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Compliance with State and Federal Air Quality Standards

Assembly Committee on Natural Resources

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CALIFORNIA LEGISLATURE

ASSEMBLY COMMITTEE

ON

NATURAL RESOURCES

ASSEMBLYMEMBER BYRON D. SHER, CHAIRMAN

Interim Hearing on

COMPLIANCE WITH STATE AND FEDERAL AIR QUALITY STANDARDS



Room 1122, State Building
107 South Broadway
Los Angeles, California

December 5, 1986

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BRIEFING PAPER
FOR
ASSEMBLY NATURAL RESOURCES COMMITTEE INTERIM HEARING
ON
COMPLIANCE WITH STATE/FEDERAL AIR QUALITY STANDARDS
BYRON D. SHER, CHAIR

10:30 a.m. -- Room 1122, State Building
107 South Broadway, Los Angeles

DECEMBER 5, 1986

Introduction

California's clean air laws and regulations have been referred to as among the most stringent in the United States. Yet, in at least several of the state's most populous regions, compliance with national ambient air quality standards appears far from becoming a reality. In the South Coast Air Basin alone, compliance with the standard for ozone, a pollutant which recent medical studies show has acute health effects upon humans at levels much lower than permissible under the current federal standard, is not expected to occur until the year 2020. This discrepancy between the view that the state has a strict air quality program which is working and the view that California is losing the battle to improve air quality has caused some observers to question whether existing institutional structures are capable of addressing and ultimately solving the state's air quality problems.

Responsibility for maintenance and improvement of air quality in the state rests primarily with three governmental agencies: the federal Environmental Protection Agency (EPA), the state Air Resources Board (ARB) and local air pollution control districts (APCD'S).

Under the federal Clean Air Act, the EPA is required to establish ambient air quality standards for use by state and local agencies and to review the state implementation plan (SIP) for improvement of air quality within parameters set forth in the act.

The ARB is responsible for regulating air emissions from mobile sources. In addition, the board is responsible for setting state ambient air standards and for reviewing local air quality planning decisions to ensure their consistency with the SIP and with state law.

APCD's and AQMD's are responsible for local air quality planning and permitting processes. With respect to stationary source air pollution control, districts are in a very real sense the front line agencies in day-to-day implementation of air quality laws.

The federal Clean Air Act requires California to comply with ambient air quality standards by 1987 or for EPA to impose sanctions on the state to create increased incentives for compliance. (It should be noted that this date has been extended several times, most recently in 1977 by amendment to the act.) Four districts (Fresno, Sacramento, South Coast and Ventura) will not attain one or more standards by the 1987 deadline, and are thus referred to as "post 1987 nonattainment areas." Under provisions of the federal act, these areas could face significant sanctions for not meeting ambient air quality standards. Such sanctions include loss of federal highway funds or imposition of restrictions on construction of new air pollution sources. However, the EPA has taken an alternative approach to imposing sanctions in these areas, one which has come to be referred to as the Reasonable Extra Efforts Program (PEEP).

According to EPA, REEP is intended to ensure that post-1987 nonattainment areas in California steadily reduce emissions in order to attain ambient air quality standards without necessarily imposing sanctions. EPA describes REEP as a program which "consists of two main components: (1) control strategy development and (2) program enhancements identified through auditing of SIP implementation." (51 FR 34431)

REEP has become the subject of controversy. Local officials and environmental organizations believe that districts are not making extra efforts to comply with federal standards, and that REEP represents an inadequate substitute for sanctions where improvement of air quality is of concern.

The purpose of this hearing is to provide committee members with an overview of the institutional mechanisms which exist to respond to serious and ever-increasing air quality problems in California, and to examine whether these mechanisms are working to ensure that the state's air quality steadily improves pursuant to state and federal law. Specifically, the hearing is intended to focus on new information on health effects of pollutants, on enforcement of air quality laws and on the EPA's proposed REEP.

1. History of California Air Quality Laws*

Modern era air quality law commenced in 1967, with the enactment of the Mulford-Carrell Air Resources Act (Health And Safety Code §39000 et. seq.) which created the state ARB and provided it with primary responsibility for statewide air quality programs, including responsibility for mobile source emission requirements, adoption of state ambient air quality standards and authority to assume local enforcement programs where necessary.

*This section and the following section were derived from a summary of air quality law prepared by the Air Resources Board legal staff.

In 1970, the federal Clean Air Act was amended by Congress to provide a greater role to the federal government in implementing air quality programs. Among other changes, the 1970 amendments required the establishment of federal ambient air standards and required California to meet these standards by mid-1975. In 1977, Congress adopted further amendments to the Clean Air Act which postponed dates for compliance but which required additional steps to be taken to alleviate air pollution. The amendments also enacted a program for the prevention of significant deterioration of air quality in areas which already complied with ambient standards.

Over the past two decades, primary responsibility for statewide air quality regulation has evolved into a shared responsibility between the ARB and local districts. The roles of these two entities are briefly described below:

a. Air Resources Board

The ARB is charged with overall responsibility for attainment and maintenance of air quality on a statewide basis. It is the lead agency for regulation of mobile source air emissions and oversees statewide efforts to control these emissions, such as the vehicle smog inspection and maintenance program. The board is also empowered to establish state ambient air standards. It acts as lead agency in air quality research, operating programs such as the state's acid deposition research program. While the board has no direct, day-to-day supervisory role over local districts, it consults regularly with districts, reviews district permitting processes and rules, and has the authority to assume jurisdiction for district air quality programs when inadequacies exist.

b. Local Districts

The 41 Local APCDs in California are creatures of state law in that they derive their existence and authority from state laws rather than from county or city ordinances. However, districts are funded primarily from local sources, and they are not considered state governmental agencies per se.

Two districts were created by special legislation. The Bay Area Air Quality Management District includes the counties of San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, Napa and Marin, and portions of Solano and Sonoma Counties. Its district board is composed of one to four appointees from each county as determined by population.

