APPENDIX C

COMMENTS ON THE NOTICE OF PREPARATION AND INITIAL STUDY

COMMENT LETTER #1

COMMUNITIES FOR A BETTER ENVIRONMENT

VIA E-MAIL AND FACSIMILE

March 5, 2001

Mr. Jonathan Nadler (c/o CBQA)
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Re: CBE Comments on Notice of Preparation of a Draft Environmental Assessment for Proposed Amendments to Regulation XX – Regional Clean Air Incentives Market (RECLAIM)

Dear Mr. Nadler,

Introduction

Communities for a Better Environment ("CBE") is a non-profit environmental justice organization committed to environmental issues impacting low-income communities of color in California. With over 20,000 members in the state, CBE has been involved in California's environmental justice movement for over a decade. Part of that struggle has included our on-going campaign against illegal pollution trading programs. When the South Coast Air Quality
1-1 Management District ("AQMD") created the RECLAIM program in 1993, CBE asserted itself as a vocal opponent to the program, due to its fundamental flaws in concept and implementation.[1] We predicted that the program would fail, thereby placing a disproportionate amount of environmental burden on low-income communities of color that house an inordinate number of major stationary sources of pollution. Unfortunately, those predictions have materialized into reality. By the District's own admission, many major sources in the South Coast air basin have maintained the same levels of pollution, and some have even increased their pollution over the past 8 years. In fact, the two largest NOx source categories, refineries and power plants, have actually increased their emissions during RECLAIM's eight years. There cannot be a clearer indication of the program's abysmal performance.

[1] In a March 30, 1995 comment letter addressed to Felicia Marcus of the U.S. Environmental Protection Agency, CBE wrote, "RECLAIM will result in tens of thousands of tons of additional pollution being released in the South Coast's skies and will allow polluting industries to actually increase their emissions. RECLAIM deprives the public and even the government of its right to comment on where that pollution will be released and in what amounts, leaving these life and death decisions to corporate directors seeking to maximize profits even at the expense of human health. RECLAIM lacks adequate safeguards against fraud and uncertainty which will mean yet more pollution in the air. In short, RECLAIM includes so many opportunities for industry gaming and fraud, that any real air pollution improvements will be delayed for years at best and may be completely illusory.

The SCAQMD has also apparently overlooked the fact that it is the region's communities of color who will bear the brunt of ozone, PM-10, and other toxic hot spots under RECLAIM. As such, the program violates the President's Executive Order on Environmental Justice and Title VI of the Civil Rights Act. If one thing is clear from our nation's history, it is that the free market has never adequately protected the rights or health of communities of color."

Rather than creating cheap credits through new credit generation rules or developing "pay to pollute" schemes that merely serve to tax pollution, the AQMD should require power plants and other polluters to install known, readily available, pollution control equipment to reduce emissions, thereby creating real pollution credits. For example, as District staff have mentioned both in public hearings and in the White Paper on RECLAIM stabilization, many power plants subject to RECLAIM do not even have Selective Catalytic Reduction (SCR) units on their facilities, units that have been available and affordable for years. Requiring the power plants to install SCR would result in a massive reduction of NOx pollution, which would both clean the air and alleviate the RECLAIM shortage.

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Yet, inexplicably, the AQMD is forging ahead with an expansion of the failed RECLAIM program, including the current effort to increase the supply of credits into the program by additional mobile source credit generation rules. Although it is true that RECLAIM initially contemplated the eventual inclusion of mobile source credit generation programs, such potential expansion was premised on a properly-functioning program. It is indeed ironic that the AQMD is now proposing to feed the source of RECLAIM's disease by increasing the supply of credits into the market, rather than take appropriate enforcement action against recalcitrant polluters who have spent the last 8 years "gaming" the RECLAIM program at the great expense to public health and now expect government relief for their mischief.

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RECLAIM's failure is due in large part to the initial over-allocation of credits into the market, which resulted from artificially inflated baselines. As the AQMD itself recognizes, "the program design allowed the use of peak production rates before recession in determining allocations."[2] This means that credits were initially allocated as if facilities were operating at full capacity, rather than at their actual levels. By unnecessarily flooding the market with credits, which artificially drove down the price of credits, the AQMD doomed its own program from the outset. Now the agency wishes to magnify that fatal mistake by again increasing the supply of credits to artificially drive down price and by offering facilities to pay their way out of their pollution reduction obligations, just at a time when RECLAIM's credit prices are at a high enough level to incentivize real pollution reduction through readily-available and cost-effective pollution control equipment. It is essential that the AQMD not waste this unique opportunity to take a strong enforcement stance against a widespread and blatant disregard for the agency's pollution control requirements.

Finally, the most troubling aspect of the proposed amendments to RECLAIM is that at least some of them are ***patently illegal***. Certain proposed amendments violate both the federal and state Clean Air Acts, along with the California Environmental Quality Act, as explained below.

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The proposed environmental review is also deficient. First, it fails to explore enforcement and penalty aspects of the program, in violation of RECLAIM's own requirements. Second, the District has engaged in illegal piecemealing under the California Environmental Quality Act by "chopping up" the proposed amendments and additions to RECLAIM into separate projects. Under CEQA, the District must prepare a programmatic EIR studying the potential environmental impacts of all District projects aimed at leveling the price of RECLAIM

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[2] *White Paper on Stabilization of NOx RTC Prices*, South Coast Air Quality Management District, January 11, 2001.

1-5 cont.

credits. Lastly, the proposed environmental assessment must include, as part of its cumulative impact analysis, an environmental analysis of the construction of power plants that will result from the proposed changes to RECLAIM.

RECLAIM's Backstop Measures Offer A Fix That is Aimed At Its Penalty Provisions

As the District knows RECLAIM's backstop provisions require the Executive Officer to submit a "review the compliance and enforcement aspects of the RECLAIM program to CARB and the U.S. EPA".[3] Citing RECLAIM's backstop provision, AQMD Rule 2015, the staff has been scrambling to "fix" RECLAIM by finding ways to reduce the price of credits, such as proposing new credit generation rules and allowing polluters to pay their way out of their emission reduction requirements through AQIP programs. These are not the type of "fixes" contemplated by RECLAIM's backstop provision (Rule 2015). In fact that provision calls for a thorough investigation into the cause of the high price of credits and into why the program's penalty provisions are not serving a deterrent effect. Specifically, Rule 2015 (b)(6) states,

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> Should the average RTC price be determined, pursuant to Rule 2015 (b)(1)(E), to have exceeded $15,000 per ton, within six months of the determination thereof, the Executive Officer shall submit to the Air Resources Board and the Environmental Protection Agency the results of an evaluation and review of the compliance and enforcement aspects of the RECLAIM program, including the deterrent effect of Rule 2004 paragraphs (d)(1) through (d)(4). This review shall be in addition to the audits to be performed pursuant to Rule 2015. The evaluation shall include, but not be limited to, an assessment of the rates of compliance with applicable emission caps, an assessment of the rate of compliance with monitoring, recordkeeping and reporting requirements, an assessment of the ability of the South Coast Air Quality Management District to obtain appropriate penalties in cases of noncompliance, and an assessment of whether the program provides appropriate incentives to comply.

Despite the fact that South Coast polluters have demonstrated gross noncompliance with RECLAIM, the AQMD has completely ignored the above provision which focuses on more stringent penalties for such non-compliance, and instead has adopted an approach that favors expansion of the program to include new sources in order to drive down prices. This is a highly objectionable response to the sudden spike in the price of credits. In light of the fact that many major polluters in L.A. have abused RECLAIM for the past eight years due to the unnaturally low price of credits, the District must include this rigorous analysis as part of its environmental assessment document.

