

## SETTLEMENT AGREEMENT

This Settlement Agreement ("the Agreement") is entered into between the Natural Resources Defense Council, Inc. ("NRDC"), Coalition for Clean Air ("CCA"), and Communities for a Better Environment ("CBE") (collectively, "Plaintiffs") and Defendants South Coast Air Quality Management District ("SCAQMD"), Barry Wallerstein, Executive Officer of SCAQMD, and Michael D. Antonovich, Hal Bernson, William A. Burke, Cynthia P. Coad, Norma J. Glover, Beatrice J. S. Lapisto-Kirtley, Mee Hae Lee, Ronald O. Loveridge, Jon D. Mikels, Leonard Paulitz, and S. Roy Wilson, Members of the Governing Board ("the Board") of SCAQMD, in their official capacities (collectively "SCAQMD "). Plaintiffs and SCAQMD are hereinafter referred to individually as "Party" or collectively as "Parties."

This Agreement is made with reference to the following recitations:

A. On November 15, 1994, the California Air Resources Board ("ARB") submitted to the United States Environmental Protection Agency ("EPA") a revision to the "State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards," hereinafter referred to as the "1994 SIP." The 1994 SIP for the South Coast Air Basin ("SCAB") was prepared by the SCAQMD and ARB. It memorialized previously adopted air pollution control measures, and included additional control measures for the SCAB to be adopted by SCAQMD, ARB and EPA on a schedule designed to attain the national ambient air quality standard for ozone in the SCAB by the 2010 deadline established by the 1990 amendments to the Federal Clean Air Act ("FCAA") and to make expeditious progress towards that goal in the interim. Specifically included in the 1994 SIP were timetables for the development, adoption and implementation of such control measures.

B. On September 25, 1996, EPA approved the 1994 SIP, effective February 7, 1997. The specific features of the SIP thus approved and the terms and conditions of approval are set forth at 62 Fed. Reg. 1150 (January 8, 1997). Certain component measures and commitments had been approved by EPA in earlier actions.

C. Since adoption and approval of the 1994 SIP, in February 1997 the SCAQMD (through ARB) submitted to EPA its 1997 Air Quality Management Plan ("1997 AQMP") as a proposed revision to the 1994 SIP. On December 30, 1998, EPA issued a notice of proposed rulemaking in which it proposed to approve in part and disapprove in part the proposed SIP revision, but EPA has not taken final action thereon. In the interim, SCAQMD has prepared a "Proposed 1999 Amendment to the 1997 Ozone SIP Revision for the South Coast Air Basin" (hereinafter "1999 Amendment") for submission to EPA as a revision to the 1994 SIP.

D. On September 18, 1997, Plaintiffs filed their Complaint in the United States District Court for the Central District of California ("the Court"), Action No. 97-6916, hereinafter referred to as "the Action." Named as defendants therein were SCAQMD, ARB and EPA, and officials and members of the governing bodies of such agencies. The Action was brought under section 304(a) of the FCAA, 42 U.S.C. § 7604(a), to compel implementation of the 1994 SIP. Plaintiffs alleged in their complaint that SCAQMD and ARB failed to adopt and implement thirty-four control measures to which SCAQMD and ARB had committed in the 1994 SIP. Thirty-one of the thirty-four measures were SCAQMD commitments; three were ARB commitments. The Action also sought declaratory and injunctive relief against EPA to ensure that activities of ARB and SCAQMD funded by EPA conformed to the 1994 SIP. All of the Defendants filed answers in the Action denying liability or otherwise denying Plaintiffs' claims.

E. On October 5, 1998, Plaintiffs filed a Supplemental Complaint alleging additional violations of the 1994 SIP by SCAQMD. The Supplemental Complaint also asserted additional claims against EPA and ARB. SCAQMD filed an answer to the Supplemental Complaint on October 23, 1998, denying Plaintiffs' claims. The Supplemental Complaint is included in the

Action. On October 5, 1998, the Court issued its Order on Plaintiffs' Motion for Partial Summary Judgment Order, ruling that the SCAQMD had defaulted on its obligation to adopt and implement 30 control measures under the 1994 SIP. On March 15, 1999, the Court issued its Order on Plaintiffs' Motion for Adjudication of Liability as to SCAQMD on the Fifth Claim of Relief, ruling that the SCAQMD had also defaulted on its obligation to adopt and implement an additional control measure, CTS-L, under the 1994 SIP. After the matter came on for trial as to remedy on June 22 and 23, 1999, the Court issued a proposed Statement of Decision herein on August 27, 1999.

F. In settlement of the Action, Plaintiffs and SCAQMD have agreed to settle their differences without admitting or conceding that the allegations or contentions of any Party are true or correct. Plaintiffs have previously entered into settlements with EPA and ARB. Nothing in this Agreement shall be construed as or constitute an admission or evidence of fault, wrongdoing, or liability.

G. In a letter, a copy of which is attached to this Settlement Agreement as Exhibit 1, EPA has committed to propose approval of the 1999 Amendment and to take action thereon either by approval or disapproval in whole or in part within a specified period of time after it is formally submitted to EPA.