The South Coast Air Quality Management District includes those portions of the counties of Los Angeles, Orange, Riverside, and San Bernardino within the South Coast Air Basin. It is headed by a ten-member board, including nine city and county elected officials and an appointee of the Governor.

Local districts have their own staffs, each headed by an air pollution control officer (APCO) who serves at the pleasure of his or her board. Local districts have primary responsibility in the state for control of nonvehicular sources of air pollution. They are required to adopt and enforce regulations which assure that reasonable provision is made to achieve and maintain the state ambient standards, and must endeavor to achieve and maintain the federal ambient

standards as well. District regulations include specific emission limitations, which may apply to particular processes, and permitting requirements. Districts must also enforce all applicable provisions of state law.

As mentioned above, if local districts fail to adopt and enforce rules and regulations which will achieve the state ambient standards, the ARB is empowered to adopt and/or enforce such rules and regulations.

In all types of APCDs, provisions exist for a hearing board to consider variances and other matters.

2. Enforcement Mechanisms For Stationary Sources

a. Permit Process

District boards are authorized to establish permit systems which require persons to obtain a permit from the APCO before they build, modify or use an article or equipment which emits air pollutants. Permits may not be required for certain types of air pollution sources such as structures used as a dwelling by fewer than four families.

Most district regulations establish a two step permit process whereby an "Authority to Construct" (AC) is issued prior to construction, and a "Permit to Operate" (PO) is issued prior actual commercial operation.

The permitting process is an important enforcement mechanism since individual permits may contain special conditions or operational restrictions; they are also required to assure that the permitted article will comply with all applicable state air pollution laws and district regulations. Districts may charge permit fees to cover their costs in issuing permits.

Regarding permit matters, the district hearing board may:

- 1) Grant or confirm the denial of a permit denied by the APCO.
- 2) Continue the suspension of the permit.
- 3) Remove the suspension of an existing permit pending the furnishing by the permittee of the required information.
- 4) Find that no violation exists and reinstate an existing permit.
- 5) Revoke an existing permit.

(Separate state laws govern the permitting authority of the South Coast Air Quality Management District.)

b. New Source Review

"New Source Review" (NSR) refers to a permitting process required by the districts prior to the construction of major new sources or major modifications. A framework for NSR is not set forth in state law. Rather, it has been developed in response to requirements in the Clean Air Act and established by EPA limiting new or modified major sources which would create additional pollution in areas where the federal ambient standards are currently exceeded. The ARB has encouraged NSR as a tool to achieve the state ambient standards.

The cutoff for determining whether a new source or modification is "major", and thus covered by NSR, may differ from district to district.

There are three major requirements before a NSR permit will be granted:

First, the source must use "Best Available Control Technology", or "BACT" (in federal law this is called "Lowest Achievable Emission Rate", or "LAER"). The definition of BACT may differ from district to district.

Second, the applicant generally must certify that all other stationary sources it operates in the state are in compliance with, or on an approved schedule for compliance with, all applicable emissions limitations in the approved SIP.

Third (generally only in areas in which the ambient standards have not been attained, or where emissions from a source would interfere with achieving the standards) the source must offset the emission it will create by emissions reductions from existing sources, so that the new or modified major source will actually result in a net air quality benefit.

c. Variances

The hearing board of a local district, on its own motion or at the request of the APCC or owner or operator of a source, must hold a hearing, at which the public may testify, to determine under what conditions and to what extent variances are necessary and will be permitted. The hearing board may grant a variance from state standards or district regulation, other than one requiring a permit to operate. The hearing board may also revoke or modify a previously granted variance, deny the granting of a variance, or determine that the source in question is not in violation thereby negating the need for a variance.

A hearing board may not grant a variance unless it finds that: (a) the petitioner is or will be in violation of the state visible emissions standard or any district regulation or order; (b) that, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business; and (c) that such closing or taking would be without a corresponding benefit in reducing air contaminants.

Variances may exceed one year only if specific increments of progress and a final compliance date are included. Operating when in violation of an increment of progress is illegal.

Air pollution control boards must submit to the ARB copies of all variances granted by the board. The ARB may revoke any variance granted by any APCD if, in the board's judgment, the variance does not require compliance as expeditiously as possible or does not comply with all legal requirements.

While a variance application is pending, the hearing board may grant an interim variance for good cause. Short-term variances of not more than 90 days may be considered in accordance with an abbreviated notice procedure. Variances from future-effective rules and regulations may be granted after a hearing.

Any decision of the hearing board of any APCD is subject to judicial review. Accordingly, any aggrieved person, including the APCD, may file a writ of mandate in accordance with the State Code of Civil Procedure within 30 days after the date on which the hearing board's decision was filed.

d. Legal/Administrative Remedies

A district may elect to employ any one or any combination of legal or administrative remedies in order to promote compliance with statutes, rules, regulations or orders. These measures include actions in the courts or procedures under the administrative powers of the air pollution control board and hearing board. The decision regarding which of the available mechanisms should be employed are made by the Board, the APCO and the district's counsel.

- 1) Court Action. The APCO may submit any violation to the district's legal counsel for prosecution in the criminal or civil courts. Actions may also be brought by the ARB, which is represented by the Attorney General. It should be noted that criminal and civil penalties were increased for certain categories of stationary source violations under Assembly Bill 1276 (Chapter 1453 of 1986). It should also be noted that, under current air quality law, prosecutors must elect to pursue violations through either a criminal or civil action, but may not pursue both for the same violation.

Criminal Action. Any person who violates any provision of the state nonvehicular air pollution laws, or any APB district rule, regulation or order, is guilty of a misdemeanor. Violations during separate days constitute separate offenses. Criminal prosecution may be initiated in any court of competent jurisdiction by the district's counsel. A county APCO or his staff may cite the alleged violator if they are authorized to make arrests by district rules and regulations. If found guilty, the violator may be fined up to \$500, or imprisoned for up to six months, or both, for each conviction.

