EPA, the SCAQMD committed to evaluate the potential of limiting the use of cutback asphalt, including the use of seasonal controls. Control Measure FUG-03 outlines that commitment for the 2007 AQMP. At this time, it is premature to exclude seasonal controls from the menu of options for reducing the emissions from cutback asphalt and such measures will remain in the control measure. A detailed evaluation of seasonal prohibitions will be completed during the rule development phase of the control measure, and at that time a decision will be made whether to keep seasonal prohibitions in the menu of possible controls for cutback asphalt. Proposed control measures, such as OFFRD-01 (Fleet Modernization) and MCS-02 (Urban Heat Island), are not intended to prohibit or delay road construction, however, specific requirements and impacts on transportation facilities from those requirements will be examined further during the rule development process.

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April 17, 2007

**VIA EMAIL (MKRAUSE@AQMD.GOV)**

Mr. Michael Krause
Office of Planning, Rule Development, and Area Sources/CEQA
21865 Copley Drive
Diamond Bar, CA 91765-4182

**Re: 2007 Air Quality Management Plan (AQMP); NPCA Comments on EIR and CEQA Analysis**

Dear Mr. Krause:

I am submitting these comments on behalf of the National Paint and Coatings Association (NPCA) concerning the Draft Program Environmental Impact Report for the 2007 Air Quality Management Plan (DEIR). NPCA submitted comments on the draft AQMP in December 2006 as well as on the subsequent version on March 30, 2007. Those comments are incorporated by reference.

In this letter, we focus primarily on the discussion of air quality impacts related to change in use of lower VOC materials (at pp. 4.1-27 through 4.1-50). Before turning to substantive comments on that discussion however, we provide the following comments on the approach taken in the DEIR to this category.

9-1

The referenced section of the DEIR contains a lengthy discussion of potential secondary emissions from reformulation of coatings. This discussion appears to have been largely drawn from environmental assessments performed by SCAQMD in connection with the 1996, 1999, 2002, and 2003 amendments to Rule 1113, that drastically lowered the VOC content of numerous coatings categories. We do not understand that any of those coatings categories are being considered for future VOC reductions in the 2007 AQMP. Nor do we believe that this discussion is necessarily relevant to the control measures being proposed in the AQMP (CTS-01, CTS-04, MCS-01, ARB-CONS-01, and SCLTM-03).

The note to section 15168 of the CEQA Guidelines provides that, if an agency intends to rely on a program EIR, "when individual activities within the program are proposed, the agency would be required to examine the individual activities to determine whether their effects were fully analyzed in the program EIR." Since, at this time, the AQMP does not propose any

9-2

concrete measures to implement any specific control measure for the manufacture, distribution, or sale of AIM coatings within the District, any discussion of the potential impacts of VOC limits or particular coatings technologies in the DEIR are speculative and would not foreclose the need to assess the potential impacts of future control measures anew, if and when they are proposed for adoption by SCAQMD.

9-2

The same is true of the proposed control measures. Standing alone, there is no substantial evidence in the DEIR to support a conclusion that there will be no environmental impacts of the proposed control measures, simply because there is no discussion at all of the impacts that may be associated with the adoption of those control measures. Accordingly, it will be necessary for an environmental assessment to be undertaken for each of these measures prior to their adoption.

We also question the necessity, wisdom, and authority for the District to undertake an EIR for control measures proposed for adoption by state and federal jurisdictions (ARB-CONS-01 and SCLTM-03). Clearly, under Guidelines section 15051(a), CARB would be the "lead agency" for adoption of any such state control measures, since it would be responsible for adopting those control measures ("If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project would be located within the jurisdiction of another public agency."). Since SCAQMD is not the agency that would adopt such control measures, its discussion of the potential impacts is outside of SCAQMD's jurisdiction.

9-3

Turning to the substance of the EIR's discussion of the potential impacts of VOC reductions, in our March 30 submission we drew the District's attention to the recent decision of the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412 (2007). *City of Rancho Cordova* found that a CEQA analysis of a proposed water project was inadequate because it essentially had assumed away the obvious difficulties with the project and had failed to adequately analyze them. Two recent opinions from the Court of Appeal have also reinforced the theme that an EIR is evaluated as an informative document, and will be set aside if it fails to adequately inform decisionmakers and the public about the important consequences of a proposed project so they can be adequately understood and evaluated. *See San Joaquin Raptor Rescue Center v. County of Merced*, ___ Cal.App.4th ___, 5th Civ. No. F050232 (filed April 10, 2007); and *Woodward Park Homeowners Ass'n v. City of Fresno*, ___ Cal.App.4th ___, 5th Civ. No. F049481 (filed April 13, 2007). We continue to believe that the earlier environmental assessments which, in turn, form the foundation for the majority of the DEIR's assessment, are insufficient for that reason.

9-4

Our main objection to the CEQA analysis of the clean air impacts of low-VOC coatings used to justify nonspecific proposed measures contemplated for coatings, solvents, and consumer products is the avoidance of an examination of the full potential consequences of the proposed measures that would require the technologies used in so-called "ultra-low VOC coatings" in both AIM and industrial/OEM coatings. A number of the potential issues with those technologies raised by the industry in previous rulemakings are examined and then essentially assumed away.