**WHEREFORE**, the Parties agree as follows:

1. Minimum Emission Reductions and Expeditious Progress.

(a) SCAQMD shall adopt and implement measures that will achieve at least the following aggregate emission reductions for VOCs in tons per day ("tpd") in the SCAB in 2010, as set forth in the following schedule:

**MINIMUM COMMITMENTS FOR TOTAL EMISSION REDUCTIONS  
(VOCs, SCAB 2010 tpd)**

<b>ADOPTION DATE</b>	<b>TPD</b>
December 31, 1999	11.0
December 31, 2000	10.0
December 31, 2001	4.0
December 31, 2002	9.3
December 31, 2003	13.8
<b>IMPLEMENTATION DATE</b>	
December 31, 2002	14.8
December 31, 2003	0.9
December 31, 2004	7.3
December 31, 2006	4.0
December 31, 2007	4.0
December 31, 2008	17.1
<b>Total</b>	<b>48.1</b>

(b) Emissions reductions in excess of the minimum emissions reductions commitment for a given year may be applied to the emissions reduction commitment of subsequent years, so long as all of the requirements in subsections 1(e) and (f) below are satisfied.

(c) No later than January 2000, the SCAQMD Board will consider adoption of Control Measure CMB-06 (Emission Standards for New Commercial and Residential Water Heaters, in the 1999 Amendment) and will implement this or an alternative measure no later than 2005, so that it will achieve 7.6 tpd of NOx emission reductions by 2010, except that in the event that the SCAQMD Board finds at the time of adoption that it is infeasible to implement CMB-06 or an alternative measure on this schedule it may delay the starting and ending implementation dates for up to a year.

(d) SCAQMD will adopt and implement the control measures set forth in Exhibit 2 for the emissions reductions and according to the schedule in Exhibit 2, except as provided in subsections 1(e) and 1(f) below.

(e) With respect to each control measure in Exhibit 2 with an implementation date later than 2006, the Governing Board is required at the time of the adoption of such rule to make a written finding that it is infeasible to implement the measure in 2006 in order to adopt an ending implementation date in 2007 or that it is infeasible to implement the measure in 2006 or 2007 in order to adopt an ending implementation date in 2008.

(f) The Board may adopt and implement one or more control measures as an alternative to any measure set forth on Exhibit 2 if (i) they will be adopted and implemented on the same schedule and will provide equivalent emission reductions for each year set forth on Exhibit 2, and (ii) the Board makes a written finding with respect to the particular control measure in Exhibit 2 that such adoption or implementation is infeasible. This subsection shall not prevent SCAQMD from otherwise advancing the dates of adoption or implementation of any control measures.

(g) The Board's finding of infeasibility pursuant to subsections 1(c), (e) and (f) above and 2(b), (c), and (d) below in this agreement shall be subject to the provisions of this subsection. SCAQMD shall give notice to the public of its intent to make a finding of infeasibility, which finding shall be made at a regularly scheduled meeting of the Board. Achievement of some or all of the required emissions reductions shall not be deemed "infeasible" unless the implementing technology is not reasonably likely to be available by the implementation date in question, or achievement of the emission reductions by that date is not cost-effective. For purposes of the Agreement, a proposed measure shall be deemed "cost-

effective" if the cost per ton for implementation of the proposed measure would be equal to or less than the dollar per ton cost for the least cost effective rule for control of VOCs previously adopted by SCAQMD in 1999. The Board's findings of infeasibility pursuant to this Settlement Agreement shall be supported by substantial evidence on the whole record, and the obligation to adopt and/or implement control measures absent substantial evidence of infeasibility shall be considered an enforceable emission standard or limitation under section 304(f) of the FCAA, 42 U.S.C. § 7604(f). Nothing in this subsection shall prevent SCAQMD from establishing or conducting a public review process for consideration of additional information or analyses regarding the measure of cost-effectiveness when staff is estimating the cost-effectiveness of proposed measures at or above a specific threshold. Nor shall this subsection prevent SCAQMD from determining in the future that a measure is cost-effective where the dollar cost per ton is greater than the cost specified by this subsection.

(h) In the event that the State legislature restricts SCAQMD's authority to adopt or implement any control measures which are the subject of this Agreement, the Parties agree to meet and confer regarding the effect, if any, of such restriction(s) on the terms of this Agreement and any changes to the Agreement which should be considered by the Parties.

2. Implementation of Measures Already Adopted.

(a) Exhibit 3 is a list of all of the control measures which have been partially or fully adopted as rules by SCAQMD since EPA's approval of the 1994 SIP and the emissions reductions credited for such measures in the SIP.

(b) With respect to those rules in Exhibit 3 that have been implemented or have not yet been implemented and are not technology forcing or subject to a technology assessment prior to implementation, SCAQMD will not relax or delay implementation of emission limitations in

these rules as set forth in Exhibit 3, except that SCAQMD could relax and/or delay implementation as long as (i) the Board makes a finding that it is infeasible to implement the measure by the date on Exhibit 3; (ii) the cumulative total of emissions reductions from rules on Exhibit 3 relaxed or delayed does not exceed three tons per day at any time; and (iii) the implementation date for an individual rule is not delayed by more than two years and no later than 2010.

(c) With respect to those rules in Exhibit 3 that are technology forcing and/or subject to a technology assessment prior to implementation, SCAQMD will not relax or delay implementation of emission limitations in these rules as set forth in Exhibit 3, unless (i) the Board makes a finding that it is infeasible to implement the measure by the date on Exhibit 3; and (ii) the implementation date for an individual rule is not delayed by more than 2 years or alternative measures are adopted and implemented to eliminate the shortfall in reductions within 2 years after scheduled implementation of the original rule, but no later than 2010.

(d) With respect to Control Measure CTS-02C in the 1999 Amendment, the SCAQMD Board shall complete its technology assessment for the 16 tpd long-term component of Rule 1171 prior to August 31, 2004. Unless the SCAQMD Board determines in the technology assessment that implementation of the long-term component of Rule 1171 by 2005 is infeasible, it shall implement the measure on or before 2005. If SCAQMD determines that it is infeasible to implement Rule 1171 by 2005, it shall make a determination as to the earliest date by which it would be feasible to implement the rule and require implementation by that date.