Civil Action. Any person violating specified air quality laws or any ARB or district rule or regulation may be liable for civil penalties of up to \$1000 for each day that the violation occurs. There is no liability if the person charged establishes by affirmative defense that the violation was not the result of intentional or negligent conduct.

Civil Injunctive Action. The violation of any state law regarding stationary sources of air pollution, or an ARB or district regulation or

order, may be enjoined in a civil action brought in the name of the people of the state. In bringing such action, the state need not show lack of adequate remedy at law or irreparable damage or loss. The Attorney General may self-initiate an action for equitable relief against any person for the protection of natural resources from all sources of pollution. Air pollution which constitutes a nuisance may be enjoined by either state or local authorities.

2) Administrative Action

Order of Abatement. A district board may, after notice and a public hearing, issue an order for abatement when the board finds that any person is in violation of specified state law, or of any rule or regulation of the district. The district hearing board also is empowered, on its own motion or on the motion of the APCO or the district board, to issue orders for abatement. Intentional or negligent violation of any order for abatement makes the violator liable for a civil penalty not to exceed \$6,000 for each day that the violation occurs .

Permit Action. The APCO may proceed against a source operating in violation of its permit conditions as outlined above.

3. Health Effects Of Air Pollutants

A thorough discussion of the health effects of air pollutants should include review of issues such as standard-setting, toxic airborne contaminants, and information on a broad range of criteria pollutants. However, since the committee hearing will focus primarily on the subject of post-1987 nonattainment areas, this discussion will limit itself to reviewing information on ozone and carbon monoxide, the pollutants for which standards will not be met in those areas.

Ozone is an odorless, colorless pollutant which is formed when sunlight interacts with hydrocarbons and oxides of nitrogen. Primary sources of these precursors are automobiles and fossil fuel-burning power plants. Ozone is the principal element of smog. Researchers have known for some time that high concentrations of ozone create serious health effects in humans. However, recent medical studies indicate that low concentrations of ozone can cause acute health effects. (Studies have also shown that ozone can cause significant damage to agricultural crops and timber lands.) Human health effects include persistent reduction in lung capacity, aggravation of respiratory diseases, premature aging of the lungs and weakened ability to resist respiratory infections.

EPA is in the process of considering revision of the ozone standard. The current standard was set in 1979, when EPA relaxed the original standard. Recent medical and toxicological studies would seem to indicate that the current standard does not guarantee an adequate margin of safety to protect public health.

All four post-1987 nonattainment areas will be unable to meet federal standards for ozone within the deadline proscribed under the Clean Air Act. In the South Coast basin, the ozone levels are often three times the current standard.

Carbon monoxide (CO) is a gas which is emitted primarily from automobile exhaust and other forms of combustion. CO can be lethal in that it binds with oxygen-carrying red blood vessels and prohibits the transport of oxygen in the body. Recent studies show that CO can also be damaging to unborn fetuses and that it is contributory to respiratory and other diseases.

The state CO standard is regularly exceeded in most major urban areas. Of the four post-1987 ozone nonattainment areas, Fresno and South Coast will also not meet the CO standard within the time lines prescribed under the Clean Air Act.

4. Reasonable Extra Efforts Program

Simply stated, the EPA's Proposed Reasonable Extra Efforts Program (REEP) is a program to achieve steady reductions in ozone and carbon monoxide (CO) emissions in post-1987 nonattainment areas without imposing sanctions.

(REEP) had its genesis in 1982 when the agency first acknowledged that specified areas of the country would not be able to meet ambient air standards for ozone and carbon monoxide by the 1987 deadline imposed by the Clean Air Act. In doing so, EPA stated: "If an area is unable to attain the ozone and carbon monoxide NAAQSs by 1987, then 'the most expeditious date beyond 1987' must be agreed to by state and local agencies..." (45 FR 7188).

In November, 1983, EPA elaborated on this policy in stating that it would not impose sanctions simply because an area failed to attain the standards in time. Instead, it would impose sanctions only if a state were not making a credible, productive effort to create and adopt a plan for compliance (48 FR 50686).