9-5

The discussion of the potential for more priming is illustrative. The DEIR states that some argue that more coats would be required to promote adhesion of ultra-low waterborne VOC primers, and that waterborne materials do not penetrate as well as solvent borne materials. This is an inaccurate statement, since adhesion is based on the initial coat, and failure to adhere would result in product failure, not more coats. Nevertheless, the analysis then cites product data sheets for the conclusion that surface preparation for both waterborne and solvent borne materials is essentially equivalent. NPCA has noted in prior proceedings that marketing materials such as product data sheets is an incomplete basis upon which to draw conclusions regarding product performance.

9-5 cont.

In the Rule 1113 rulemaking undertaken in 1999, which involved proposed reductions to the Industrial Maintenance Coating category, public agency comments noted a "lack of coatings which have been demonstrated to perform comparably to existing products" that "could conceivably result in the use of coatings which may not adequately protect and possibly result in accelerated damage to our public infrastructures . . . ." The agencies noted the need to undertake field testing before requiring the use of unproven coatings in critical applications, and that the product data sheets relied upon by SCAQMD were alone unreliable. The Metropolitan Water District (MWD) explicitly commented that "it has been [MWD's] experience that the performance characteristics represented in the manufacturers' technical product data sheets are not obtainable under our laboratory testing or actual usage conditions." Other comments provided by agencies during that rulemaking included the following:

9-6

- the performance characteristics represented in manufacturers' technical product data sheets are not obtainable under laboratory testing or actual usage conditions;
- information in data sheets "must be verified through laboratory and field testing"; and
- SCAQMD did not acquire enough field data and "relied too heavily upon the unsubstantiated claims of a small number of manufacturers which may not represent the mainstream of industrial maintenance coatings technology".

Moreover, the analysis fails to adequately characterize the results of the various AIM coatings studies it relies upon, including the NTS and KTA-Tator studies. Despite industry objections during the design and performance, neither study tested the performance of coatings under real-world conditions, or comported with basic approaches and methodologies used to determine whether a coating provides acceptable performance characteristics. The NTS study allowed the coatings to cure in a pristine environment instead of actually in field conditions. The NTS data did not report on real coatings, but described a "theoretical coating" that combined all of the favorable features found in several different coatings. In essence, it was a collection of "data points," conducted in a manner completely dissimilar to how the products are actually

9-7

used, and lacked controls. Over objections of the Technical Advisory Committee, the KTA-Tator study tested materials at "reported" instead of actual VOC levels. Subsequently it was revealed that some of the materials actually touted as low-VOC products were in fact higher-VOC, and a whole class of products that were tested as nonflat coatings in fact did not meet the gloss levels for this category.

9-7 cont.

With particular reference to the issue of primers, it is a well established principle and practice in the AIM coatings category that, for poor wood surfaces, a solvent borne primer is the most effective because it better penetrates the wood to achieve adhesion. To imply that a waterborne primer, everything else being equal, has the penetrating and adhesion properties of a solvent borne primer, demonstrates a misunderstanding of the essentially different natures of the resin technologies. Also ignored are the issues of water soluble stains such as wood tannins and smoke/fire damage which, because they are water soluble, bleed through water borne primers. Specialty primer categories recognized under existing regulations recognize this need for higher VOC materials for such applications. Further, a recent CARB survey of this category indicated that over 75% of the coatings in this coating category were higher-VOC. This fact should invite at least some kind of inquiry and analysis concerning the relative benefits and drawbacks of the two types of coatings. Instead, it is implicitly assumed that the minority technology is adequate for all of the applications.

9-8

Similar lack of analysis is seen in the discussion of substitution. The use of the small container exemption which allows higher VOC products to be used in applications is totally ignored in the analysis. Yet it is well known by the District that it is a significantly-used means of still obtaining higher VOC products for certain applications. An adequate CEQA analysis should have taken that issue up.

When substitution was raised in the 1999 rulemaking, SCAQMD responded to comments from public agencies that had questioned the availability of "coatings needed for usage on critical structures," by saying that it would "encourage end-users to approach coating manufacturers to ensure that they have available, for any highly specialized uses, coatings that do not comply . . . ." Yet, despite affirmatively "encourag[ing] users to obtain non-compliant coatings for critical applications for which there were no compliant coatings, the Environmental Assessment concluded that substitution of better performing coatings in other categories for use in categories with low compliance limits was not likely to occur for four reasons. First, based on the product data sheets, compliant products were available. Second, the rule prohibited substitution with noncompliant products. Third, performance requirements would prohibit the use of substitute coatings. Fourth, if a product were recommended for more than one category, the VOC limit of the lower category would apply. The first three of those reasons are offered again in the DEIR.

9-9

As is discussed above, the first reason is insufficient. Merely because some compliant coatings were offered for sale in each category did not mean that they would perform adequately and be used for all application requirements of that coating category. The second reasons is

nothing more than a conclusion that substitution of noncompliant products was illegal. This has been held to be an inadequate analysis under CEQA[1]. The third reason, that substitution would not occur due to the performance characteristics of the application, was precisely why comments claimed that substitution *would* happen. The DEIR fails to recognize that inadequate coatings performance would motivate users to secure coatings that adequately perform, either from inside or outside the district, regardless of how long the product was warranted to perform.

9-9 cont.

The DEIR ultimately concludes that substitution "would not increase emissions" but would "only result in lesser emissions reductions." This sleight of hand avoids, without analyzing, the potential that, if sufficient compliant products are not available, substitution could cause a net *increase* in emissions from a category. Without having undertaken such an analysis, the conclusion is not supported by substantial evidence.