(e) In the event that SCAQMD's adoption of Phase II of CTS-07 relating to architectural coatings is hereinafter invalidated by the court in the pending challenge to this rule, SCAQMD will have 9 months from the entry of judgment to this effect by a Superior Court to

adopt a replacement rule and may delay the existing schedule for initial implementation of this rule up to 9 months.

3. Long Term Measures. In the event that any of the emission reductions attributed to the long-term component of Control Measure CTS-02C in the 1999 Amendment are used by SCAQMD to satisfy its 48 tpd commitment in section 1 of this Agreement, SCAQMD shall use its best efforts to adopt and implement other rules to achieve equivalent emission reductions to those used to satisfy the 48 tpd commitment. SCAQMD shall also use its best efforts to develop rules to achieve the remaining 12 tons per day of VOC emission reductions (in 2010 currency) identified as long-term measures in Table 2-2 of the 1999 Amendment, to be proposed for adoption at the earliest practicable date.

4. Studies on Refinery Issues. SCAQMD shall take the actions specified in Exhibit 4 by the dates specified therein.

5. With respect to rules 1102, 1103, 1104, 1130 and 1146, SCAQMD will compare the stringency of all regulated components of these rules to comparable rules of other air districts in California and ARB ("alternative rule") and, where a component of the SCAQMD rule is less stringent now or in the future than a comparable component of an alternative rule already adopted or where the SCAQMD rule does not cover a component of an alternative rule, the SCAQMD Board will amend its rule within 9 months of the effective date of this Agreement to be at least as stringent as to each regulated component of the alternative rule.

6. Annual Update Meeting. SCAQMD agrees to host a meeting annually with the Plaintiffs to provide an update to Plaintiffs on the progress SCAQMD is making in fulfilling the provisions of this Agreement, and to resolve any potential conflicts that may arise in the following one year period regarding obligations under this Agreement.



7. Annual Workshop. SCAQMD will hold annual technical workshops open to the public designed to assist in the development of the control measures in its 1999 Amendment and to identify additional control measures that could be adopted and implemented. In addition to the Plaintiffs, the SCAQMD will invite at least 4 business community representatives to such workshops.

8. SIP Revisions. SCAQMD intends to submit the 1999 Amendment to the 1997 AQMP to EPA and seek approval thereof. The SCAQMD Board shall take action on the proposed adoption of the 1999 Amendment on or before January 31, 2000. On or before the date of submission to EPA of the 1999 Amendment, SCAQMD shall submit to EPA for its approval as part of the SIP a list of all measures in the baseline in the SIP and the emission reductions credited for each such measure. Approval by EPA of the 1999 Amendment or the 1997 AQMP or any other revision to or replacement of a SIP shall not relieve SCAQMD from the obligation to adopt measures and to achieve the minimum emissions reductions set forth in sections 1 and 2 of this Agreement or to comply otherwise with the terms of this Agreement. The Parties agree that in this Agreement SCAQMD is committing to tonnage reductions relative to 1997 emissions inventories.

9. Enforcement of the Settlement Agreement. The Parties hereby stipulate to the entry of the Order Regarding Settlement Agreement and Final Judgment (hereinafter "Order and Final Judgment") attached hereto as Exhibit 5. Sections 10 through 15 below are also included in the Order and Final Judgment.

10. Dispute Resolution. If the Plaintiffs conclude that SCAQMD has breached this Agreement, they shall send a notice to SCAQMD specifying the respects in which they contend the Agreement has been breached. SCAQMD shall have 60 days after receipt of the notice to

cure or remedy a breach noticed by Plaintiffs, and the Parties shall meet and confer in good faith within that 60 day period to determine if the breach can be resolved in a way that avoids further litigation of the issue. Upon the expiration of such 60 day meet and confer period, Plaintiffs may thereafter pursue the remedy provided in section 11 below.

11. Remedies. In the event Plaintiffs identify a breach of the Agreement by SCAQMD as specified in section 10, their remedy in the first instance of such a breach of any one of sections 1 through 8 of the Agreement (or a breach of the Order and Final Judgment) shall be limited to moving, upon notice to SCAQMD, that the Court order SCAQMD to come into compliance with the Agreement and/or the Order and Final Judgment. In the event of a failure thereafter of SCAQMD to comply with any order of the Court compelling such compliance or in the event of a further breach of a section of the Agreement (or a breach of the Order and Final Judgment) previously breached, Plaintiffs shall have the right to move the Court to take such further action as may be appropriate to enforce the terms of the Agreement and/or the Order and Final Judgment.

12. Board Member Liability. SCAQMD agrees not to assert a defense of sovereign immunity under the Eleventh Amendment in any proceeding to enforce this Settlement Agreement and/or the Order and Final Judgment. Plaintiffs agree not to seek any judicial contempt citations or other relief against individual Board members, officers or employees of SCAQMD for any breach of this Settlement Agreement and/or the Order and Final Judgment or of a court order issued to enforce this Settlement Agreement, except in the event that the Court determines that SCAQMD is immune under the Eleventh Amendment and the waiver in this provision and any subsequent waiver of its defense of sovereign immunity is ineffective.

13. Retention of Jurisdiction. The Parties agree that the Court shall retain jurisdiction of

the Action only for the purpose of entering any further orders that may be needed (1) to carry out or enforce this Settlement Agreement and/or the Order and Final Judgment, (2) for consideration of an appropriate application for the costs of litigation including reasonable attorney and expert witness fees as provided in section 16 of this Agreement, and (3) to vacate the Order and Final Judgment pursuant to section 14 below and in that event to reopen the action as specified in section 15 below.