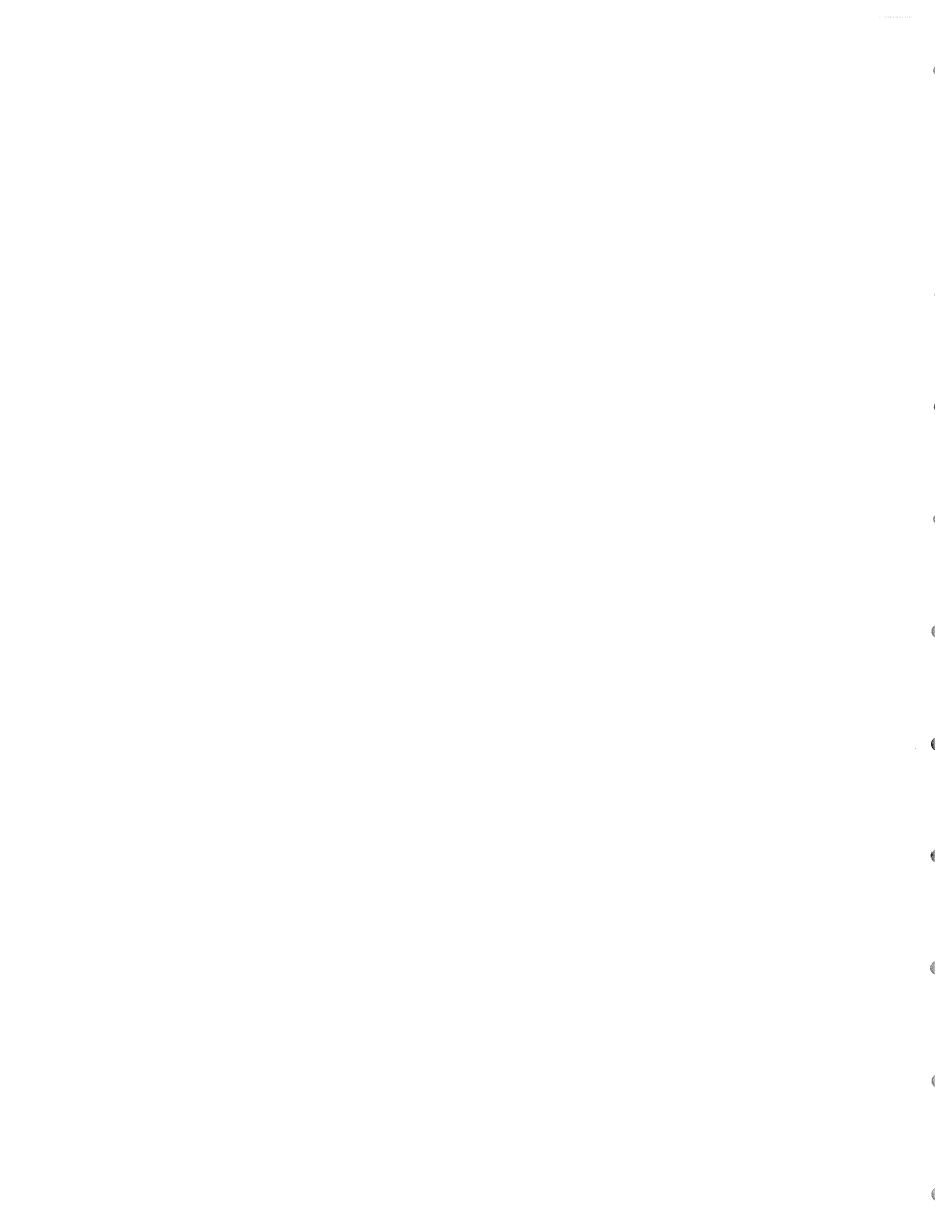
In California, EPA designated the Ventura and Sacramento basins as nonattainment areas for ozone, and the South Coast and Fresno areas as nonattainment areas for both ozone and CO. In 1983, EPA rejected proposed revisions to the California SIP to strengthen compliance with the ozone and CO standards, primarily because they failed to demonstrate attainment of the standards by the statutorily required date. According to the Federal Register, "... [EPA] drew many comments questioning [its] threatened use of sanctions and urging instead that EPA use a "reasonableness" test to decide whether to impose sanctions" (51 FR 34429). In 1984, EPA undertook to review and evaluate control measures which would lead to attainment of the applicable standards in the four areas, thereby initiating a policy which evolved into REEP.

REEP is intended to be a collaborative effort among the EPA, ARB, Caltrans, local air districts, and other relevant local agencies. The program consists of two main components: control strategy development and program enhancements identified through auditing of SIP implementation. Both of these components would be addressed when the state submits an updated REEP SIP in February 1987. Among other things, the REEP SIP will include commitments on the part of the state and local districts to timetables for attaining standards for ozone and CO.

Several controversies have arisen over REEP since the EPA began public hearings on it in mid-November. Opponents contend that EPA has no authority under the

Clean Air Act to promulgate REEP. They further state that the program is a poor substitute for much stronger sanction measures which could be taken under the Clean Air Act. They point out that local governments continue to approve development which invariably exacerbates already serious air quality problems in nonattainment areas. Finally, they note that while in some cases, stringent air pollution control requirements exist on the books, in reality districts simply are not enforcing these requirements to the degree possible.

EPA acknowledges that the Clean Air Act does not expressly authorize the agency to propose a program in the nature of REEP (51 FR 34430). However, the agency states that due to apparent conflicts between statutory provisions of the Act and its legislative history, its consideration of REEP is a means of navigating the "uncharted waters" between law and congressional intent. EPA further contends that the four nonattainment areas should not be penalized if they are making reasonable progress to attaining standards within a specified period of time.



STATEMENT OF
ASSEMBLYMAN BYRON D. SHER
BEFORE THE
ASSEMBLY NATURAL RESOURCES COMMITTEE
HEARING ON COMPLIANCE WITH STATE/FEDERAL AIR QUALITY STANDARDS
DECEMBER 5, 1986

GOOD MORNING, AND WELCOME TO THE ASSEMBLY NATURAL RESOURCES COMMITTEE INTERIM HEARING ON COMPLIANCE WITH STATE AND FEDERAL AIR QUALITY STANDARDS.

OVER THE PAST TWO DECADES (AND PARTICULARLY IN THE 1970'S WHEN MANY OF THE STATE'S LANDMARK AIR QUALITY LAWS WERE ENACTED), THIS COMMITTEE HAS PLAYED A SIGNIFICANT ROLE IN REVIEWING LEGISLATION DESIGNED TO IMPROVE CALIFORNIA'S AIR QUALITY.

HOWEVER, IN RECENT YEARS, THE COMMITTEE, AND THE LEGISLATURE AS A WHOLE, HAVE GENERALLY HELD BACK IN THE PURSUIT OF MAJOR NEW INITIATIVES IN REGULATING STATIONARY SOURCE AIR POLLUTION. IN MY VIEW, THIS WAS AT LEAST PARTLY PROMPTED BY THE BELIEF THAT THE LEGISLATURE HAD DONE ITS JOB IN CREATING REGULATORY AGENCIES WHICH WERE VESTED WITH AIR QUALITY RESPONSIBILITIES AND THAT THOSE AGENCIES SHOULD FOR THE MOST PART BE LEFT TO PERFORM THEIR JOBS WITHOUT UNDUE INTERFERENCE.