Similarly, in addressing the issue of reactivity, the DEIR acknowledges that, on a per-gram basis, some VOCs used in waterborne coatings are more reactive than those in solvent borne coatings but then fails to examine or discuss in any meaningful way the implications of this for the regulatory program. The analysis reveals that, in light of certain studies that have been undertaken regarding MIR values of solvents typically used in coatings, it would be possible to estimate the impacts of requiring the use of various waterborne technologies, even assuming the uncertainties identified in the DEIR. Rather than attempt to do so, the DEIR treats reactivity as an infeasible alternative, not data that can be evaluated to assess the impacts of the use of this technology.

9-10

In conclusion despite our continuing concerns with the adequacy of the CEQA analysis because it assumes away the potential difficulties of ultra-low VOC coatings, NPCA looks forward to working with the District in helping to shape an effective program that ultimately will be based on the realities of coatings technologies.

Very truly yours,

Jeffrey B. Margulies

[1] The 1990 amendments to Rule 1113 had been overturned under CEQA, because SCAQMD could not avoid analyzing the impacts of the rulemaking by claiming that the potential increased emissions from thinning of compliant coatings was "illegal." *Dunn-Edwards Corp. v. South Coast Air Quality Management District, 19 Cal.App.4th 519, 665* (1993).

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# COMMENT LETTER NO. 9

## NATIONAL PAINT AND COATINGS ASSOCIATION
**April 17, 2007**

**Response 9-1**

See Response 5-15 regarding the use of Program EIRs. The 2007 AQMP provides general goals that include the use of lower VOC content coatings. During the rulemaking process for coating-related short-term control measures, the SCAQMD staff will work with stakeholders to address various control options. The environmental analysis in the 2007 AQMP EIR provides an estimate of the potential impacts associated with implementation of lower VOC content coatings, as currently understood. Specific impacts associated with the proposed rules will be evaluated at the time that specific rules are developed.

**Response 9-2**

The SCAQMD staff disagrees that the discussion of potential impacts of VOC limits or particular coatings technologies are speculative and included a general analysis of potential impacts in the 2007 AQMP PEIR. The potential impacts associated with the implementation of lower VOC coatings and solvents are evaluated: (1) under air quality subsection 4.1.4.2, Secondary Impacts from Change in the Use of Lower VOC Materials; (2) under air quality, subsection 4.1.5.3, Non-Criteria Pollutants; (3) under hazards, subsection 4.3.4 - Reformulated Coatings, Solvents, and consumer Products; and (4) under hydrology and water quality, subsection 4.4.3, Reformulated Coatings, Solvents and Consumer Products. However, because the details of the rules that would be associated with the particular control measures are not known, additional project-specific CEQA analysis will be required, as necessary, when rules to implement the control measures are developed. Preparation of the Program EIR does not foreclose analysis of impacts associated with rule projects implementing the 2007 AQMP Instead, impacts outside the scope of the analysis in the Program EIR a required to analyzed pursuant to CEQA Guidelines §15152(d)(1)).

**Response 9-3**

The proposed project is the 2007 AQMP. In order to provide the necessary emission reductions and demonstrate attainment of the federal 8-hour ozone and PM2.5 ambient air quality standards, all identified control measures must be implemented, including those under the jurisdiction of the U.S. EPA, CARB, SCAG, and the SCAQMD. In fact, additional control measures over and above those that have been identified in the 2007 AQMP's short-term measures are required to attain the applicable ambient air quality standards, i.e., "black box" control measures. Therefore, in order to evaluate the impacts of implementing the 2007 AQMP and attaining the applicable federal standards, the control measures that will be implemented by other agencies must be included.

**Response 9-4**

The Draft Program EIR recognized the issues raised in the past by the coating industry with regard to potential air quality impacts from reformulating certain products including industrial lubricants, coatings and solvents, and consumer products. The Draft Program EIR does not rely on earlier assessments but rather discloses the specific potential impact, such as more thickness, more priming, more frequent recoating, etc., and provides a robust detailed analysis supporting the significance or nonsignificance conclusion. Thus, contrary to the commentator's opinion, the Draft Program EIR does not rely on earlier assessments and provides a sufficient evaluation of potential adverse impacts to adequately inform decisionmakers and the public about the important known consequences if coating and solvent control measures are implemented.

**Response 9-5**

See Response 9-4 with regards to the commentator's opinion that potential issues raised by industry in previous rulemakings are "essentially assumed away." Further, not agreeing with the conclusions in the analysis does not mean an inadequate evaluation was conducted on these impacts. Further, the issue of more priming used as an example in the comment was previously raised by the coatings industry and responded to by the SCAQMD in previous CEQA documents prepared for amendments to Rule 1113.

The SCAQMD staff disagrees that the use of product data sheets provide an "incomplete basis upon which to draw conclusions regarding product performance." The courts have validated staff's technology assessments showing that low-VOC coating performance characteristics meet or exceed those of the of their higher-VOC counterpart. Staff relies on a number of key sources of data and information for determining the availability and performance of coatings. These include:

1. CARB Surveys provide sales, emission data, market penetration and VOC content of coatings actually sold in California.
2. Web-based searches where staff has found compliant and super-compliant low-VOC coatings verified by examining Technical Data Sheets.
3. Field Visits to New Construction Sites where staff visited more than 100 new construction sites in 2004 and 2005 in order to determine what products the contractors are using and whether they are working. Overall, most of the construction sites visited had applied architectural coatings with VOC levels much lower than the current specified limits in many different categories and had used many super-compliant products that meet the future limits in Rule 1113. Even with the super compliant products, all of the contractors indicated that they were satisfied with their performance.
4. Performance studies by various public service agencies (i.e., Metropolitan Water District, Southern California Alliance of Publicly Owned Treatment Works) which have completed testing of low-VOC industrial maintenance

coatings (some with the exempt solvent TBAc) in recent years and have found compliant products with satisfactory performance.