14. The Order and Final Judgment will be vacated upon a showing made to the Court in a hearing set by noticed motion by either the Plaintiffs or SCAQMD that either (a) the 1999 Amendment has been disapproved in whole or in part as established by a notice published by EPA in the Federal Register (except for EPA's disapproval of minor or immaterial parts of the 1999 Amendment) or (b) that EPA has failed to take final action approving or disapproving the 1999 Amendment within the 6 month period after the 1999 Amendment was adopted by the SCAQMD Board. No motion to vacate will be entertained by the Court unless filed with the Court within 30 days after either of the events in (a) and (b) above, and within such 30 day period the parties shall comply with the 21 day "meet and confer" requirements of Local Rule 7.4.1, in order to determine if there is any means of resolving the matter short of filing the motion. The parties may stipulate in writing to the extension of the above 6 month period for action by EPA or the 30 day period for bringing a motion to vacate the Order and Final Judgment.

15. In the event that the Order and Final Judgment is vacated by the Court pursuant to paragraph 14 above, this Agreement shall be void, except for subsections 16(a) and (c) which shall remain in effect. The action will be reopened and the Court will take those steps necessary for the entry of a Final Judgment on the claims alleged by the Plaintiffs in the action against

SCAQMD which are the subject of the Court's Order on Plaintiffs' Motion for Partial Summary Judgment Order issued on October 5, 1998, the Order on Plaintiffs' Motion for Adjudication of Liability as to SCAQMD on the Fifth Claim of Relief issued on March 15, 1999, and the proposed Statement of Decision herein issued on August 27, 1999 after the trial on remedy on June 23 and 24, 1999.

**16. Attorneys' Fees.**

(a) SCAQMD agrees to pay Plaintiffs' costs of litigation in this Action, including reasonable attorney and expert witness fees, incurred in the Action in accordance with section 304(d) of the FCAA, as negotiated by the Parties in a separate agreement or as determined by the Court upon motion by the Plaintiffs.

(b) The Plaintiffs shall be entitled to the costs of litigation, including reasonable attorneys and expert witness fees, incurred in accordance with section 304(d) of the FCAA in the enforcement of this Agreement or related judgment.

(c) In the event the Parties are unable to reach agreement on the payment of Plaintiffs' costs of litigation, including reasonable attorney and expert witness fees, under this section, the Parties hereby stipulate that the Court will retain jurisdiction to make a determination upon an application by the Plaintiffs for an award of such costs and fees.

**17. Release and Resolution of All Claims.** This Agreement shall constitute a complete and final resolution and full release of all claims under the FCAA asserted by Plaintiffs in the Action against SCAQMD. However, Plaintiffs reserve their right to take any other actions to enforce the FCAA or other laws regarding matters relating to air quality in the South Coast Air Basin, except to the extent that such actions would be inconsistent with any obligations or remedies imposed under this Agreement. Plaintiffs' rights include but are not limited to any

actions to enforce obligations under the FCAA or other laws after the termination of obligations under this Agreement.

18. Notices and Reports. Whenever, under the terms of this Agreement, notice is required to be given or documents to be served on or to either Party or Parties, the communication shall be directed to the following persons:

For Plaintiff Natural Resources Defense Council, Inc.:

Gail Ruderman Feuer, Esq.  
Natural Resources Defense Council, Inc.  
6310 San Vicente Boulevard, Suite 250  
Los Angeles, CA 90048  
(213) 934-6900

For Plaintiff Coalition for Clean Air:

Tim Carmichael  
Coalition for Clean Air  
10780 Santa Monica Boulevard, Suite 210  
Los Angeles, CA 90025  
(310) 441-1544

For Plaintiff Communities for a Better Environment:

Roger Beers, Esq.,  
Law Office of Roger Beers  
1300 Clay Street, Ninth Floor  
Oakland, CA 94612  
(510) 873-6706

Anne Simon, Esq.,  
Communities for a Better Environment  
500 Howard Street, #506  
San Francisco, CA 94105  
(415) 243-8373

For SCAQMD:

Barry Wallerstein, Executive Officer  
South Coast Air Quality Management District  
P.O. Box 4940  
Diamond Bar, CA 91765-0940

(909) 396-2303

Any Party may designate new or substitute persons to receive notice.

19. Applicable Law. The Parties intend and agree that this Agreement shall be subject to, governed by, and enforced and construed pursuant to the laws of the State of California.

20. Representation by Counsel. Each of the Parties represents and warrants that, in connection with the negotiation and execution of this Agreement, it has been represented by counsel of its own choosing, has executed this Agreement after receiving the advice of counsel, and its representatives have read and understand the provisions and terms of this Agreement and have had an adequate opportunity to conduct an independent investigation of all facts and circumstances with respect to all matters that are the subject of this Agreement.

21. Entire Agreement. Each of the Parties acknowledges that this Agreement and exhibits attached hereto contain all of the terms and conditions agreed upon by the Parties concerning the settlement of the Action and that this Agreement supersedes all prior negotiations, proposed agreements, and agreements concerning such settlement and release. This Agreement shall not be modified or changed except by a written instrument signed by all Parties to this Agreement or their successors in interest.

22. Successors. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective successors, assigns, trustees, and personal representatives. Any reference in this Agreement to SCAQMD shall include any successor to any of the parties identified heretofore as "SCAQMD" in this agreement.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

24. Joint Drafting of Agreement. The Parties have jointly drafted this Agreement, and the Agreement shall not be interpreted against or in favor of any of the Parties that participated in drafting the Agreement.