THIS PAST YEAR, MANY IN THE LEGISLATURE HAVE EXPRESSED A RENEWED CONCERN OVER AIR QUALITY MATTERS. SOME OF THIS CONCERN CAME ABOUT AS A RESULT OF PUBLICITY SURROUNDING THE FACT THAT FOUR AREAS OF THE STATE, INCLUDING THE LOS ANGELES BASIN, WILL NOT MEET FEDERAL AMBIENT AIR STANDARDS BY THE DECEMBER, 1987 DEADLINE. SOME OF IT CENTERS ON CONSTRUCTION OF WASTE-TO-ENERGY FACILITIES IN LOCATIONS LIKE THE SAN GABRIEL VALLEY. STILL OTHERS ARE CONCERNED THAT DECISION-MAKING BODIES SUCH AS THE SOUTH COAST DISTRICT BOARD ARE NOT SUFFICIENTLY RESPONSIVE TO AIR QUALITY CONCERNS. WHATEVER THE REASONS ARE, IT SEEM CLEAR THAT THE LAWS AND INSTITUTIONS DESIGNED TO PROTECT AND IMPROVE AIR QUALITY ARE UNDERGOING A FUNDAMENTAL RE-EVALUATION.

THE PURPOSE OF TODAY'S HEARING IS TO RECEIVE TESTIMONY FROM THOSE WHO ARE MOST DIRECTLY INVOLVED IN AIR QUALITY PERMITTING, ENFORCEMENT AND RESEARCH SO THAT COMMITTEE MEMBERS WILL BETTER UNDERSTAND WHERE WE ARE IN OUR EFFORTS TO IMPROVE AIR QUALITY, WHAT PROBLEMS EXIST IN THE CURRENT LEGAL AND REGULATORY FRAMEWORK, AND WHAT WE AS A LEGISLATURE OUGHT TO BE DOING TO IMPROVE ON THAT FRAMEWORK.

SPECIFICALLY, THE COMMITTEE WILL HEAR FROM THE EPA ON THE SUBJECT OF ITS REASONABLE EXTRA EFFORTS PROGRAM AND ON POST-1987 NON-ATTAINMENT, FROM SOME OF THE DISTRICTS, INCLUDING SOUTH COAST, ON THEIR PERMITTING AND ENFORCEMENT ACTIVITIES, FROM THE AIR RESOURCES BOARD, FROM INDUSTRY AND PUBLIC INTEREST ORGANIZATIONS, AND FROM AIR POLLUTION HEALTH EFFECTS EXPERTS.

AFTER HEARING FROM THESE PARTIES, IT IS MY HOPE THAT THE COMMITTEE CAN DETERMINE WHAT EFFORTS WE SHOULD UNDERTAKE IN JANUARY, WHEN THE LEGISLATURE RECONVENES, TO ADDRESS THE STATE'S AIR QUALITY PROBLEMS.

THANK YOU ALL FOR COMING. WE WILL BEGIN WITH OUR FIRST WITNESS.



ASSEMBLY NATURAL RESOURCES COMMITTEE

STATEMENT OF IRA REINER
LOS ANGELES COUNTY DISTRICT ATTORNEY

December 5, 1986

Thank you for the opportunity to address what I consider to be issues of utmost importance.

The specific questions are answered by letter furnished to members of the committee.

If the people of the South Coast Air Basin were to charge all the government agencies responsible for the enforcement of air pollution laws with failing to effectively do so, those agencies would all have to plead guilty -- with an explanation. Each of the explanations would vary, depending upon the particular area of responsibility, but each agency would have to admit that collectively government has failed in a number of areas.

I have some specific comments regarding problem areas in the South Coast Air Basin; however, I would like to take just a moment to address the larger issue of air pollution regulation statewide.

As you know, the SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD) regulates only stationary sources of air pollution, which contribute less than 50% of the total air pollution in the basin. It is critical to note that more than half of all air pollution is emitted by mobile sources. The responsibility of regulating those sources of air pollution lies with the AIR RESOURCES BOARD (ARB). In addition, under federal law, THE ENVIRONMENTAL PROTECTION AGENCY (EPA) is authorized to regulate both stationary and mobile sources of air pollution. Despite the apparent breadth of this regulatory net, major categories of air pollution remain unregulated by EPA or ARB.

Let me give you some specific examples. UNDER CALIFORNIA LAW, NO TOXIC AIR CONTAMINANT REGULATIONS EXIST. This means that if there were a major toxic release in California, injuring thousands of individuals, prosecutors would have no specific, effective law or regulation upon which to base a case.

Another example, which will be all too familiar to those of you who have been unfortunate enough to be stuck in traffic behind a smoke belching diesel bus or truck, is diesel powered vehicles. Standards are just coming into effect regulating such vehicles.

A final example is the inadequate enforcement of vehicular emission standards by the EPA and ARB. A recent report by the SOUTHERN CALIFORNIA AUTOMOBILE ASSOCIATION shows that substantial emission reductions can be achieved by more efficient enforcement of current law. According to this report, cars and light trucks

emit 459 tons of hydrocarbon per day in the South Coast Air Basin. If these vehicles met their emission standards for their respective model year, the emissions would be 179 tons per day of hydrocarbons. Thus, there are excess emissions of 280 tons per day, attributable primarily to automotive manufacturers failing to meet the standards to which they are subject. The excess emissions for carbon monoxide and nitrogen oxide are comparable.

I cite the above examples to underscore the fact that the problem of inadequate government regulation of air pollution involves far more than just the SCAQMD. The EPA and ARB are major governmental actors in this area who have failed to exercise fully the regulatory power given them by statute.

Now, let me address myself to the specific problems of SCAQMD.

In 1981, as Los Angeles City Attorney, I testified before then Assemblyman Mel Levine's committee hearings into the adequacy of the AQMD's enforcement program. At that time I identified a number of problem areas faced by prosecutors attempting to enforce the air pollution laws. Although Ed Camarena, the present Director of Enforcement, has made substantial progress in improving the district's enforcement program, a number of problems still remain to be resolved. Let me take a few moments to try to give you the prosecutor's view of the difficulties encountered in the prosecution of air pollution cases.