5. Meetings with local manufacturers (large and small) to inquire about their successes and failures in preparing for the low-VOC limits. These manufacturers who indicated that complaint products are available and that they exhibit acceptable performance for their markets.
6. A point of distribution survey of local store inventories. The primary purpose of the surveys was to obtain a snapshot of the currently available architectural products being sold from store shelves. This limited survey indicated that products that met the 2006 VOC limits were available and being sold to consumers.
7. A review of select technical papers and articles on advancements in the coatings industry. Manufacturers of coatings rely heavily on the research and development efforts of the raw materials suppliers. Successful reformulation by individual coating companies requires different resins and additives. The 20005 Annual Status Report on architectural coatings provides excerpts from these articles that overwhelmingly indicate that there are ongoing technological achievements to support compliant product formulation. Papers presented at the recent Western Coatings Society Symposium and Show indicate the availability and support from resin and additive suppliers of low-VOC components that meet and exceed the future VOC limits in Rule 1113 and expected performance characteristics as compared to traditional higher VOC containing materials.
8. SCAQMD contracted performance studies with industry experts to conduct laboratory studies to assess the performance characteristics of low-VOC products. A review of these studies supports staff conclusions that overall super compliant coatings meet or exceed expected characteristic performance standards when compared to products that have much higher VOC content.
9. Studies of alternate means of compliance provided by the rule by examining the number of manufacturers who have taken advantage of the Averaging Compliance Option and sell-through provisions as well as the small container exemption.

**Response 9-6**

The rulemaking for Rule 1113 in 1999 is not part of the current 2007 AQMP. See Response 9-5 with regard to relying on the product data sheets to determine performance characteristics.

**Response 9-7**

In addition to referencing the NTS and KTA-Tator studies, the SCAQMD has conducted extensive technology assessments, including side-by-side performance testing to support

the feasibility of the Rule 1113 limits in the South Coast Air Basin. Through recent store shelf surveys in the Basin, staff has found numerous compliant products available within each of the categories, including nonflats, nonflat – high gloss, flats, primers-sealers-undercoaters, specialty primers. This is the direct "real world" result of the lower limits implemented in July 2006, and to be implemented in July 2007 and 2008. Although the SCAQMD is unable to obtain any specific sales volume, the South Coast does represent approximately 45 percent of the statewide sales volume, and volumes, especially from large retail chains, are typically substantial. Moreover, these limits have also been corroborated by technology assessments and commercial availability, as well as a preliminary judgment from the courts to uphold the technological feasibility of the VOC limits originally adopted in 1999. As a result, implementing the same lower limits as those found in Rule 1113 can result in significantly greater emission reductions and further enhance the cost-effectiveness of the proposed rule by allowing manufacturers to take advantage of economies of scale.

**Response 9-8**

The discussion of penetrating and adhesion properties of primers was not based on assumption or speculation, but based on the coating manufacturer's coating product data sheets, the material needed and time necessary to prepare a surface for coating which is approximately equivalent for conventional and low-VOC coatings . These conclusions are supported by the University of Missouri-Rolla (UMR), National Technical Systems (NTS) and other coating studies. While resin plays an important role in the behavior of any coating, the commentator's broad statement that solvent borne primers are more effective is unsubstantiated. According to the CARB survey (Table 4.1-8 in the PEIR), 81 percent of the primer category complied with the lower VOC content limit, which appears to contradict the commentator's opinion that there were a majority sales of higher VOC primers. In addition, 85 percent of the specialty primers complied with the VOC content limit, which also appears to contradict the commentator's opinion that specialty primer categories "recognize this need for higher VOC materials." Low-VOC coatings do not tend to require any special surface preparation different from what is required before applying conventional coatings to a substrate. As part of good painting practices for any coating, water-borne or solvent-borne, the surface typically needs to be clean and dry for effective adhesion.

Rule 1113 already provides small containers (one quart or less) an exemption from the provision of the rule which would allow higher VOC products to be used in applications. If coating users violate the small container exemption, a Notice of Violation will be issued. When the SCAQMD identified an increase in the small container sales for clear wood finishes, the rule was amended to eliminate the small container exemption for clear wood finishes effective July 1, 2006. There are no control measures proposing a change to the current small container exemption and requirements. Thus, for the 2007 AQMP CEQA analysis, no further evaluation on this issue is necessary or warranted.

**Response 9-9**

As already noted, the 1999 amendments to Rule 1113 are not part of the 2007 AQMP. However, SCAQMD staff still supports the four reasons that substitution would not be a significant adverse air quality impact from future control measures. First, as discussed in Response 9-5, the courts have validated staff's technology assessments showing that low-VOC coating performance characteristics meet or exceed those of the of their higher-VOC counterpart. Staff relies on a number of key sources of data and information for determining the availability and performance of coatings. Second, it is a valid argument that operators of illegal activities will be issued a Notice of Violation which should restrict future wrong behavior. In the Dunn-Edwards case cited by the commentator, the court ruled the SCAQMD could not assume people would obey the rule's prohibition on thinning because there was specific testimony that people would violate the law. Subsequent field surveys have indicated that illegal thinning is not a significant problem. Third, if a coating user substitutes one coating type for another because of performance characteristics, the operator is either illegally avoiding proper VOC content limit compliance (e.g., defining an industrial maintenance coating at 250 grams per liter as a metallic pigmented limited at 500 grams per liter) or will be applying a coating that will be less appropriate for the specific application (e.g., using a graphic arts coating to paint a flat wall). Fourth, coatings classified in two categories would have to comply with the lower VOC content limit. Finally, the commentator does not provide any evidence that coating operators will act illegally or that there would be an increase in emissions if substitution would occur.