Mobile To Stationary Source Trading Threatens Severe Environmental Justice Impacts

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Mobile to stationary source trading tends to lead to the concentration of pollutants in low-income communities of color. This is because the stationary sources that use pollution credits are generally housed in such communities. The environmental justice concerns arise from the following logical sequence. Mobile source credits come from reductions that are widespread (a

[3] Notice of Preparation of a Draft Environmental Assessment for Proposed Amendments to RECLAIM, page 1-4.

mobile source, by definition, spreads its emissions throughout a large area). When those credits are used by a stationary source, they will result in an increase in pollution concentrated in a relatively small area (the community surrounding the stationary facility that is using the credits). Even though pollution, on the whole, may have decreased in the air district employing the mobile to stationary trading scheme, pollution levels in pockets of the basin (pockets that are likely to be environmental justice communities) may have dramatically increased, resulting in disproportionate impacts and toxic hot spots. Although the AQMD contends that the replacement of highly-polluting diesel fleet vehicles will render a benefit to low-income communities of color, it has not and can not show that the use of those credits will not actually result in a higher exposure to low-income communities in the South Coast.

1-7 cont.

Furthermore, monitoring of the such programs is very difficult and often leads to "phantom trades" (as demonstrated in AQMD's Rule 1610 - a car-scrapping rule). The implementation of Rule1610 has taught us that the AQMD lacks the enforcement capabilities and oversight to ensure that mobile sources being traded are actually surplus and permanent emission reductions and that such sources would not have been retired through natural attrition. Given the disastrous consequences from Rule 1610, CBE strongly urges the AQMD to completely disallow any future mobile to stationary source trading scheme, including the ones proposed in the current amendments to RECLAIM.

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

The federal Clean Air Act clearly prohibits the use of mobile source credits for purposes of new source review offsets – one of the anticipated uses of the MSERCs that result from RECLAIM's amendments. Section 173(a)(1)(A) of the Act states that before a new source commences operation, it must obtain offsetting emissions reductions "from existing sources in the region." Section 111(a)(6) states that the term "existing source" means "any *stationary source* other than a new source." Therefore, offsets for new and modified sources in non-attainment zones must be obtained from stationary, not mobile, sources. This legal defect in the proposed amendments subjects the AQMD along with any source that uses MSERCs for purposes of NSR offsets to liability under the federal Clean Air Act.

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This Pollution Trading Scheme Is Illegal Under State Law

As a matter of state law, under §40714.5(b)(2) of the California Health and Safety Code, the AQMD does not have the legal authority issue credits that do not "meet all of the requirements of state and federal law, ..." Because, as explained above, the amendments of RECLAIM which contemplate the generation of MSERCs to be used for NSR purposes do not meet federal requirements, such amendments are also invalid under the Health and Safety Code, which governs the creation of such trading programs in California. Promulgation of this federally non-compliant pollution trading program subjects the AQMD to liability under the California Clean Air Act §42402 *et seq*.

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Furthermore, the District does not even attempt to explain how the proposed AQIP scheme satisfies the contemporancity and equivalency requirements for pollution credit programs

1-9 cont.

under California law. This problem is especially apparent in the District's proposal to fund the AQIP with a loan.

The AQMD Must Prepare a Programmatic Environmental Assessment that Analyzes All the Proposed Changes to RECLAIM

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By chopping up one project into many different pieces, the District is engaging in illegal piecemealing under CEQA. There are currently 3 CEQA documents posted on the District's website that concern proposed additions and/or amendments to the RECLAIM program. The District's Environmental Assessment must include a cumulative environmental assessment of these changes and, future anticipated changes to the program triggered by its backstop provisions, in order to comply with CEQA. The District has failed to commit to such a programmatic analysis and has instead issued separate environmental assessments on specific parts of the project, such as proposed rule 1612.1 and proposed amended rule 1303. This is a clear violation of the letter and spirit of CEQA.

The AQMD Must Analyze the Environmental Impact of the Construction of Power Plants Resulting From the Anticipated Increase in Credit Availability From Amendments to RECLAIM

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The District's Notice of Preparation of A Draft EA does not discuss the fact that the proposed amendments to RECLAIM directly affect the construction of at least one new power plant in the South Coast air basin. As the District knows, the current price of RECLAIM credits is serving as a strong deterrent to the construction of new power producing facilities. The draft Environmental Assessment must discuss such construction as part of its cumulative environmental impacts analysis.

The District Should Include an Environmental Justice Analysis As Part of Its Environmental Assessment

1-12

Given the fact that the proposed changes to RECLAIM will increase the use of credits by major stationary sources in the L.A. air basin, and given that those stationary sources tend to be located in low-income communities of color, the Air District should include a thorough environmental justice analysis of the proposed changes to the RECLAIM program. Many of the communities that will be affected by the District's proposed changes are already overburdened with pollution. The additional exposure of these communities should be part of the localized impact analysis of any environmental assessment on the proposed changes to RECLAIM.

Conclusion

CBE strongly urges the Air District to take the above-mentioned concerns into account when preparing its Draft Environmental Assessment on the proposed changes to RECLAIM.

Sincerely,

Suma Peesapati, Staff Attorney
Richard Toshiyuki Drury, Legal Director

COMMENT LETTER 1
COMMUNITIES FOR A BETTER ENVIRONMENT
February 23, 2001

1-1 The SCAQMD does not agree with the commentator that RECLAIM is illegal or that the program has failed. RECLAIM is not illegal. The California Health and Safety Code (HS&C) §39616 establishes specific provisions for a market based incentive program by stating, in part, "[W]hile traditional command and control air quality regulatory programs are effective in cleaning up the air, other options for improvement in air quality, such as market-based incentive programs should be explored, provided that those programs result in equivalent emission reductions while expending fewer resources and while maintaining or enhancing the state's economy." (HS&C §39616(a)(2)). See also HS&C §§40440.1 and 40440.2, which provide additional requirements relative to market based incentive programs. Further evidence of the fact that the RECLAIM program is not illegal is the fact that the program has been approved by both CARB and U.S. EPA and is included in the State Implementation Plan. See also the responses to comments #1-8 and #1-9.

Beginning June 2000, a sharp and sudden RTC price increase occurred, mainly due to the unanticipated increase in RTC demand by power generating facilities. The currently proposed amendments to the RECLAIM program and the associated proposed mobile source emission reduction credit (MSERC) generating rules are proposed in part to respond to the substantial increase in demand for electricity generation in the district and to address Governor Gray Davis' Executive Order D-24-01, which states in part,

> IT IS ORDERED that the local air pollution control and air quality management districts (hereinafter "districts") shall modify emissions limits that limit the hours of operation in air quality permits as necessary to ensure that power generation facilities are not restricted in their ability to operate. The districts shall require a mitigation fee for all applicable emissions in excess of the previous limits in the air quality permits…
>
> IT IS FURTHER ORDERED that the Board shall establish an emissions reduction credit bank using emissions reductions from all available sources. Such credits shall be made available through the Board to powerplant peaking sources that need emissions offsets in order to add new or expanded peaking capacity for the summer peak season in 2001. Such credits shall be provided to such facilities at up to the market rate for emissions reduction credits.