In regard to criminal enforcement, the South Coast Air Quality Management District (SCAQMD) has total control over which cases will be referred for criminal prosecution. In Los Angeles County, there have been pathetically few such referrals. Since June of 1985, only thirty-nine cases have been sent to us by the SCAQMD. Of those, seven had to be rejected because they were too old, the evidence necessary for a prosecution had not been confiscated, or there was insufficient evidence. More disturbingly, none of the cases referred were major cases, except for that of Mobil Oil. The Mobil Oil case was referred only after a specific request by the Deputy District Attorney responsible for air pollution prosecutions. When received, we discovered these serious violations could not be prosecuted criminally, primarily because a civil case had been filed, precluding criminal prosecution under election provisions in effect at that time.

Clearly, the lack of referrals of air pollution cases does not mean that there are not serious and widespread violations. The SCAQMD's own records show almost twenty percent of those sources subject to source tests were in violation. Nevertheless, no cases based upon source tests or continuous emission or in stack monitoring have been referred to us.

The SCAQMD issued citations for approximately 5,000 violations in the past year. Ninety percent of those violations were handled under the mutual settlement agreement program. This means relatively small fines were imposed, there were no conditions of probation or continuing court jurisdiction, and more importantly, no possibility of jail time.

One particular concern we have about the mutual settlement agreement process as it has developed is that because settlement is normally anticipated due to the low fines sought, inspectors have little incentive to thoroughly develop the facts of a case. As a result, when a case is deemed appropriate for prosecution, the documentation necessary for an effective prosecution often has not been compiled by the inspector. Basically, because the mutual settlement agreement program demands very little of an inspector in terms of ability to prove a violation, inspectors do not develop and maintain the type of investigative skills they need for a case that is going to be prosecuted.

Precisely what the degree of noncompliance with existing rules means in terms of deteriorated air quality, I cannot say. The ARB and EPA audit of SCAQMD's enforcement program will be a good indicator of the scope of noncompliance. I can simply say that based upon what we have seen of the SCAQMD's enforcement program, we expect the degree of noncompliance to be high.

The lack of more aggressive enforcement and poor industry compliance with existing regulations are inextricably related. I have already suggested that one of the reasons for inadequate development of cases for criminal prosecution is the extensive reliance upon the mutual settlement agreement process. That process not only reduces the likelihood of effective prosecution should criminal remedies be pursued, it also applies minimal penalties to the vast majority of violators. As a result, if a violator is caught they can anticipate receiving penalties that are treated as part of the cost of doing business.

What is the reason for the present structure of the mutual settlement agreement program? Because the majority of the SCAQMD Board seeks compliance rather than aggressive enforcement. If the truth be known, too many of the Board members perceive their duty as serving the interest of industry rather than the public that breathes the polluted air. Consequently, many staff members have their hands tied when it comes to aggressive enforcement. Industry knows this all too well, so there is little to deter them from operating in violation of the regulations.

Not all of the industrial violations are due to industries attempts to cut corners. Many are attributable to the complexity of the SCAQMD rules. Some industries simply do not know how to comply. Conditions imposed by the District's engineering division on permits to operate often assist industry in achieving compliance by spelling out methods of operation. However, when new rules are developed, industry does not have the benefit of revised conditions of operation. This is because the District Counsel has opined that a permit to operate cannot be amended to impose additional conditions reflecting new rules until a new permit is sought. Therefore, many industries are operating under permits that do not reflect the latest requirements. This increases the likelihood of noncompliance. It also results in a situation where an industry can claim they are operating pursuant to their permit when cited for violations of a new rule. Clearly, old industries as well as new must keep abreast of current regulations.

While many of the rules are complex and difficult for industry to understand, others are unenforceable, either because of loopholes in the language of the rules, or the type of evidence needed to show a violation. Fortunately, the Director of Enforcement,

has recognized the critical need to have enforcement input into development of the rules. He has initiated a program whereby all existing rules will be reevaluated, and future rules developed with enforcement participation.

The past failure of the District to include the enforcement division in rule development is an indicator of a wider problem of lack of communication and cooperation between various divisions within the District. I sincerely hope that the new Executive Officer will be able to foster a greater spirit of cooperation within the SCAQMD staff.

A final but glaring cause of the failure to properly develop and refer cases for criminal prosecution, is the long delay once a case is sent to the District Counsel's office. Whether the cause is shortage of personnel or lack of commitment, the effect is the same: cases sit literally for months in the District Counsel's office. Evidence that was available becomes stale, and opportunities for further investigation are lost. This must change if there is ever going to be an effective enforcement program in the South Coast Air Basin.

Once the causes of a problem are identified, certain solutions always become apparent. First, the mutual settlement agreement program must be substantially revised. I seriously question the authority of the District to conduct such a program, absent legislative authorization. Realistically, the volume of violations identified are such that reliance exclusively on civil or criminal prosecution is not reasonable. Therefore, there should be a legislative authorization for a settlement program, but such authorization should include carefully crafted criteria for cases that must be referred for review for possible criminal prosecution. Furthermore, the penalties imposed as part of the settlement process should be substantially increased.

Second, the entire enforcement and investigation program needs to be upgraded. Morale will undoubtedly be enhanced if the staff knows there is a Board that desires enforcement. At the same time, salaries for inspectors and investigators need to be increased to reduce turnover and increase the expertise of enforcement personnel. The number of inspectors should be increased. Currently only two investigators are assigned to the swing shift, and none to nighttime inspections. The staff should be sufficiently expanded so no industry will be tempted to surreptitiously release their pollution at night.

The investigation unit, which is specifically responsible for preparing cases for civil or criminal prosecution, also should be expanded. More importantly, this section should be staffed with aggressive and highly trained individuals who are capable of working with inspectors to assure that necessary evidence is compiled for each case.