**Response 9-10**

Contrary to the commentator's opinion that the DEIR treats "reactivity as an infeasible alternative," the 2007 AQMP is proposing a long-term control measure, SCLTM-03, to further reduce emissions from consumer products which includes the use of lower reactive VOC compounds that could offer the potential for achieving equivalent reductions. In addition, the DEIR did evaluate and discuss the implementation of the SCLTM-03 and concluded potential air quality, hazards and hydrology impacts were less than significant. Air quality impacts from the use of reactivity as a regulatory tool was discussed meaningfully for eight pages including the summary of solvents studied in the environmental chamber experiments and the conclusion of the results. The use of reactivity data as an alternative ozone control strategy is not only being proposed as a control measure but was evaluated in a robust discussion, thus, the reactivity issue was not "assumed away" as the commentator expressed.

MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

April 18, 2007

**Via E-Mail**

Mr. Michael Krause
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Dear Mr. Krause:

Draft Program Environmental Impact Report: 2007 Air Quality Management Plan

The Metropolitan Water District of Southern California (Metropolitan) has received a copy of the Draft Program Environmental Impact Report (Draft PEIR) for the 2007 Air Quality Management Plan (AQMP). The South Coast Air Quality Management District (SCAQMD) is acting as lead agency under the California Environmental Quality Act. The proposed 2007 AQMP would update the 2004 AQMP. The 2007 AQMP identifies control measures to be implemented by state, federal and local agencies to demonstrate that the region will attain the federal 8-hour ozone standard and the federal standard for particulate matter less than 2.5 microns in diameter (PM2.5) by the applicable target dates. The Draft PEIR identifies potential adverse impacts in the following environmental topics: air quality; energy; hazards and hazardous materials; hydrology and water quality; and solid and hazardous waste. This letter contains Metropolitan's views, as a potentially affected public agency. Most of Metropolitan's comments show as revisions to various sections in the form of strikeouts and underlines to the text.

10-1

EXECUTIVE SUMMARY

SUMMARY: CHAPTER 3 – ENVIRONMENTAL SETTING

Hydrology and Water Quality

Metropolitan suggests that this section clarify Metropolitan's role as a regional wholesale water supplier in providing supplemental water to its member agencies.

10-2

SUBCHAPTER 3.4 HYDROLOGY/WATER QUALITY

3.4.1 REGULATORY BACKGROUND

700 N. Alameda Street, Los Angeles, California 90012 • Mailing Address: Box 54153, Los Angeles, California 90054-0153 • Telephone (213) 217-6000

3.4.1.5. Water Quality Standards

Page 3.4-4; Paragraph 1; Sentence 6:
Metropolitan recommends that this sentence be revised to clarify that a request for irrigation water from the State or Federal distribution facilities does not require a water right permit since the State or Federal distribution facilities are already permitted.

10-2 (Con't)

3.4.2 EXISTING WATER SOURCES AND USES

Page 3.4-4; Paragraph 3; Sentences 3 and 4:
"Most lakes in this area are actually reservoirs, made to hold water coming from the State Water Project, the Los Angeles Aqueduct, and the Colorado River Aqueduct. These reservoirs include, ~~Lake Casitas,~~ Castaic Lake, ~~Big Bear Lake,~~ Lake Mathews, Lake Perris, Silverwood Lake, and Diamond Valley Lake ~~and Morena Lake.~~" whereas Lake Casitas, Big Bear Lake, and Morena Lake regulate local runoff."

3.4.2.1 Surface Water Resources

Page 3.4-5; Paragraph 2; Sentences 1 and 2:
"The Colorado River watershed includes seven states, four of which are on the western slope of the Rocky Mountains, traversing the arid southwest to the Gulf of California in Mexico. The river supplies water to over ~~25~~ 35 million people in both the U.S. and Mexico."

Please note that the source of the population figure is indicated on Page 1-2 of the "2005 Review, Water Quality Standards for Salinity, Colorado River Basin", October 2005, published by the Colorado River Basin Salinity Control Forum, and accessed on April 10, 2007 at http://www.coloradoriversalinity.org/.

10-3

Page 3.4-6; Paragraph 2; Sentence 4;
"The main sources of surface water used by local water districts within southern California are the Sacramento-San Joaquin Delta, Colorado, Santa Ana, and Santa Clara Rivers."

3.4.3 WATER DEMAND AND FORECASTS

Page 3.4-8, Table 3.4.1:
"~~Metropolitan~~ Municipal Water District of Orange County".

3.4.4 IMPORTED WATER SUPPLIES

Page 3.4-9; Paragraph 1; Sentence 1
"…as well as the Imperial Irrigation District, Palo Verde Irrigation District, Desert ~~Valley~~ Water Agency, San Bernardino Valley Municipal Water District, Coachella Valley Water District, etc."

Mr. Michael Krause
Page 3
April 18, 2007

Page 3.4-9; Paragraph 1; Sentence 7:
"The All American Canal and Coachella Canal were completed in 1940 and 1948 respectively, supplying irrigation districts in the Imperial and Coachella valleys with water for agricultural operations."