The commentator's opinions that major sources in the district have increased emissions instead of reducing emissions and that the program lacks safeguards against fraud and uncertainty (footnote 1) are incorrect and inconsistent with the facts. From 1994 to 1999, NOx emissions, in aggregate, were below allocations,

and compliance rates were high. The commentator is referred to response to comment #1-3.

With regard to footnote 1, this information represents opinions expressed by CBE and not factual information. For example, the opinion that the RECLAIM program "deprives the public and even the government of its right to comment on where that pollution be released and in what amount, does not take into consideration CEQA or SCAQMD Rule 212 noticing requirements. Projects at RECLAIM facilities that require approvals from state or local public agencies may be subject to CEQA. If a CEQA document is prepared, whether an environmental impact report or a negative declaration, the public has an opportunity to comment on the project. Further, regardless of CEQA applicability for projects at RECLAIM facilities, if a project requiring a new permit to construct will increase emissions at levels exceeding the levels specified in Rule 212, the owner or operator of that facility must provide notification of the project to the local community. Rule 212 provides specific provisions as indicated in the following paragraph of Rule 212.

> (e) Any person may file a written request for notice of any decision or action pertaining to the issuance of a Permit to Construct. The Executive Officer shall provide mailed notice of such decision or action to any person who has filed a written request for notification. Requests for notice shall be filed pursuant to procedures established by the Executive Officer. The notice shall be mailed at the time that the Executive Officer notifies the permit applicant of the decision or action. The 10-day period to appeal, specified in subdivision (b) of Rule 216, shall commence on the third day following mailing of the notice pursuant to this subdivision. The requirements for public notice pursuant to this subdivision are fulfilled if the Executive Officer makes a good faith effort to follow procedures established pursuant to this subdivision for giving notice and, in such circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the Executive Officer.

Consequently, there are several avenues open to the public that allow it to comment on projects at RECLAIM facilities.

It is important to note that the proposed project does not change the fundamental principles of RECLAIM, which do not allow emissions exceeding the facility's original allocation plus non-tradable, unless the project complies with Rule 2005 – New Source Review for RECLAIM.

Finally, the commentator should be aware that the SCAQMD adopted Environmental Justice Guiding Principles at its October 10, 1997 Public Hearing. These guiding principles were adopted in recognition that low income communities of color often live and work in areas with higher than average exposures to toxic or hazardous materials. It should be noted that the proposed amendments are not expected to cause any significant adverse localized air

quality impacts, as discussed in Chapter 4. Further, the NOx credit generating rules have the potential to reduce toxic air contaminate emissions, which would not occur otherwise. Since air toxics effects are generally a localized effect, benefits would accrue in the local communities where the reductions occurred.

1-2 RECLAIM, adopted in 1993, already allows the use of mobile source credits (see Rule 2008) and the proposed credit generating rules do not change the RECLAIM program. When the RECLAIM program was adopted in October 1993, Rule 2008 – Mobile Source Credits allowed mobile source emission reductions generated by Rule 1610 and future 1600 series rules to be used as RTCs. The objective as stated in the RECLAIM October 1993 Staff Report is to "provide the opportunity for RECLAIM facilities to pursue the most cost-effective approach to reduce facility emissions – through stationary source emission controls or possibly by reducing mobile source emissions through old-vehicle scrapping." Although Rule 1610 was the only mobile source credit generation rule at the time of adoption of Regulation XX, future mobile source credit generation rules were anticipated. As stated in the October 1993 RECLAIM Staff Report, "the District is currently developing other Regulation XVI rules that will be applicable to RECLAIM facilities through Rule 2008." In addition, these future Regulation XVI rules, "would allow facility credits for emission reductions from these on-site/off-road equipment."

With regard to the currently proposed NOx credit generation rules, these are not "pay to pollute schemes" as asserted by the commentator. Instead, the proposed rules produce real, surplus, and enforceable reductions, including air toxic emission reductions. As already noted in response to comment #1-1, the proposed rules will help implement Governor Davis' Executive Order #D-24-01. Further, during the development of proposed Rule 1612.1, the SCAQMD worked closely with CARB, U.S. EPA, RECLAIM stakeholders, and the environmental community to ensure that, AQMP as required by federal law, the credit generating rules provide real, enforceable emission reductions in excess, or surplus, to emission reductions required by existing rules and regulations or proposed in control measures in the SCAQMD's. In addition, the proposed credit generating rules contain a nine percent environmental benefit provision (one percent would go to fund Rule 518.2 – Federal Alternative Operating Conditions), also required by federal law. The analysis of potential environmental impacts in the environmental assessment does not take credit for the fact that the proposed NOx credit generating rules will also provide localized reductions of diesel emissions components other than NOx including PM10 and toxic air contaminant reduction benefits. The proposed NOx credit generating rules include program evaluations regarding their effectiveness and potential impacts. Finally, the proposed NOx credit generating rules contain sunset provisions that prohibit credit generation applications by approximately 2003 or 2004. By 2003, the proposed NOx credit generating rules require evaluations every two years to ensure that credits generated under these pilot programs continue to be surplus. If the NOx MSERCs are no longer considered to be surplus they will be removed from the RECLAIM program.

Finally, with regard to control equipment on power plants, the SCAQMD agrees that such controls should be required. The proposed project would prohibit power plants from purchasing and using RTCs to reconcile emissions for any quarter starting January 1, 2001, unless the RTC was acquired prior to January 12, 2001. Further, the proposed amendments require all electricity generating equipment, except peaking turbines, to achieve BARCT levels by January 1, 2003, and all peaking turbines must achieve BARCT levels as early as, but no later than January 1, 2004. Further, the Order of Abatement between the SCAQMD and LADWP requires complete repowering of certain units, which would require installation of BACT, on a specified schedule (see responses to comments #2-2 and #2-3), and a settlement agreement with AES that requires expeditious installation of control equipment at its facilities.

1-3 It is assumed here that the commentator's reference to a "failed RECLAIM program" implies that the RECLAIM program has not resulted in reducing total NOx emissions from RECLAIM facilities. This opinion is contrary to the facts as explained in the following paragraphs.

The Governing Board made a variety of findings regarding the program's projected performance during the Public Hearing at which RECLAIM was adopted. Health and Safety Code §39616(e) directs the Governing Board to ratify certain of these findings within seven years of adoption. These findings pertain to achieving equivalent or greater emissions reductions at equivalent or less cost, providing a level of enforcement and monitoring to ensure compliance with emission reduction requirements, promoting privatization of compliance and the availability of data in computer format, achieving emission reductions across a spectrum of sources including mobile, area, and stationary sources, and achieving timely compliance with state ambient air quality standards. The findings required pursuant to Health and Safety Code §39616(e) were approved by the SCAQMD's Governing Board at its October 20, 2000 Public Hearing. The specific findings are as follows.

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

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

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

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

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

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

- Per capita exposure to ozone in the South Coast Air Basin met the target reductions specified for year 2000 in Health and Safety Code §40920(c) several years ahead of schedule. Additionally, RECLAIM is still on target to achieve the same emissions reductions as was projected to result from implementation of the subsumed rules and control measures. RECLAIM's reductions are also more certain than the projected reductions from the

subsumed rules and control measures. Thus, RECLAIM is not delaying attainment with state ambient air quality standards [§39616(c)(6)].