Third, I believe that types of industries and types of contaminants or emission problems should be targeted for prosecution. Then investigators should be assigned to work with inspectors and prosecutors in deciding how to obtain the necessary evidence of a violation.

Fourth, the District should increase the number of source tests, and require continuous emission monitoring on a greater percentage of sources.

Fifth, I recommend that the law be amended to specifically provide that additional permit conditions can be imposed at any time as necessary to reflect new rules or the developments of best available control technology.

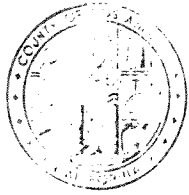
In conclusion, let me emphasize that the successful prosecution of air pollution cases requires the cooperation and expertise of the regulatory agencies. We look to those agencies to provide guidance in selecting major air pollution problem areas, and technical assistance in proving these complex cases in the courtroom.

Successful prosecution demands certainty and clarity in the regulations and statutes governing the area. Doubt, ambiguity and technical uncertainty devastate any prosecutor's ability to convince a court or jury that a particular violation has occurred.

Thus, the first and most important step in the battle against air pollution is the clarification of the rules, regulations and statutes governing the area. The regulated community, the public and the prosecutor must all know exactly what the rules are regarding air pollution.

I have instructed my staff to provide any assistance that they can in drafting of understandable rules and regulations in this area. For without the guidance of logical, comprehensible laws, successful prosecution in air pollution cases will remain wishful thinking.





IRA REINER
DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LOS ANGELES

18000 CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
(213) 974-3501

December 5, 1986

Assemblyman Byron Sher
Chair, Assembly Natural Resources Committee
California Legislature
State Capitol
Sacramento, California 95814

Dear Assemblyman Sher:

In re AIR POLLUTION ENFORCEMENT

Thank you for your interest in my views on air pollution enforcement problems. In order to maximize the amount of time available for testimony on these problems, I am responding to the four questions you set forth in your November 19, 1986 letter in writing.

Question #1 - What are the mechanisms by which air quality violations are referred by the SCAQMD to the District Attorney? Are delineations of responsibility between the District Attorney and the AQMD counsel clear and efficient?

All but a few violations cited by the Air Quality Management District are channeled through its Chief District Counsel, who reviews the violations and decides whether the case will be prosecuted civilly, criminally, or by mutual settlement agreement. Once he decides how a case will be prosecuted, the case is sent to AQMD's investigation unit for document preparation. Ninety percent of the approximately 5,000 violations noticed last year were handled through the mutual settlement agreement process.

If a case is to be prosecuted criminally, it is sent from the investigative unit to the District Attorney's Office for a filing decision. There is presently no District Attorney input into the initial selection process, except for a monthly enforcement meeting where specific cases are discussed. The AQMD has all the authority and responsibility for deciding how cases will be handled.

Question #2 - How many major and minor air quality violations does the L.A.D.A prosecute per year? Are enforcement efforts sufficient to ensure that violators are prosecuted in a timely way? If not, how might they be improved?

In June of 1985, we assigned a Deputy District Attorney within the Environmental Crimes Section special responsibility to develop an air pollution prosecution program. The deputy regularly meets with AQMD's personnel and repeatedly requests referral of cases, especially major cases, for criminal prosecutions. Nevertheless, since June of 1985, there have been only 39 cases referred. This is only slightly over two cases per month.

Of the cases referred, twenty-three were filed and seven are pending further investigation. Nine cases were rejected because of lack of sufficient evidence.

None of the cases referred to the Los Angeles District Attorney involved major polluters, except one case against Mobil Oil. That case was referred only because the deputy district attorney responsible for such cases read an article in the newspaper, made a point personally to sit in on hearings involving Mobil's violations, and requested that the case be referred. Unfortunately, the status of the law at the time regarding election of remedies, and some factual problems, prevented a criminal filing.

Of the cases received, many are not timely. Shortages in staffing at the District Counsel's Office have resulted in many cases sitting for months before being sent back to the investigative unit. By the time the case gets to the prosecutor, it is often too late to do any follow-up, and a case has to be rejected or prosecuted with less than optimal evidence.

Question #3 - Are statutes which establish civil and criminal penalties for air quality violations adequate to ensure strict enforcement? Do so-called "election" provisions in current law (provisions which require a prosecutor to elect to seek civil or criminal penalties for air quality violations, rather than being permitted to pursue both) hinder otherwise effective prosecutorial efforts?

AB 1276, which we were actively involved in supporting, has substantially raised fines for air pollution violations. Unfortunately, several provisions were added or deleted over my Office's objections, and problems remain. They are:

1. "Actual injury," required under 42400.1(b) and 42400.2(c), is a severely limiting requirement on:
 - (a) Prosecuting a public nuisance that creates a danger to the public, and;
 - (b) Whether a larger fine will attach.

For example, if asbestos is released into the air, no one knows whether a person who is exposed will contract asbestosis or mesothelioma. Nevertheless, the danger to the public health is so great that if release of this type occurs when the emitter acted knowingly (\$25,000 limit) or negligently (\$10,000 limit), the larger fines should apply. With the "actual injury" requirement, the larger fines are not available.

2. A portion of the fines cannot be recovered by a District Attorney or county, or City Attorney or city, prosecuting the case. Only costs are available. The AQMD and the ARB receive all the fines regardless of who does the work. The incentive for a county or city to put their resources to the task of prosecuting air pollution violations is significantly diminished. A distribution system similar to that for hazardous waste violations should be adopted.
3. There are no regulations on which to base a prosecution for toxic air releases. At present, such releases must be prosecuted, if at all, on a public nuisance theory. Unless you prove "actual injury," the fine is a maximum of \$1,000.

4. The election theory, even as modified by AB 1276, is a substantial impediment to effective prosecution.

For example, if a company has violated a regulation and a civil case is filed, the prosecution is prohibited for all time from filing on that violation. If a witness turns up later, proving the most flagrant, intentional, and hazardous toxic violation, nothing can be done criminally under present law if so much as \$1 in civil fines has been collected.