Please note that this is based on information accessed on April 10, 2007 and found at http://www.usbr.gov/dataweb/html/allamcanal.htm

3.4.4.1 State Water Project

Page 3.4-9; Paragraph 3; Sentence 5 and 6:
"~~MWD~~ Metropolitan reached a high of 1. MAF in 2005, and experienced shortages in SWP supplies in 1991 and 1992, with reduced deliveries of 391,000 af and 710,000 af, respectively." Please correct "1. MAF".

Page 3.4-9; Paragraph 3; Sentence 1:
"Prior to the 1994 Bay-Delta Accord, the reliability of SWP deliver~~s~~ies was deteriorating rapidly."

10-3
(Con't)

3.4.4.3 Colorado River Aqueduct

Page 3.4-10; Paragraph 1:.
"This supply is currently available and consists of a ~~firm annual~~ supply of over ~~550,000~~ 700,000 af per year from:

- Metropolitan's fourth priority to California's basic apportionment,
- water conserved by Imperial Irrigation District,
- water exchanged with San Diego County Water Authority,
- water conserved by the Coachella Canal Lining Project,
- water saved by land fallowing in Palo Verde Irrigation District, and
- water made available from the Lower Colorado Water Supply Project.

The availability of surplus water is determined annually by the Secretary of the Interior. Metropolitan can utilize such water under its fifth priority and surplus water contract (for more information on the apportionment priority system, refer to subsection 3.4.4.4)."

Page 3.4-10; Paragraph 2; Sentences 1 and 2:
"~~MWD~~ Metropolitan's ~~dependable water~~ supply ~~from its fourth priority apportionment of California's Colorado River water~~ is expected to ~~be 550,000~~ increase to over 900,000 af . ~~In other words, it is expected that the~~ This supply would be available during all year types, including wet, average, single dry-year, and multiple dry-year weather. Although the Secretary of the Interior has allowed ~~MWD~~ Metropolitan to divert surplus water and water that is unused by Arizona and Nevada under ~~MWD~~ Metropolitan's fifth priority to California's apportionment in the past, these additional water supplies over the next ~~20~~ 9 years will be provided in accordance with Interim Surplus Guidelines established in 2001 (~~MWD~~ Metropolitan, 2005)."

3.4.4.4. Supply Inventory

Page 3.4-11; Paragraph 4; Sentence 2:
"Over the last 28 years, an average of 1.046 MAF per year have been available for ~~MWD's~~ Metropolitan's use.~~, enabling MWD to maintain a full CRA delivery capability each year~~

Page 3.4-12; Table 3.4-2: Priority 6b:
"Palo Verde Irrigation District – ~~160,000~~ 16,000 acres of land on the Lower Palo Verde Mesa."

Page 3.4-12. Table 3.4-2. Footnote 2. Sentence 1.
"In 1946, the City of San Diego, San Diego County Water Authority, ~~MWD~~ Metropolitan, and the Secretary of Interior entered into a contract that merged and added the City of San Diego's rights to storage and delivery of Colorado River water to the rights of ~~MWD~~ Metropolitan."

Page 3.4-12; Paragraph 1:
"The fifth priority water includes ~~consists of~~: (1) water apportioned to, but unused, by Arizona and Nevada, (2) surplus Colorado River water, and (3) water unused by holders of priorities 1 through 3 in California ~~,and (4) an amount of water equal to the amount conserved under the 1988 and 1989 agreements with Imperial Irrigation District~~ (~~MWD~~ Metropolitan, 2005)."

Page 3.4-12; Paragraph 2 (Bullet):
"~~The Secretary of the Interior determines the availability of certain fifth priority water MWD's~~ Metropolitan's Basic Contracts - ~~The~~ ~~MWD's~~ Metropolitan's 1930, 1931, and 1946 basic contracts with the Secretary of the Interior permit the delivery of 1.212 MAF per year when sufficient water is available. ~~MWD's~~ Metropolitan's 1987 surplus flow contract with the ~~reclamation~~ Bureau of Reclamation permits the delivery of water to fill the remainder of the Colorado River Aqueduct when…."

Page 3.4-13; Paragraph 2 (Bullet):
"1964 Court Decree - The 1964 U.S. Supreme Court Decree confirmed the Arizona, California, and Nevada basic apportionments of 2.8 MAF per year, 4.4 MAF per year and 300,000 af per year, respectively."

3.4.4.5. Colorado River Water Agreements

Page 3.4-13; Paragraph 2; Sentences 2, 3 and 4:
"As a result of this experience, agencies from the Colorado River Basin states are ~~embarking on a~~ negotiating ~~process to develop~~ detailed guidelines ~~for~~ to managing Colorado River shortages for submittal to the Bureau of Reclamation. In February 2007, the Bureau of Reclamation published a Draft Environmental Impact Statement, "Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead" containing four action alternatives and a no action alternative. One of the alternatives is the Colorado River Basin States preliminary proposal. Until this process is completed (expected by December 2007),

10-3
(Con't)

the Colorado River Basin Project Act of 1968 provides that deliveries of water to holders of post-September 30, 1968 contracts are to be eliminated prior to deliveries to holders of pre-September 30, 1968 contracts only ~~only guideline to allocations of this water is the existing priority system~~. Under this federal ~~system~~ law, ~~MWD's~~ Metropolitan's base supply has a higher priority than the Central Arizona Project's ~~or Nevada's~~ supply, so ~~MWD~~ Metropolitan has assumed (and current modeling demonstrates) that this supply is unlikely to be interrupted."