Further, the SCAQMD is not simply "forging ahead with an expansion" of the RECLAIM program. The proposed amendments to the RECLAIM program are in response to a number of factors. The convergence of several factors resulted in a higher demand for NOx RTCs for the 1999 compliance year. These factors include a reduction of annual allocations to the point where allocations and emissions are roughly equal, restructuring of the electric utility industry resulting in change of ownership of ten local power plants, creation of an open market for sale of electricity, and electricity shortages during summer 2000 resulting in the need to generate more electricity than anticipated. The proposed project is, therefore, an effort to stabilize the price and availability of RTCs, while requiring, at a minimum, BARCT on power generating equipment. See also response to comment #1-6.

There is no indication that there has been inadequate enforcement of the RECLAIM program. As noted in each audit report, RECLAIM has typically shown a high rate of compliance. Moreover, during the past year, the SCAQMD has taken aggressive enforcement action against RECLAIM violators, including action against a power generating facility that resulted in civil penalties of 17 million dollars, dwarfing all previous penalty actions by the SCAQMD.

The proposed project does include promulgation of a number pilot NOx credit generating rules to credit additional MSERCs and ASCs that can be converted into additional RTCs to provide a small amount additional RTCs into the RECLAIM trading market where they are currently in short supply. As noted in response to comment #1-2, RECLAIM already allows the use of mobile source credits (see Rule 2008) and the proposed credit generating rules do not change the RECLAIM program. Use of MSERCs and ASC converted to RTCs has always been a core component of the RECLAIM program to accommodate growth and make the program more cost effective in reducing emissions than the command-and-control rules it replaced. In addition, the MSERCs and ASCs will help offset, to a small extent, power generating facility emissions that the SCAQMD is required to allow by virtue of the Governor's Executive Order.

1-4 The SCAQMD disagrees with the commentator's opinion that the proposed amendments to RECLAIM violate federal and state Clean Air Acts. The commentator is referred to the responses to comments #1-1, #1-2, #1-8 and #1-9. The SCAQMD also disagrees with the commentator's opinion that the proposed amendments to RECLAIM violate CEQA. The commentator is referred to the responses to comments #1-5, #1-10, and #1-11.

1-5 It is unclear what the commentator means by environmental review as used in the first sentence of the comment. It is assumed here that this refers to the Initial Study, which the commentator asserts "fails to explore enforcement and penalty aspects of the program…" The Initial Study is a preliminary evaluation and

identification of potentially significant adverse impacts from the proposed project. Compliance or non-compliance with the existing RECLAIM program is subject to applicable monitoring and enforcement actions contained in the existing program. With the exception that the missing data provision in Rules 2011 and 2012 have been modified to allow additional time to submit data, no other enforcement provisions are being modified by the proposed project (refer to the project description in Chapter 2. The SCAQMD has prepared an Initial Study for the proposed project consistent with CEQA Guidelines requirements. Consequently, it is not appropriate to "explore" in the Initial Study alleged conditions that are not part of the proposed project.

The commentator appears to be referring to Rule 2015(b)(6), which calls for an evaluation of the compliance and enforcement aspects of the program upon RTC prices exceeding $15,000 per ton. However, this is not par of the CEQA analysis of the impacts of the proposed project. In any event, the White Paper examining the causes of high RTC prices did not conclude that enforcement and compliance aspects of the program had any causal role in the price increase. Rather, it was the confluence of RECLAIM emissions matching allocations, together with the unanticipated increased demand for RTCs in the power industry that caused the price increases.

The SCAQMD's regulatory program was certified by the Secretary of the Resources Agency pursuant to Public Resources Code (PRC) §21080.5, which means that the SCAQMD can prepare an environmental analysis in written documentation, "which may be submitted lieu of an environmental impact report. As a result, the SCAQMD has prepared an environmental assessment, consistent with PRC §21080.5, that analyzes all components of the proposed project, including the proposed amendments to RECLAIM, proposed rule 2020, and the currently proposed NOx credit generating rules (PR 1631, PR 1632, PR 1633, and PR 2507).

The SCAQMD's regulatory program is a dynamic program that changes over time as a result of a number of factors, including but not limited to, changing technologies, improving air quality (i.e., declining ambient pollutant concentrations), changes requested by CARB or EPA, etc. For example, changes to the existing SCAQMD rules or regulations, e.g., SCAQMD's New Source Review program (Regulation XIII or Rule 2005) have occurred over the last year for several reasons unrelated to the proposed project. To the extent that other new rules or rule amendments have been or are currently being developed and are related to the proposed project they will be included in the cumulative impact analyses in Chapter 4. To this end cumulative impacts of Rules 1612.1 and 2005 are also included as part of the environmental assessment. Therefore, the commentator's assertion that the SCAQMD is "chopping up" the proposed project is not correct.

With regard to the commentator's opinion that the Draft EA should have analyzed potential adverse environmental impacts from the construction of power plants in the district, please refer to response to comment #1-11.

1-6 The commentator correctly cites Rule 2015 (b)(6). However, Rule 2015(b)(6) does not preclude appropriate amendments to address the causes of RTC price increases. The proposed project is designed to address the underlying reasons why the RTC price increases occurred. Through the recent efforts that went into developing the RECLAIM White Paper, SCAQMD staff identified the causes that led to such high demand and prices for RTCs. The proposed amendments to the RECLAIM program are designed to lessen the demand for RTCs by facilities and stabilize RTC prices.

The first RTC transaction that traded at a price exceeding $15,000 per ton was in mid-2000. As noted above, the White Paper examining the causes of the RTC price increases did not find that program compliance or enforcement aspects had any causal role in the RTC price increases.

SCAQMD does not agree with the characterization of gross non-compliance and abuse of the program. From 1994 to 1999, compliance rates were high and overall emissions were less than allocations. Recent price increases and the electrical crisis are being addressed with the proposed rule amendments. Further, the environmental assessment takes into consideration existing levels of compliance, which includes installation of control equipment that has already occurred, as well as the affect on future BARCT installation as a function of the increase or reduction of the price of available RTCs. In any event, evaluation of the effectiveness of enforcement provisions is not part of the environmental analysis of the proposed project.

1-7 SCAQMD staff is aware that CBE is fundamentally opposed to the use of mobile source credits and sensitive to the issues raised by the environmental community regarding trading issues. However, as documented in the Draft EA, the ability of stationary sources to use RTCs for regulatory compliance is already set forth in the provisions of Regulation XX. Since the proposed NOx credit generating rules do not alter a stationary source's ability to use credits as a means of compliance with RECLAIM, the proposed project would not alter the existing setting relative to this issue and, thus, would not be considered an impact under CEQA. The use of MSERCs in the RECLAIM credit market is an inherent part of the program. Nevertheless, as part of the effort to increase information availability and accuracy of trade data available to the public through the SCAQMD, the proposed amendments include provisions requiring the registrations for trades included additional information. The proposed requirements would include disclosure of the actual RTC seller after the transaction, enforceable certification of the trading transaction date, and timely filing of trade registrations.

Moreover, as documented in Chapter 4 of the Environmental Assessment, there are no significant adverse localized air quality impacts expected from the

proposed project. As further documented in the Draft EA, regional air quality benefits would accrue from 1) the rule provision that automatically retires nine percent of MSERCs generated for the benefit of the environment, 2) the non-credited reduction of diesel emissions components other than NOx, and 3) the accelerated and increased replacement of heavy-duty diesel vehicles with alternative clean fuel vehicles.

Benefits would accrue in those areas where participating heavy-duty vehicle diesel engine emissions are concentrated, e.g., in the vicinity of the Ports of Los Angeles and Long Beach, farms that use agricultural pumps, etc. While NOx credits (at a 10 percent discount) would be used by RECLAIM facilities, there would be reductions of particulate and toxic air contaminant emissions that are not eligible for credits under the proposed NOx credit generating rules from replacement of heavy-duty diesel-fueled engines. These benefits are notable since particulate matter in the exhaust of diesel–fueled engines is considered a toxic air contaminant (based on data linking diesel particulate emissions to increased risks of lung cancer and respiratory disease).