25. Authorization to Execute Agreement. Each of the Parties represents and warrants that the person executing this Agreement on its behalf is a representative duly authorized to bind it and empowered to enter into this Agreement on its behalf. The Executive Officer of the SCAQMD warrants that he has authority to execute this Agreement on behalf of all persons collectively referred to herein as "SCAQMD." Execution of this Agreement by the Executive Officer shall bind SCAQMD and successors thereto to the commitments set forth in this Agreement.

26. The headings or titles of sections in this Agreement are for convenience of reference only and shall not alter the meaning of any provisions herein.

**THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT IN ITS ENTIRETY AND FULLY UNDERSTAND ITS TERMS.**

Dated: December 10, 1999

COALITION FOR CLEAN AIR

BY:



Tim Carmichael  
Executive Director

Dated: December 10, 1999

NATURAL RESOURCES DEFENSE COUNCIL, INC.

BY:



Gail Ruderman Feter  
Staff Attorney

Dated: December 10, 1999

**COMMUNITIES FOR A BETTER ENVIRONMENT**

BY:

Carlos Ferras  
Carlos Ferras  
Executive Director

Dated: December \_\_\_\_\_, 1999

**SCAQMD**

BY:

Barry Wallerstein  
Barry Wallerstein  
Executive Officer, South Coast Air Quality  
Management District

**APPROVED AS TO FORM:**

Dated: December \_\_\_\_\_, 1999

Gail Ruderman Feuer  
Gail Ruderman Feuer  
Attorney for Plaintiffs Natural Resources Defense Council,  
Inc., and Coalition for Clean Air

Dated: December \_\_\_\_\_, 1999

Roger Beers  
Roger Beers  
Attorney for Plaintiff Communities for a Better Environment

Dated: December \_\_\_\_\_, 1999

Anne Simon  
Anne Simon  
Attorney for Plaintiff Communities for a Better Environment

Dated: December \_\_\_\_\_, 1999

Peter Greenwald  
Peter Greenwald  
General Counsel, SCAQMD, and Attorney for SCAQMD



Dated: December \_\_\_\_, 1999

COMMUNITIES FOR A BETTER ENVIRONMENT

BY:

Carlos Porras  
Executive Director

Dated: December 10, 1999

SCAQMD

BY:

Barry R. Wallerstein  
Barry Wallerstein  
Executive Officer, South Coast Air Quality  
Management District

**APPROVED AS TO FORM:**

Dated: December 10, 1999

Gail Ruderman Feier  
Gail Ruderman Feier  
Attorney for Plaintiffs Natural Resources Defense Council,  
Inc., and Coalition for Clean Air

Dated: December 9, 1999

Roger Bears  
Roger Bears  
Attorney for Plaintiff Communities for a Better Environment

Dated: December 9, 1999

Anne E. Simon  
Anne Simon  
Attorney for Plaintiff Communities for a Better Environment

Dated: December 9, 1999

Peter Greenwald  
Peter Greenwald  
General Counsel, SCAQMD, and Attorney for SCAQMD

**EXHIBIT 1**

**[EPA Letter of Commitment to Propose to Approve and for Schedule of Action Thereon]**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94705-2301

December 10, 1999

Dr. Barry Wallerstein  
Executive Officer  
SCAGMD  
21865 E. Copley Drive  
Diamond Bar, CA 91765-4182

Dear Dr. Wallerstein:

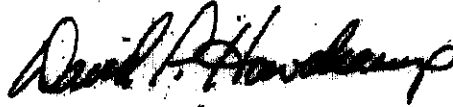
We have reviewed the Draft Proposed 1999 Amendment to the 1997 Ozone SIP Revision for the South Coast Air Basin, as recently revised and forwarded to us. We appreciate your willingness to make changes to the initial draft to address the District's concerns. These changes, in the context of your settlement agreement with the private plaintiffs, address our areas of concern, and we believe that the 1999 Amendment, as amended, will resolve our approval issues regarding the 1997 Ozone SIP Revision. We strongly encourage the District Governing Board to adopt the 1999 Amendment in December and to submit it immediately to the California Air Resources Board (ARB) for approval as a revision to the State Implementation Plan.

If the 1999 Amendment is adopted by the Governing Board, approved by ARB, and reflected in a settlement agreement with environmental plaintiffs, we are willing to undertake expedited Federal action, as requested by the District, the State, and the environmental plaintiffs. Our commitment remains that the 1999 Amendment is adopted on schedule, without substantial amendment, and that ARB submits the plan to us by February 4, 2000. We will agree to sign the proposal approved by January 31, 2000, to sign the final action by April 3, 2000, and promptly to forward the final action for publication in the Federal Register. Thirty days after any final approval is published, the 1997 ozone plan, as amended in 1999, would replace the 1994 plan as the applicable ozone SIP for the South Coast.

We are sensitive to the District's concern that the plan provide opportunities for changes in control measures without the need for further plan modification. We believe that the final draft 1999 Amendment in the context of your settlement agreement with the private plaintiffs provides for flexibility while still meeting the Clean Air Act requirement that all necessary emission reductions be clearly specified and enforceable. Your settlement agreement with the environmental plaintiffs will provide additional and essential assurances that the revised ozone plan, although innovative and dependent upon technological developments, will be stable, secure, and efficient in achieving our clean air goals.

Please feel free to contact us if you have any questions relating to the 1999 Amendment or to our action on the plan.