Page 3.4-13; Paragraph 3; Sentences 1 and 2:
"The San Diego County Water Authority has ~~begun~~ two projects underway that ~~will~~ provide Colorado River water to ~~that agency~~ Metropolitan for exchange. These projects ~~will~~ result in an increased amount of Colorado River water being diverted into the Colorado River Aqueduct from Lake Havasu. ~~for delivery by~~ Metropolitan delivers an equal amount of water to San Diego County Water Authority at the terminus of its distribution system in northern San Diego County."

10-3 (Con't)

3.4.6. WATER RESOURCE ALTERNATIVES

Metropolitan's numerous transfer, storage and core water supply programs are not addressed sufficiently in this section. One such program, which Metropolitan recommends the document include as an additional subheading is "Desalination Projects". Metropolitan supports its member agencies in desalination (brackish and seawater) projects as a portion of its water supply resources.

10-4

Page 3.4-15; Paragraph 1; Sentence 2:
"Imported supply options include storage of water from existing sources, use or storage of water unused by other states or agricultural agencies, and advance delivery of water to irrigation districts."

3.4.7. WATER RECYCLING

3.4.7.1 Reclaimed Water by ~~MWD~~ Metropolitan

Page 3.4-18; Paragraph 2 (West Basin Water Recycling Project)

Metropolitan recommends that this paragraph be clarified that the West Basin Municipal Water District's Recycling Project is one of various other recycling projects being developed by other Metropolitan member agencies.

Metropolitan suggests the following opening sentence to this paragraph as follows:
"Metropolitan supports its member agencies in reclaimed water projects. One such example is the West Basin Water Recycling Project."

10-5

3.4.7.3. Reclaimed Water by Orange County

Page 3.4-19; Paragraph 1; Sentence 1:
"Recycled water is widely accepted as a source for direct use and indirect use of water supply throughout ~~Metropolitan~~ the Municipal Water District of Orange County's (MWDOC) service area."

Page 3.4-20; Paragraph 2; Sentence 6:
"If the future envisioned phases of the project are approved and developed, then it is projected that up to 146,af per year of water will be produced (MWDOC, 2005)." Please revise this sentence to correct "146,af".

Page 3.4-20; Paragraph 2; Sentences 1 and 2:
"In 2005, landscape use for recycled water was 32,733 af, groundwater recharge use ~~is~~ was zero, and seawater barrier use was 4,000 af. By 2030 recycled water use is projected to almost double to 62,618 af per year, groundwater recharge use is projected to be 38,000 af per year and seawater barrier use is projected to be 34,000 af per year."

10-5 (Con't)

SUBCHAPTER 4.4. HYDROLOGY/WATER QUALITY

4.4.2 Significant Criteria

Page 4.4-1; 1st Bullet:
The source of the stated criterion of 5,000,000 gallons per day does not originate from Appendix G of the State CEQA Guidelines, as do the other six criteria. Please identify the basis of this criterion.

10-6

Page 4.4-1; 3rd Bullet:
Why is this criterion included in "The Project Requires Construction of New Water Conveyance Infrastructure" as being significant? Not all such activities are significant. What is the basis for this criterion?

10-7

Page 4.4-1; 8th Bullet:
"Alter~~n~~ations to the course of flow of floodwaters."

10-8

4.4.3 2007 AQMP Control Measures with Potential Hydrology and Water Quality Impacts

Page 4.4-2, Table 4.4-1
The balance between environmental control measures and affected industries need to be carefully considered, as such, Metropolitan is concerned with the changes to the control measures identified on Table 4.4-1, particularly CTS-01 and MCS-01. Metropolitan looks forward to participating during the Rule Making process for the control measures.

10-9

Page 4.4-2, Table 4.4-1; FUG-03:
"Potential increase~~d~~ in water demand associated with making emulsified asphalt."

Page 4.4-14; Paragraph 6; Sentence 3:
"Release of contaminants due to engine oil that burns up in, or leaks from engines or due to burning of recover engine oil for energy generation will also be correspondingly reduced." Should the word "recover" be revised to "recovered" in this sentence?

Page 4.4-15: Paragraph 1; Sentence 1:
"…the feasibility of recycling or safe disposal is promising, especially considering that spent batteries have economic value and the fact that ~~these~~ there are two secondary lead recycling facilities located within the Basin, increased use of electric batteries will require greater efforts at preventing disposal of spent batteries in unlined municipal landfills or via illegal dumping."

10-9
(Con't)

Page 4.4-15; Paragraph 5; Sentences 1 and 2:
"The possible control methods for BCM-05, Emission Reductions from Under-fired Charbroilers, ~~has~~ have yet to be determined as cost-effective controls for the majority of underfired charbroilers ~~has~~ since they (?) have not been developed. Also, please consider revising this sentence to make it clearer.

BCM-05 is aimed at PM10 and PM2.5 emission controls and could involve water scrubbing or filtering devices as add~~ass~~-on controls."

Page 4.4-17; Paragraph 2; Sentences 1 and 2:
"To be conservative, it is estimated that BCM-01, BCM-02 and EGM-01 could result in a 10 percent increase over current water demand for those dust control method~~s~~ affected by the control measure. Though BCM-01, BCM-02, and EGM-01 would affect only a subset of the activities listed in Table 4.4-2, it is estimated that the incremental increase in water demand due to implementation is approximately ~~115.67~~ 11.6 acre-feet per day (10 percent x 115.67 = 11.6) or about 3,779,990 gallons per day."