Over the past 12 to 14 months, the SCAQMD staff has worked closely with U.S. EPA and ARB to develop a NOx credit generating rule, Rule 1612.1, to ensure that it MSERCs are real, surplus, and enforceable as required by federal law. The following highlights some key elements of Rule 1612.1 that will largely be included in the currently proposed NOx credit generating rules, to ensure that emission reductions are enforceable:

- ✓ Requires credit generators to submit an application prior to generating credits, which is an enforceable document, which will document the credit generation project.
- ✓ Contingent on credit generation and issuance, requires credit generator to demonstrate proof of delivery of the new replacement vehicle or equipment and proof of transfer of ownership of the replaced vehicle or equipment.
- ✓ Requires a written certification or signed declaration that the replaced vehicle or equipment has not and will not be operated in the district.
- ✓ Requires maintenance of quarterly records of the activity level for the project.
- ✓ Establishes penalty requirements for the generator and user, to ensure no shortfall in emission reductions will occur.

1-8 State and federal law allows stationary sources to use mobile source credits. The RECLAIM program, including Rule 2008 was approved by CARB and U.S. EPA as complying with all state and federal laws including the Clean Air Act (CAA). The SCAQMD's authority in state law to achieve emission reductions across a spectrum of sources, "including mobile, area, and stationary, which are within the district's jurisdiction" which the district is authorized to include in a market-based emissions trading program (Health and Safety Code §40440.1).

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

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

1-9 California Health and Safety Code §40440.1 requires the SCAQMD to include mobile source credits in the market-based incentive program, RECLAIM. Health and Safety Code §39607.5 required the state to adopt a program to ensure that such credits are used in a manner that is consistent with state and federal requirements and RTCs meet these requirements. The commentator asserts that the only problem with the use of MSERCs as a matter of state law is that the use does not comply with federal law. Since the credits comply with federal law, see response to comment #1-8, and meet the requirements of state law, RTCs generated from mobile sources comply with the requirements of Health and Safety Code §40714.5.

The proposed RECLAIM AQIP is limited to new power plants and select non-power producing RECLAIM facilities and responds, in part to the Governor's Executive Order #D-24-01 (see response to comment #1-1). The concept is to provide an additional compliance option to sources with unique credit needs to reduce the overall demand for RTCs from the RECLAIM trading market. Under proposed Rule 2020, the Executive Officer will create a reserve of emission reductions that can be used for the AQIP program. The SCAQMD will strive to prefund control strategy proposals. The objective is to initiate the process for requesting control strategy proposals to ensure that emission reductions can be put in the reserve and are available for RECLAIM AQIP participants. The RECLAIM AQIP will satisfy the contemporaneous reduction and equivalency requirements because its use is predicated on pre-funded emission reductions. Further, emission reductions must exist in AQIP before a source can use AQIP to comply with RECLAIM allocations. Therefore, the proposal to pre-fund the RECLAIM AQIP with a "loan" actually helps assure contemporaneous reductions that will allow work to begin on programs to reduce emissions immediately so the reductions will be in place when needed.

1-10 The commentator is referred to the response to comment #1-5. Further, the cumulative impact analysis in Chapter 4 adequately addresses cumulative impacts, including potential environmental impacts from proposed Rule 1612.1 pursuant to CEQA Guidelines §15130.

1-11 The SCAQMD disagrees with the commentator's opinion that the proposed amendments directly affect construction of power plants in the district and should be addressed in the environmental assessment for the proposed project. The proposed project does not require the construction of new power plants. Further, the decision to build a power plant is typically an economic decision based upon a number of factors, not simply the cost of RTCs. To the extent that the proposed project reduces the price and increases the availability of RTCs, this may influence the decision to build a power plant, but does not require it. If a new power plant is constructed in the district and its projected emissions are greater than or equal to four tons per year, it would be regulated by RECLAIM and would specifically be subject to Rule 2005, which requires installation of best available control equipment, modeling to ensure that no localized impacts would occur, etc. No amendments to Rule 2005 are being proposed as part of the proposed project at this time. Any new power generating facility would not increase regional emissions since its emissions would be offset with RTCs, MSERCs, or ASCs, which represent real reductions. Finally, any proposed new power plant would be required to undergo its own CEQA analysis.

1-12 An environmental justice analysis is not required by CEQA, either in the Public Resources Code or the CEQA Guidelines (California Code of Regulations). The Draft Environmental Assessment does, however, include an analysis of potential localized air quality impacts resulting from the proposed project. The commentator is referred to Chapter 4 of the Draft Environmental Assessment. See also response to comment #1-7. Moreover, it is expected that localized benefits will occur as a result of reducing diesel emissions pursuant to the mobile source credit rules. Some of these rules target local areas such as the harbor area, which experiences high levels of diesel pollution.

COMMENT LETTER #2

LOS ANGELES DEPARTMENT OF WATER AND POWER

03/05/2001 16:07 2133674710 → 919093963324 2133674710 NO.352 001

Fax Transmittal Memo 7672 No. of Pages 3 Today's Date 3-5-01 Time

To Jonathan Nadler (c/o CEQA) From Mark Sedlacek

Company SCAQMD Company Los Angeles Dept. Water & Power

Department of Water and Power the City of Los Angeles

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Mayor

Commission
KENNETH T. LOMBARD, *President*
JUDY M. MILLER, *Vice President*
NICK J. GARIBALDI
MICHAEL J. KESTON
DOMINICK W. RUDASAVA
JOHN C. BURMAN, *Secretary*

S. DAVID FREEMAN, *General Manager*

March 5, 2001

VIA FAX AND U.S. MAIL

Mr. Jonathan D. Nadler (c/o CEQA)
South Coast Air Quality
Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Dear Mr. Nadler:

Comments on a Notice of Preparation
For a Draft Environmental Assessment
Proposed Amendments to Regulation XX – RECLAIM
SCAQMD No. 010201JDN

The Los Angeles Department of Water and Power (LADWP) has reviewed the Notice of Preparation and Initial Study for the subject project. The intent of the proposed amendments to Regulation XX is to lower and stabilize RTC prices by increasing supply and reducing demand. The proposed project includes the temporary removal of power plants from RECLAIM, development of a RECLAIM mitigation fee program for utilities, and a compliance plan for large emitting sources.

In order to fully address the impacts of the proposed amendments on the environment, LADWP believes the following items need to be considered during the development of the draft Environmental Assessment:

Project Definition

2-1 As described in the proposed amended rules, the project elements may not be adequately defined for proper evaluation under CEQA. For example, the removal of power plants from the RECLAIM program with the possibility of reentering the RECLAIM universe at a later date and the future viability of the proposed RECLAIM mitigation fee program leads to an ambiguous project description that could be difficult to assess under CEQA. This may lead to an incomplete CEQA document and also uncertainty in the utility industry if these air quality programs do not have the intended results as we have seen with deregulation of the electric utility industry and price instability with RTCs

Water and Power Conservation . . . a way of life

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in the RECLAIM program itself. It is not clear whether the environmental document will assess a stable, finite project involving a clear physical change in the environment. Therefore, the draft Environmental Assessment should assess the various, possible alternatives to the proposed project (i.e., RECLAIM with or without reentry of power plants, and whether the mitigation fee program is successful or not in generating sufficient RTCs).