Sincerely,



David P. Howland  
Director, Air Division

cc: William Burke, Chair, SCAQMD  
Mike Kenny, Executive Officer, ARB

**EXHIBIT 2**

**Revised AQMP Short- and Intermediate Term Control Measures,  
Implementing Agency, Adoption Date, Implementation Period**

Control Measure Number	Control Measure Name	Adoption Date	Implementation Period	Reductions		
				Existing Year	Reductions in 2006	Reductions in 2010
<b>Surface Coating and Solvent Use</b>						
CTS-02C(P2)	Further Emission Reductions from Solvent Cleaning Operations (Rule 1171) (VOC)	1999	2002	9.9	10.6	11.0
CTS-02E	Emission Reductions from Adhesives (Rule 1168) (VOC)	2000	2007-2008	1.3	0	1.3
CTS-02D	Emission Reductions from Solvent Usage (Rule 442) (VOC)	2000	2002	1.1	1.1	1.0
CTS-07(P3)	Further Emission Reductions from Architectural Coatings and Cleanup Solvents (Rule 1113) (VOC)	2003	2006-2008	9.5	3.1	9.8
CTS-08	Further Emission Reductions from Industrial Coating and Solvent Operations (VOC)	Phase I: 2002 Phase II: 2003	Phase I: 2004-2008 Phase II: 2005-2008	4.7	2.4	5.0
CTS-09	Further Emission Reductions from Large Solvent and Coating Sources (VOC)	Phase I: 2000 Phase II: 2002	Phase I: 2003-2004 Phase II: 2005-2006	2004=3.7 2006=6.3*	6.3	7.0
<b>Petroleum Operations and fugitive Emissions</b>						
FUG-05	Further Emission Reductions from Large Fugitive VOC Sources (VOC)	Phase I: 2001 Phase II: 2002 Phase III: 2003	Phase I: 2003-2006 Phase II: 2004-2007 Phase III: 2005-2008	2006=2.6 2007=2.8* 2008=2.9*	2.6	3.0
RFL-02(P2)	Further Emission Reductions from Gasoline Dispensing Facilities (Rule 461) (VOC)	2000	2001-2002	2.0	2.0	2.0

\* Cumulative reductions that include reductions from previous phase(s).

**EXHIBIT 2 (CONTINUED)**  
**Revised AQMP Short- and Intermediate Term Control Measures,**  
**Implementing Agency, Adoption Date, Implementation Period**

Control Measure Number	Control Measure Name	Adoption Date	Implementation Period	Ending Year	Reductions in 2006	Reductions in 2010
<b>Miscellaneous Sources</b>						
PRC-03(P2)	Further Emission Reductions from Restaurant Operations (VOC)	2000	2001 (new) 2003 (retrofit)	2003-09	0.9	0.9
PRC-06	Further Emission Reductions from Industrial Processes (VOC)	2001	2004-2007	2.7	1.9	3.0
WST-01	Emission Reductions from Livestock Waste (VOC)	2002	2004	3.3	3.3	3.3
WST-04	Disposal of Materials Containing Volatile Organic Compounds (VOC)	2000	2002	0.7	0.7	0.8
<b>Total Emission Reductions Committed</b>					<b>34.9</b>	<b>48.1</b>

**EXHIBIT 3**

**SCAQMD VOC and NOx Emission Reduction Rules Adopted Since the Submittal  
of the 1994 Ozone SIP to U.S. EPA (November 1994)**

Control Measure/ Rule	Title	Adoption Date	Implementation Schedule	Achieved Through Rule Implementation in 2010
<b>Rules without Technology-Forcing Limits and/or Technology Assessments</b>				
CTS-C (Rule 1171)	Emission Reductions from Solvent Cleaning Operations	1996	1999	26.8
CTS-02H (Rule 1107)	Emission Reductions from Metal Parts and Products (VOC)	1998	1999	8.8
CTS-02M (Rule 1145)	Emission Reductions from Plastic, Rubber, Glass Coatings (VOC)	1997	1998	1.2
CTS-02N (Rule 1122)	Emission Reductions from Solvent Degreasers (VOC)	1997	1999	48.1
CTS-07* (Rule 1113)	Further Emission Reductions from Architectural Coatings (VOC)	Phase I: 1996	Phase I: 1998-2008	14.8
		Phase II: 1999	Phase II: 2002-2006	16.5
CMB-02B (Rule 1146.2)	Emission Reductions from Small Boilers and Process Heaters (NOx)	1998	2000-2006	4.2**
FUG-01 (Rule 462)	Emission Reductions from Organic Liquid Transfer (VOC)	1995	1999	0.8***
FUG-02 (Rule 1176)	Emission Reductions from Sumps and Wastewater Separators (VOC)	1996	1997	5.0***
PRC-03 (Rule 1138)	Restaurant Operations (VOC)	1997	1999	0.2
RFL-02 (Rule 461)	Further Emission Reductions from Gasoline Dispensing Facilities (VOC)	1995	1998	3.7***
Rule 1104	Wood Flat Stock Coating Operations (VOC)	1998	2000	(negligible)

\* CTS-07 was adopted in two phases. The first phase was adopted in November 1996 and the second phase in May 1999. 18.5 tons per day of the Phase II reductions are subject to technology assessment prior to final implementation.

\*\* Rule 1146.2 is expected to achieve 7.9 tons/day of NOx reductions. However, only 4.2 of the 7.9 tons/day reductions were included in the 1997 AQMP baseline emissions inventory.

\*\*\* The projected reductions were incorporated in the 1997 AQMP baseline emission inventories.