Page 4.4-18; Paragraph 5, Sentences 1 and 2:
Revise the sentence to read, "Based on the preceding analyses, implementing control measures in the 2007 AQMP could increase water demand impacts by as much as 3.84 million gallons per day. This total projected water demand estimate does not exceed the SCAQMD's water demand significant~~t~~ce threshold and therefore, water demand impacts from implementing the 2007 AQMP control measures are considered to be less than significant."

4.4.4 SUMMARY OF HYDROLOGY/WATER QUALITY IMPACTS

Page 4.4-19; 2nd Bullet:
"Dust Suppression: The potential water quality impacts associated with implementation of the 2007 AQMP from the use of chemical dust suppressants ~~was~~ were expected to be less than significant."

10-10

5.10.1 HYDROLOGY AND WATER QUALITY IMPACTS

Page 5-23; Paragraph 1; Sentence 1:
"The conclusions of the analysis of hydrology/water quality impacts associated with implementation of the 2007 AQMP was that the potential water quality impacts associated with implementation of the 2007 AQMP from the use of chemical dust suppressants, the use of alternative fuels, the increase in disposal of electric batteries, and the installation of pollution control equipment were expected to be less than significant."

10-10
(Con't)

Page 5-23; Paragraph 2; Sentence 1: .
"According to the 2004 Final RTP PEIR, Project-specific studies would be necessary to determine the actual potential for significant impacts on water resources resulting from implementation of the 2004 RTP."

Lastly, Metropolitan recommends a global revision on the following, "The MWD…" to "Metropolitan".

We appreciate the opportunity to provide input to your planning process and we look forward to receiving future environmental documentation on this project. Metropolitan supports the SCAQMD's efforts to improve air quality. If we can be of further assistance, please contact Dr. Debbie Drezner of the Environmental Planning Team at (213) 217-5687.

Very truly yours,

Delaine W. Shane
Interim Manager, Environmental Planning Team

LIM/lim
(Public Folders/EPU/Letters/16-APR-07A.doc – Michael Krause)

# COMMENT LETTER NO. 10

## METROPOLITAN WATER DISTRICT
**April 18, 2007**

**Response 10-1**

SCAQMD staff appreciates the instructive comments on the Draft PEIR from the Metropolitan Water District. Please see the following responses to the specific comments.

**Response 10-2**

Your suggested edit regarding irrigation water has been prepared and added to the hydrology existing setting section of Chapter 3 the Draft PEIR.

**Response 10-3**

Your suggested clarifications regarding water sources, demand and supplies have been incorporated in the hydrology existing setting section of Chapter 3 the Draft PEIR.

**Response 10-4**

Your suggested edit regarding Metropolitan's water supply programs has been prepared and added to the hydrology existing setting section of Chapter 3 the Draft PEIR.

**Response 10-5**

Your suggested clarifications regarding water recycling have been incorporated in the hydrology existing setting section of Chapter 3 the Draft PEIR.

**Response 10-6**

Pursuant to CEQA Guidelines §15002(b)(3), CEQA applies to "Private activities which require approval from a governmental agency." Further, pursuant to CEQA Guidelines §15022, "each public agency shall adopt objectives, criteria, and specific procedures for administering its responsibilities under CEQA." Consistent with these requirements, the SCAQMD must evaluate all applications for a permit and determine whether each proposed project is exempt from or subject to the CEQA. To streamline the CEQA applicability process, SCAQMD staff developed a CEQA Applicability Form for the applicant to complete with the general permit application form for each proposed project. Form 400-CEQA is a general CEQA screening tool to for SCAQMD staff to determine if a more detailed CEQA review of a proposed project is necessary. Twelve questions were developed that identify the six environmental areas which may typically be adversely affected by a proposed project. The questions contain distinct quantitative thresholds which may trigger whether there is a potential significant impact from the proposed project.

To determine potential hydrology impacts, thresholds used by a previous project was evaluated. Increased water demand of approximately 4,000 acre-feet per year was concluded to be the significance threshold in the 1990 State Implementation Plan for PM10 in the Coachella Valley (SCH No. 90020391; SCAQMD, 1991). The SCAQMD has, therefore, used 5,000,000 gallons per day as a significance threshold since 1990. As shown in the following calculation, this number translates to 5,000,000 gallons of water per day, which is SCAQMD's threshold of significance for a proposed project.

$$\frac{(4{,}000 \text{ acre-feet})}{(1 \text{ year})} \times \frac{(326{,}000 \text{ gallons})}{(1 \text{ acre-feet})} \times \frac{(1 \text{ year})}{(260 \text{ days})} = 5{,}000{,}000 \text{ gallons per day}$$

**Response 10-7**

See Response 10-6 with regard to the establishment of the significance criterion in question. New water conveyance infrastructure construction may be necessary if the local water purveyor cannot sufficiently accommodate the proposed water demand from the project. The need for this type of construction would be considered significant for CEQA purposes because the project may require new or modified sewage treatment facilities, new water lines, new sewage lines, sewage hook-ups, etc., and, therefore, could create significant physical impacts to the environment.

**Response 10-8**

The typo regarding "alterations" has been corrected in hydrology impacts section in Chapter 4 of the Draft PEIR.

**Response 10-9**

The rulemaking process is open to all public, industry, environmental and government participants. The SCAQMD looks forward to working with Metropolitan Water District during the development of control measures CTS-01 and MSC-01. The suggested typos and clarifications regarding water impacts have been incorporated in the appropriate sections of Chapter 4-4 in the Draft PEIR.

**Response 10-10**

The suggested corrections to typos have been incorporated in the appropriate sections of Chapter 4-4 in the Draft PEIR.