2-1 cont.

Potentially Significant Impact Areas – Energy and Public Services

The scope of the environmental analysis for the proposed project should address the potential environmental impacts to energy supplies and public services from the expedited installation of emission control equipment and the removal of utilities from the RECLAIM universe.

1. Expedited Installation of Emission Control Equipment

Under the proposed amended rules, the expedited compliance schedule for the installation of emission control equipment will result in substantially altered power utility facilities (Sections VI [b] and XIV [e] of the Initial Study). The alteration of power plants on an accelerated schedule could result in multiple units being unavailable during peak energy demands. Any decrease in generation capacity in this already limited power supply market (i.e., units off-line during plant improvements) could lead to rolling blackouts and related impacts to public health, safety, and welfare. This potential impact needs to be addressed in the upcoming environmental document (Sections VI [c] and [d] of the Initial Study).

2-2

There are a number of other long-term concerns that will affect power supplies in the region. Reentry of utilities back into the RECLAIM program would be contingent on the expedited implementation of the power plant improvements which, as stated above, could affect the already limited energy supplies. This results in uncertainty at a time when sufficient planning and reasonable construction times are needed to increase power supplies in the state. There has to be flexibility in the compliance schedule that allows appropriate time for planning and implementation of plant upgrades without affecting the delivery or reliability of utility services. More comments on this issue will be submitted under a separate cover dealing with specific concerns on the proposed amended rules to Regulation XX.

2. Removal of Utilities from the RECLAIM Universe

By temporarily removing power producers from RECLAIM and freezing RTC allocations as of January 11, 2001, utilities will be placed in a position of continuing to provide power as required by the state and exceed their annual RTC allocation or ration energy supplies to remain below the allocation. Although AQMD's proposed mitigation fee program may provide additional RTCs for utilities, it is contingent upon identifying and implementing successful programs. If sufficient RTCs are not created, the power plants

2-3

2-3 cont.

would be subject to future year deductions, which would create a domino effect and restrict the ability to provide power in future years. In LADWP's case, the inability to buy RTCs and the uncertainty associated with the RECLAIM mitigation fee program may limit our ability to sell surplus generation to the state. The surplus generation that LADWP is providing to the state is essentially a public service that has been instrumental in preventing rolling blackouts. If rolling blackouts do occur as a result of restrictions on the usage of RTCs, public services (i.e., fire and police protection and schools) would be adversely affected. Potential impacts to public services from the proposed rules should be evaluated as part of the draft Environmental Assessment (Section XIV of the Initial Study).

LADWP appreciates the opportunity to comment on the Notice of Preparation and Initial Study. If you have any questions, please contact me at (213) 367-0403 or Mr. Val Amezquita of my staff at (213) 367-0429.

Sincerely,

Mark J. Sedlacek

MARK J. SEDLACEK
Manager
Corporate Environmental Services

c: Mr. Val P. Amezquita

COMMENT LETTER 2
Los Angeles Department of Water and Power
March 5, 2001

2-1 Because of the current energy crisis and its effect on the price and availability of RTCs, the SCAQMD is moving expeditiously forward with proposed amendments to the RECLAIM program, proposed Rule 2020, and proposed credit generating rules in Regulations XVI and XXV. Further, because of the procedural requirements imposed by CEQA, specifically the public review and comment periods for the NOP/IS and the Draft Environmental Assessment, it has been necessary to prepare and circulate the NOP/IS in the early stages of project development. Since the release of the NOP/IS, the proposed project has been more fully defined, which allows a comprehensive analysis of potential adverse environmental impacts (refer to Chapter 4 of the Draft Environmental Assessment).

It should be noted that, while the proposed amendments to Rule 2007 remove power plants from the RECLAIM trading program, the proposed amendments to Rule 2015 state that power plants would only rejoin the RECLAIM trading program in 2004 if it is determined by the Governing Board in a public hearing that their reentry will not result in a negative impact on the remainder of the RECLAIM facilities or on California's energy security needs. Since it cannot be predicted at this time whether or not the Governing Board will return power plants to the RECLAIM trading market, the analysis assumes that they will be removed from the RECLAIM trading program indefinitely. However, the analysis of project alternatives is broad enough to account for the range of possible options suggested by the commentator.

Chapter 5 of the Draft Environmental Assessment identifies and compares the relative merits of a range of reasonable project alternatives. Project alternatives were developed by varying major components of the proposed project, including requirements related to power plants. In addition to the No project Alternative, which would not require any changes to the existing RECLAIM program, Alternative A would isolate all power plants regardless of size from the RECLAIM trading market and Alternative B, which does not include isolating power plants from the RECLAIM trading market. Alternative C has the same requirements relative to isolating power plants as the proposed project.

2-2 The intent of the Compliance Plan requirement in proposed amended Rule 2004 is to quickly retrofit existing utility boilers or repower facilities so they will be in a position to operate at maximum capacity to provide reliable energy to the California electricity grid, while still complying with applicable air quality control rules and regulations. To help minimize the potential for multiple units being unavailable during peak energy demand periods, instead of requiring all utility units to meet the BARCT requirement no later than January 1, 2003, proposed

amended Rule 2004 allows utilities an additional year or no later than, January 1, 2004, to meet the BARCT requirement for turbines used as peaking units.

The possibility that adverse effects will occur because multiple units will be unavailable at the same time is further minimized for the following reasons. First, affected power generating facilities are currently in discussion with the ISO to develop schedules that will allow them to install control equipment or repower units without disrupting the supply of electricity during peak energy demand periods. Further, there are a number of retrofitting or repowering projects currently in progress, which are expected to be online before the peak power demand period occurs in the summer of 2001. As the commentator is aware, LADWP is currently installing five peaker turbines at its Harbor Generating station and one peaker turbine at its Valley Generating Station. Further, LADWP is in the process of installing SCRs on three existing units at its Scattergood Generating Station. As required by the Order of Abatement between LADWP and the SCAQMD, these projects must be online by June 1, 2001. Other power plant SCR retrofit projects currently in progress and expected to be online for the peak power demand season this summer include the following: SCRs on four existing boilers at the AES Alamitos Generating Station; SCRs on two existing boilers at the AES Huntington Beach Generating Station, SCRs on two existing boilers at the AES Redondo Beach Generating Station; two SCRs on Reliant Energy's Etiwanda Generating Station. Finally, the proposed project does not preclude the power generating facilities from coordinating their retrofit schedules with ISO.

2-3 Implied in this comment are two incorrect assumptions. First, the commentator assumes that utilities, including LADWP, will continue to emit at the uncontrolled or minimally controlled levels at which they are currently emitting. If this assumption were correct, LADWP would have difficulty complying with future annual allocations, especially if current year exceedances are deducted from future allocations. As noted in response to comment #2-2, LADWP is currently undertaking a number of retrofit and repowering projects that must be online by June 1, 2001. Further, under the terms of the Order of Abatement, LADWP is in the early stages of repowering four units at its Valley Generating Station, which are required to be online no later than June 1, 2003. The Order of Abatement also requires LADWP to adhere to the following repowering schedule: repower Haynes units #3 and #4 by 12/1/04; repower Scattergood units #1 and #2 by 6/1/06; and repower Haynes units #1 and #2 by 12/1/08. Based upon the requirements under the Order of Abatement, LADWP is expected to substantially reduce system-wide emissions, which will contribute to complying with future allocations, which will help minimize future NOx emission shortfalls.