**EXHIBIT 3****(Concluded)**

<b>Control Measure/ Rule</b>	<b>Title</b>	<b>Adoption Date</b>	<b>Implementation Schedule</b>	<b>Achieved Through Rule Implementation in 2010</b>
<b>Rules with Technology Forcing Limits and/or Technology Assessments</b>				
Rule 1136†	Wood Products Coatings (VOC)	1996	2005	7.9
Rule 1124†	Aerospace Assembly and Component Manufacturing Operations (VOC)	1996	2002	0.2
Rule 1130.1†	Screening Printing Operations (VOC)	1996	2003	0.1
Rule 1168†	Adhesive Applications (VOC)	1998	2003	1.3
CTS-07* (Rule 1113)	Further Emission Reductions from Architectural Coatings (VOC)	Phase II: 1999	Phase II: 2002-2006	18.5
<b>Total</b>				<b>VOC = 153.9 NOx = 4.2</b>

\* CTS-07 was adopted in two phases. The first phase was adopted in November 1996 and the second phase in May 1999. 18.5 tons per day of the Phase II reductions are subject to technology assessment prior to final implementation.

† The projected reductions were incorporated in the 1994 Ozone SIP and 1997 AQMP baseline emission inventories. The recent amendments delayed the implementation of technology-forcing limits.



**EXHIBIT 4**  
**Proposed Further Studies on Refinery Issues**

**APPROACH:** The AQMD is committed to further study the emission source categories identified below that are not included as part of the proposed 1997 AQMP amendments

**SOURCE CATEGORIES:**       →     Pressure Relief Devices (PRD)  
  →     Tanks

**STUDY ELEMENTS:**

Source Category	Emissions Inventory	Control Technologies	Cost Effectiveness
PRDs	<ul style="list-style-type: none"> <li>• Number of controlled PRDs</li> <li>• Number of uncontrolled PRDs</li> <li>• Number of historical release events</li> <li>• Emission estimates from release events including an assessment of the adequacy of the existing reporting mechanisms</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluation of potential control options, including, but not limited to, non-flaring vapor recovery system, flaring (including an assessment of emissions generated from additional flaring).</li> <li>• Development of enhanced reporting requirements for release events.</li> </ul>	<ul style="list-style-type: none"> <li>• Cost calculations to reflect all feasible control options and emission reductions from various release events.</li> <li>• Socio-economic impact analysis to assess potential avoided costs associated with controlling releases.</li> </ul>
Tanks*	<ul style="list-style-type: none"> <li>• Enhanced tank field audit to assess the current emissions inventory, including but not limited to those items listed below<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Evaluation of potential controls for slotted and unslotted guide poles and all measures identified in the Aug. 20, '99 BAAQMD Draft Staff Report on Tanks,<sup>2</sup> and associated final staff reports when available, including measures listed below,<sup>3</sup> and other viable control options based on findings from the field audit.</li> </ul>	<ul style="list-style-type: none"> <li>• Cost calculations for all feasible options.</li> </ul>

\*The study will incorporate issues identified in BAAQMD Rule Effectiveness Study (1/16/92) and associated comments by Dr. Fox (11/1/92).

**STUDY MILESTONES:**

Source Category	Emissions Inventory	Control Technologies	Cost Effectiveness
PRDs	By 5/2001	By 10/2001	By 10/2001
Tanks	By 5/2002	By 10/2003	By 10/2003

**FINDINGS AND RECOMMENDATIONS:**

If the studies conclude that meaningful emissions reduction potentials exist with technically feasible and cost effective controls, the AQMD staff will proceed with rulemaking expeditiously and bring the proposed rule to the Governing Board for adoption no later than 12 months after the respective latest dates identified in study milestones.

<sup>1</sup> The emissions inventory evaluation will include all deck fittings and seal details (e.g. liquid mounted, vapor mounted, shoe, etc.), will update tank emissions from sources identified in the updated API document (Manual of Petroleum Measurement Standards, Chapter 19, Evaporative Loss Measurement, Section 2, Evaporative Loss from Floating Roof Tanks, API, April 1987), will identify emissions and pressure of P-V (Pressure-Vacuum) valves on tanks, and will evaluate emissions measurement of storage tanks using GC analysis. (These issues were identified during BAAQMD tank rule assessment)

<sup>2</sup> Amendments to Reg. 8, Organic Compounds, Rule 5, Storage of Organic Liquids, BAAQMD, Bob Nishimura, et al, Aug 20, 1999.

<sup>3</sup> Evaluated control measures will be included for guidepoles (including gasketing, wipers, pole sleeves, other retrofitting controls), for potential emissions reductions from lowering or removing vapor pressure exemptions (and improving accuracy of determination of emissions of lower vapor pressure materials through GC analysis), upgrading floating roof tanks seals to zero gap, retrofitting fixed roof tanks to internal or external floating roof tanks or installing vapor recovery, tightening blind flanks to vapor tight with a low leak standard, increasing inspection frequency, and other measures identified in the cited BAAQMD tank rulemaking documents.

**EXHIBIT 5 TO SETTLEMENT AGREEMENT**

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

COALITION FOR CLEAN AIR, INC., et al.,

Plaintiffs,

v.

SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT ("SCAQMD"), et  
al.

Defendants.

Case No.: 97-6916 HLH (SHx)

ORDER REGARDING SETTLEMENT  
AGREEMENT; AND FINAL JUDGMENT

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1           **The Plaintiffs Natural Resources Defense Council Inc., Coalition for Clean Air and Communities**  
2 **for a Better Environment (collectively "Plaintiffs") and the Defendants South Coast Air Quality**  
3 **Management District, Barry Wallerstein, Michael D. Antonovich, Hal Bernson, William A. Burke,**  
4 **Cynthia P. Coad, Norma J. Glover, Beatrice J. S. Lapisto-Kirtley, Mee Hae Lee, Ronald O. Loveridge,**  
5 **Jon D. Mikols, Leonard Paulitz, and S. Roy Wilson (collectively "SCAQMD") have reached a**  
6 **settlement of this action which is embodied in the Settlement Agreement attached hereto as Exhibit A. In**  
7 **the Settlement Agreement the parties have stipulated to the entry of an Order providing for how this**  
8 **Settlement Agreement will be enforced by this Court and the entry of such an Order provides a basis**  
9 **also for the entry of a Final Judgment in this action. This document shall be referred to hereinafter as**  
10 **"Order and Final Judgment."**