The second incorrect assumption inherent in this comment is that electricity is expected to be in short supply indefinitely. Currently, there are 10 new power plant projects that have been approved and, in some cases, are already under construction in California. Four of these projects, representing 1,219 MW, are expected to be online before the end of 2001; five of these projects, representing

4,480 MW, are expected to be online before the end of 2002; and one of these projects, representing 750 MW, is expected to be online by June 2003. Further, CEC is currently reviewing an additional 14 new electricity generating projects.

In addition to approval and construction of new electricity generating projects, the state of California is aggressively pursuing a number of other options to increase and ensure a reliable supply of electricity. Recently adopted AB 970 establishes expedited review of peaker unit projects, reducing the review time from approximately one year to six months. Governor Davis selected the state Department of Water Resources to buy electricity on behalf of the utilities, and nearly $3 billion of taxpayer money has been spent since mid-January, 2001 toward this effort. The state is also currently in the process of finalizing contracts with power generators to secure a long-term supply of reliable energy.

It is acknowledged that there is uncertainty with regard to future allocations for power-producing facilities currently supplying electricity to ease the current energy crisis. Because power generating facilities would be limited in their ability to participate in the RECLAIM trading market and there exists uncertainty in whether sufficient emission reductions would be obtained from the Mitigation Fee Program, there is a possibility that future year allocations could be substantially reduced. However, the proposed project is being promulgated to reduce future NOx emission shortfalls. As shown in Table 3-1 in Chapter 3, under the existing RECLAIM program it is expected that there will be substantial NOx emission reduction shortfalls through the year 2005 and possibly beyond. However, through the emissions reductions anticipated from the projects funded by the mitigation fees, surplus credits generated from the pilot NOx credit generating rules, and the installation of additional control equipment, it is anticipated that the proposed project will substantially reduce potential future NOx emission shortfalls (Table 4-6). To further offset this uncertainty, a power-producing facility can participate in the private market to generate MSERCs or ASCs to minimize, if not eliminate, its overage of allocations.

Consequently, with the current projects to retrofit or repower existing electricity generating facilities in the Basin, the anticipated increase in electricity generators and other proposals to secure reliable long-term energy supplies from the power generators, it is not expected that the proposed amendments to the RECLAIM program will exacerbate the current energy crisis, including the possibility of rolling blackouts. In fact, the proposed project is anticipated to result in beneficial effects on public services such as police and fire departments, schools, etc., by generating real and surplus credits that will serve to reduce future NOx emission shortfalls. Compared to the existing situation, the proposed project will reduce the possibility of rolling blackouts in the future, which will reduce potential adverse impacts to public services in the district. As a result, the SCAQMD disagrees with the commentator' opinion that the proposed project will adversely affect public services.

COMMENT LETTER #3

LATHAM & WATKINS

FROM LATHAM & WATKINS OC #4 714+755+8290 (MON) 3. 5'01 15:08/ST. 15:07/NO. 4861978686 P 2

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March 5, 2001

VIA FACSIMILE (909) 396-3324 AND U.S. MAIL

Mr. Jonathan D. Nadler
c/o CEQA
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, California 92765

Re: NOP for Proposed Amendments to Regulation XX - RECLAIM

Dear Mr. Nadler:

We are writing on behalf of our client InterGen North America LP regarding the Draft Environmental Assessment for the proposed amendments to South Coast Air Quality Management District ("SCAQMD") Regulation XX – RECLAIM. InterGen is proposing to develop several natural gas fired electrical generating facilities within the jurisdictional boundaries of the SCAQMD. These facilities include two to three peaking units (approximately 50 megawatts each), which may be combined on a single site, and a larger approximately 900 megawatt facility. Applications for certification for all of these projects are expected to be submitted to the California Energy Commission in the near future. The peaking units are scheduled to come on line for Summer 2001, and the larger facility is expected to come on line in simple cycle mode by Summer 2002, converting to combined cycle mode at a subsequent time.

3-1

The proposed locations for all of these projects is in the Palm Springs area within the Salton Sea Air Basin. By virtue of their location outside the South Coast Air Basin, these projects are currently exempt from the RECLAIM program pursuant to SCAQMD Rule 2001(i)(1). Due to the lack of availability of traditional emission reduction credits for use as

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offsets for these facilities, InterGen would like to have the option of opting into the RECLAIM program. We have discussed this proposal with SCAQMD staff, and we intend to pursue amendments to SCAQMD Rule 2000 which would allow this to occur.

3-1 cont.

To ensure that the CEQA review of the proposed amendments encompasses the possibility of these facilities opting into the RECLAIM program, please include this possibility in your assumptions as you develop the analysis. If you need any additional information regarding the proposed projects, please do not hesitate to call me.

Truly yours,

Michael J. Carroll
of LATHAM & WATKINS

cc: Bob Hren, InterGen North America LP
Mark Turner, InterGen North America LP
Joel H. Mack, Esq.

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COMMENT LETTER 3
LATHAM & WATKINS
March 5, 2001

3-1 Recent modifications to proposed amended Rule 2001 would allow electric generating facilities in the Salton Sea Air Basin with a completed permit application after January 1, 2001, the option to voluntarily enter the RECLAIM program. This modification is included in the project description in the Draft Environmental Assessment and, therefore, is part of the analysis of potential adverse impacts in Chapter 4.

COMMENT LETTER #4

NATURAL RESOURCES DEFENSE COUNCIL

COALITION FOR CLEAN AIR

03-06-2001 08:51am From-NATURAL RESOURCES DEFENSE COUNCIL 32393412.. 32393412102/003 P-674

NRDC
NATURAL RESOURCES DEFENSE COUNCIL

March 6, 2001

Mr. Jonathan D. Nadler
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Re: Notice of Preparation of Draft Environmental Assessment, Proposed Amendments to Regulation XX – RECLAIM

Dear Mr. Nadler:

We write on behalf of the Natural Resources Defense Council and the Coalition for Clean Air to submit the following comments on the Notice of Preparation of a Draft Environmental Assessment for Proposed Amendments to RECLAIM. We appreciate the time the staff has spent developing the Initial Study for the proposed amendments. However, as we discuss below, we believe that this study fails to address fully the potential environmental impacts from the proposed changes, and a more complete analysis should be included in the final Environmental Assessment.

4-1 We strongly oppose easing the high price of credits through an Air Quality Investment Program (AQIP) for sources in the RECLAIM program and through a "mitigation fund" for power plants bifurcated from the RECLAIM program. We believe that the result of allowing companies to violate their caps under RECLAIM will be further delays in installation of cost-effective controls by RECLAIM facilities to the detriment of the environment. Accordingly, it is essential that the Environmental Assessment fully analyze (1) the likely increase in emissions or delay in emissions reductions for companies in RECLAIM opting to use the AQIP program; (2) any potential delay in installation of BACT at RECLAIM facilities; (3) all other environmental impacts from this proposal. Similarly, the Environmental Assessment must analyze these same impacts with respect to emissions from power plants paying mitigation fees under this proposal. For example, while power plants in the region have been allocated approximately 6 tons per day (tpd) of NOx emissions under the RECLAIM program, our understanding is that power plants at 100% capacity (and the current level of control) could emit as much as 200 tpd of NOx each day. This potential impact must be analyzed in the Environmental Assessment.