11           **The Settlement Agreement also contemplates that SCAQMD will adopt a "Proposed 1999**  
12 **Amendment to the 1997 Ozone SIP Revision for the South Coast Air Basin" (hereinafter "1999**  
13 **Amendment") and that the 1999 Amendment will be submitted to and approved by the United States**  
14 **Environmental Protection Agency ("EPA") as a revision to the State Implementation Plan ("SIP"). In the**  
15 **event the 1999 Amendment is disapproved or is not timely approved, the Settlement Agreement**  
16 **provides for a means by which this Court's Order and Final Judgment will be vacated and the the**  
17 **Settlement Agreement voided. As set forth below, these terms are incorporated as part of this Order and**  
18 **Final Judgment.**

19           **Therefore, pursuant to the stipulation of the parties and good cause appearing therefor,**

20           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

21           **1. Sections 1 through 8 of the Settlement Agreement shall be operative as part of the Order**  
22 **and Final Judgment of this Court and enforced in the manner set forth in paragraphs 2 through 7 below.**

23           **2. If the Plaintiffs conclude that SCAQMD has breached the Agreement, they shall send a**  
24 **notice to SCAQMD specifying the respects in which they contend the Agreement has been breached.**  
25 **SCAQMD shall have 60 days after receipt of the notice to cure or remedy a breach noticed by Plaintiffs,**  
26 **and the Parties shall meet and confer in good faith within that 60 day period to determine if the breach**  
27 **can be resolved in a way that avoids further litigation of the issue. Upon the expiration of such 60 day**  
28 **meet and confer period, Plaintiffs may thereafter pursue the remedy provided in paragraph 3 below.**

1           3.     In the event Plaintiffs identify a breach of the Agreement by SCAQMD as specified in  
2 paragraph 2, their remedy in the first instance of such a breach of any one of sections 1 through 8 of the  
3 Agreement (or a breach of this Order and Final Judgment) shall be limited to moving, upon notice to  
4 SCAQMD, that the Court order SCAQMD to come into compliance with the Agreement and/or the  
5 Order and Final Judgment of the Court. In the event of a failure thereafter of SCAQMD to comply with  
6 any order of this Court compelling such compliance or in the event of a further breach of the same  
7 section of the Agreement (or a breach of this Order and Final Judgment) previously breached, Plaintiffs  
8 shall have the right to move the Court to take such further action as may be appropriate to enforce the  
9 terms of the Agreement and/or the Order and Final Judgment.

10           4.     SCAQMD has agreed not to assert a defense of sovereign immunity under the Eleventh  
11 Amendment in any proceeding to enforce the Settlement Agreement and/or the Order and Final  
12 Judgment, and the Plaintiffs have agreed not to seek any judicial contempt citations or other relief  
13 against individual Board members, officers or employees of SCAQMD for any breach of the Agreement  
14 and/or the Order and Final Judgment or of a court order issued to enforce the same, except in the event  
15 that the Court determines that SCAQMD is immune under the Eleventh Amendment and the waiver in  
16 the Settlement Agreement and any subsequent waiver of its defense of sovereign immunity is  
17 ineffective.

18           5.     This Court will retain jurisdiction of the Action for the purpose of entering any further  
19 orders that may be needed (a) to carry out or enforce the Agreement and/or the Order and Final  
20 Judgment, (b) for consideration of an appropriate application for the costs of litigation including  
21 reasonable attorney and expert witness fees as provided in the Settlement Agreement, and (c) to vacate  
22 this Order and Final Judgment pursuant to paragraph 6 below and in that event reopen the action as  
23 specified in paragraph 7 below.

24           6.     This Order and Final Judgment will be vacated upon a showing made to the Court in a  
25 hearing set by noticed motion by either the Plaintiffs or SCAQMD that either (a) the 1999 Amendment  
26 has been disapproved in whole or in part as established by a notice published by EPA in the Federal  
27 Register (except for EPA's disapproval of minor or immaterial parts of the 1999 Addendum) or (b) that  
28 EPA has failed to take final action approving or disapproving the 1999 Amendment within the 6 month

1 period after the 1999 Amendment was adopted by the SCAQMD Board. No motion to vacate will be  
2 entertained by the Court unless filed with the Court within 30 days after either of the events in (a) and  
3 (b) above, and within such 30 day period the parties shall comply with the 21 day "meet and confer"  
4 requirements of Local Rule 7.4.1, in order to determine if there is any means of resolving the matter  
5 short of filing the motion. The parties may stipulate in writing to the extension of the above 6 month  
6 period for action by EPA or the 30 day period for bringing a motion to vacate the Order and Final  
7 Judgment.

8 7. In the event that this Order and Final Judgment is vacated by the Court pursuant to  
9 paragraph 6 above, the action will be reopened and the Court will take those steps necessary for the entry  
10 of a Final Judgment on the claims alleged by the Plaintiffs in the action against SCAQMD which are the  
11 subject of the Court's Order on Plaintiffs' Motion for Partial Summary Judgment Order issued on  
12 October 5, 1998, the Order on Plaintiffs' Motion for Adjudication of Liability as to SCAQMD on the  
13 Fifth Claim of Relief issued on March 15, 1999, and the proposed Statement of Decision herein issued  
14 on August 27, 1999 after the trial on remedy on June 23 and 24, 1999.

15 Dated: \_\_\_\_\_

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16 United States District Judge  
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