4-2 Similarly, we are troubled by the proposed "fix" for the RECLAIM program of allowing companies to meet their RTC allocations by the purchase of mobile or area source credits, which

4-2 cont.

would further delay installation of cost-effective controls at current RECLAIM facilities. Although the RECLAIM program allows conversion of mobile source credits to RTCs, circumstances have changed since adoption of the program in 1993. It is now clear that facilities will delay their installation of cost-effective controls if they can purchase inexpensive credits to satisfy their obligations. In our view it is important that credit prices not be artificially lowered by a large flow of mobile source credits into the RECLAIM market to a level which further delays the installation of cost-effective controls. If this were to happen, we would see a repetition of the past cycle – lower costs further delaying controls, resulting in later price spikes as credits become more scarce. These potential impacts must be analyzed in the Environmental Assessment.

Thank you for this opportunity to comment on the Notice of Preparation.

Sincerely,

Gail Ruderman Feuer
Senior Attorney
Natural Resources Defense Council

Tim Carmichael
Executive Director
Coalition for Clean Air

COMMENT LETTER 4
NATURAL RESOURCES DEFENSE COUNCIL/
COALTION FOR CLEAN AIR
March 6, 2001

4-1 With regard to easing the high price of credits, the proposed amendments to the RECLAIM program are in response to a number of factors. The convergence of several factors resulted in a higher demand for NOx RECLAIM Trading Credits (RTC) for the 1999 compliance year. These factors include reduction of annual allocations to the point where allocations and emissions are roughly equal, restructuring of the electric utility industry resulting in change of ownership of ten local power plants, creation of an open market for sale of electricity, and electricity shortages during summer 2000 resulting in the need to generate more electricity than anticipated. The proposed project is, therefore, is an effort to stabilize the price and availability of RTCs, while requiring, at a minimum, BARCT on power generating equipment.

It should also be noted that efforts to reduce the price of RTCs are not expected to delay installation of cost-effective control equipment (tier 1 control equipment). It is acknowledged, however, that the proposed project may delay installation of controls with a cost-effectiveness of more than $15,000 per ton. The effects of the proposed pilot NOx credit generating rules are actually anticipated to be relatively minor because of the sunset provisions in the proposed rules and a relatively small number of RTCs per year would be generated. Further, the enforcement provisions in Rule 2010 are still in effect. The only modification in the enforcement provision is the provision that utilities exceeding an annual allocation can pay a mitigation fee and deduct the exceedance from that facility's annual allocation two years into the future, instead of deducting from the next year's annual allocation. The effect of this change is discussed in the Environmental Assessment.

As required by CEQA, the Draft Environmental Assessment has comprehensively analyzed potential adverse environmental impacts from the proposed project, including regional and localized emissions, potential energy impacts, and potential hazard impacts from ammonia use associated with SCR equipment. As identified in the Initial Study, the proposed project has the potential to generate significant adverse impacts in the following areas: air quality, energy, and hazards. The commentator did not identify any other environmental areas that could be adversely affected by the proposed project. The commentator is referred to the Chapter 4 for the analysis of potential adverse environmental impacts.

This comment implies that the SCAQMD is simply allowing power producing facilities to exceed their annual RECLAIM allocations. As already indicated, the power producers are operating at higher than historical levels to minimize electricity shortages in California's deregulated energy market. The Governor has taken a number of steps to ensure that power producers are not hindered in their

ability to provide power to the state grid. If insufficient power is generated, there are potential public safety issues that could occur in the event that rolling blackouts are implemented by the Cal-ISO. Further, emergency backup internal combustion engines burning diesel would be used to a greater extent than would otherwise occur, resulting in greater emissions into the air.

Governor Gray Davis' Executive Order D-24-01 requires local air pollution control and air quality management districts to modify emissions limits that limit the hours of operation in air quality permits as necessary to ensure that power generation facilities are not restricted in their ability to operate. The proposed amendments are being implemented in part to address the Governor's Executive Order and to minimize the potential air quality effects of increased power production in the district. As the analysis in Chapter 4 shows, NOx emission reduction shortfalls (NOx emission increases) would be much greater and last longer under the current RECLAIM program than under the proposed project, assuming that the power generating facilities continue to operated whether or not they violate RECLAIM allocation, as is allowed pursuant to the Governor's Executive Order. Finally, approximately nine power generating facilities in the district are due to install control equipment by the peak demand in the summer of 2001, so it is not likely that the will generate current levels of emissions after installation of this equipment.

4-2 RECLAIM, adopted in 1993, already allows the use of mobile source credits (see Rule 2008) and the proposed credit generating rules do not change the RECLAIM program. When the RECLAIM program was adopted in October 1993, Rule 2008 – Mobile Source Credits, allowed mobile source emission reductions generated by Rule 1610 and future 1600 series rules to be used as RTCs. The objective as stated in the RECLAIM October 1993 Staff Report is to "provide the opportunity for RECLAIM facilities to pursue the most cost-effective approach to reduce facility emissions – through stationary source emission controls or possibly by reducing mobile source emissions through old-vehicle scrapping." Although Rule 1610 was the only mobile source credit generation rule at the time of adoption of Regulation XX, future mobile source credit generation rules were anticipated. As stated in the October 1993 RECLAIM Staff Report, "the District is currently developing other Regulation XVI rules that will be applicable to RECLAIM facilities through Rule 2008." In addition, these future Regulation XVI rules, "would allow facility credits for emission reductions from these on-site/off-road equipment." In any event, the effects of the NOx credit generating rules on the supply of RTCs has been analyzed and can be found in Chapter 4.

The proposed project requires power generating facilities to install BARCT on all equipment, which ultimately could produce greater NOx emission reductions than under the current RECLAIM program. The reason for this is that, when RECLAIM was originally adopted, it was considered possible that a facility could install controls that are less effective than BARCT and still comply with their annual allocations. Further, the requirement to submit a Compliance Plan for both power generating facilities and facilities with emissions greater than 50 tons per

year provides greater certainty that affected facilities will meet their annual allocation requirements because the SCAQMD will be able to enforce the critical path in selecting compliance options for each facility. Finally, although the proposed project may result in delayed installation of more costly types of controls, the proposed project also includes several mobile and area source credit generating rules. These rules include similar requirements as proposed Rule 1612.1, which was developed in cooperation with U.S. EPA, CARB, RECLAIM stakeholders and the environmental community to ensure that emission credits are real, surplus, and enforceable. Because of the unanticipated increased demand for electricity, some power generating facilities may exceed their allocations. Because of the relatively low availability of NOx RTCs, a modest increase in available NOx credits is needed. Use of these credits will contribute to reducing the NOx emission shortfall (increase in NOx emissions).

COMMENT LETTER #5

COALITION FOR CLEAN AIR

NATURAL RESOURCES DEFENSE COUNCIL

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March 6, 2001

Jonathan Nadler
Air Quality Specialist
21865 E.Copley Drive
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Re: Environmental Assessment for the Proposed Changes to the Reclaim program

Dear Jonathan:

5-1 We are writing on behalf of the Coalition for Clean Air and the Natural Resources Defense Council to join in the comments submitted by Communities for a Better Environment. We intend to submit additional comments tomorrow.

Sincerely,

Tim Carmichael
Executive Director
Coalition for Clean Air

Gail Ruderman Feuer
Senior Attorney
Natural Resources Defense Council

COMMENT LETTER 5
COALTION FOR CLEAN AIR/
NATURAL RESOURCES DEFENSE COUNCIL
March 5, 2001

5-1 The commentators indicate in this comment that they support the comments provided by Communities for a Better Environment (comment letter #1). Therefore, please refer to the responses to comment letter #1.