Normally a prosecutor elects to proceed either civilly or criminally. However, to statutorily require an advance election flies in the face of common sense, is inconsistent with other laws, and is contrary to sound prosecutorial practice.

Question #4 - What is the L.A.D.A.'s view, if any, of EPA's proposed Reasonable Extra Efforts Program (REEP)?

As a lawyer, I must first note that the REEP program is of questionable legality. The premise of REEP is that the South Coast Air Basin already has agreed to adopt and implement all reasonable control measures. This is a premise that I cannot accept. There are reasonable control measures which have not been adopted.

As a public official who is deeply concerned about the adverse health and economic consequences of our extremely polluted air, I believe EPA should not be calling for a "reasonable" extra efforts program. They should instead require "extraordinary" efforts to attain federal air quality standards.

While no one in the South Coast Air Basin wants to see sanctions imposed, we cannot afford to see EPA become a paper tiger and the Clean Air Act an empty promise. Congress must promptly struggle with reauthorizing and appropriately amending the Clean Air Act. My own view is that the Act should be amended to stay sanctions for those jurisdictions where extraordinary efforts are being made and a plan to attain the standards by a date certain are rapidly developed and vigorously implemented.

Congress, like the Legislature, also must recognize that areas like the South Coast Air Basin will never attain the standards without modifying land use and transportation patterns. The Act should be amended to reflect this fact. Furthermore, until such time as the standards are met, I believe that all large new commercial or residential developments should be scrutinized in the same way as major stationary sources. I will be submitting more specific legislative recommendations on this and related points next week to Senator Presley, and will forward a copy of those proposals to this committee.

While Congress is at work on amendments to the Clean Air Act, EPA should act in partnership with state and local air agencies to fashion far more creative and aggressive plans to improve our air, refusing to accept business as usual. The REEP process as proposed deals with only a small part of the problem. The sixteen measures included by EPA would result in no more than ten tons per day reduction, which is less than one percent of the reactive organic gas emissions which currently occur in the South Coast Air Basin. The air quality management planning process must move far beyond these limited measures to grapple with the broader issues. The failure to do so will result in perpetually polluted air.

Assemblyman Sher
December 5, 1986
Page Four

Nineteen eighty-seven was long ago envisioned as the outside date for attaining clean air. We have failed miserably to attain this goal. With the renewed interest in protecting our air, perhaps we will someday look back on 1987 as the turning point in the fight to protect the public health from air pollution.

I hope the above information, taken in conjunction with my oral testimony, will be useful in assessing the adequacy of air pollution enforcement and in identifying some possible solutions.

Very truly yours,

ORIGINAL SIGNED

IRA REINER
District Attorney

ar

Robert F. Phalen, Ph.D.
Director: Air Pollution Health Effects Laboratory
Department of Community & Environmental Medicine
College of Medicine
University of California, Irvine

Summary of Air Pollution Health Effects

I. Daily Intake of Air, Food & Water- 10,000 to 20,000 quarts of air; 1 to 2 quarts of food & of water. The potential for toxic injury is usually greatest from airborne contaminants.

II. Three Main Air Pollution Concerns- (1) Long-Term Chronic Exposures; (2) Unusual Episodes; (3) Accidents.

III. Major Sources of Air Pollutants- Transportation; Electric Power Generation; Industry. Each of the major sources share about equally in contributing to air-pollution hazards. Because these activities are of economic importance it is not possible to eliminate air pollution and maintain an acceptable quality of life. Therefore, careful regulation and sophisticated monitoring are essential to prevent health catastrophes.

IV. Likely Sensitive Groups- The Young & Growing; The Senior Citizen; The Ill; The Biologically Extreme; The Unlucky (in the wrong place). Present air standards do not have good safety margins for these people.

V. Scientific Research Findings- Air pollution episodes produce a variety of health effects (even the deaths of thousands of people in extreme cases). There are other findings in humans. However most of our knowledge of the disease-producing potential of air pollutants comes from well-controlled studies with laboratory animals. Seen are increases in infection, killing of lung cells, inactivation of lung's self-cleaning mechanisms, increased leakiness of lung tissues, increased susceptibility to lung tumors in tumor-prone strains, & many other serious effects.

VI. The Bottom Line- (1) There is no doubt that human populations are currently experiencing adverse health effects from air pollutants. (2) Erosion of present safety factors for permissible levels of air contaminants is unwise from the health point of view. (3) Monitoring of air-pollutants should be tightly-linked with their potential to produce adverse health effects (this requires a close working relationship between experts in public health and experts in chemical/physical analysis.) Note that medical training alone does not qualify one expert in public health-- this requires special training & experience.



ROBERT F. PHALEN, Ph.D.
Professor
Director, Air Pollution Health Effects Laboratory

Community and Environmental Medicine
College of Medicine
UNIVERSITY OF CALIFORNIA
Irvine, California 92717

Area Code 714
856-5860
856-4758

Mission Statement

The mission of the Air Pollution Health Effects Laboratory at the University of California, Irvine is to prevent human disease from environmental pollutants by developing toxicology information and providing that information to environmental air quality regulators, industry decision-makers, physicians, research scientists, and the public. The laboratory and its staff also provide active leadership in pioneering new research methods and in teaching and training undergraduate and graduate students interested in environmental pollution problems. The laboratory does not take a political position on environmental issues, but strives to generate key scientific information which bears on such issues.

PRESENTATION OF
JAMES D. BOYD, EXECUTIVE OFFICER
CALIFORNIA AIR RESOURCES BOARD
ASSEMBLY NATURAL RESOURCES COMMITTEE
HONORABLE BYRON SHER, CHAIRMAN
STATE BUILDING, LOS ANGELES
DECEMBER 5, 1986

Introduction

Mr. Chairman, members of the Committee and distinguished guests. I am pleased to be here today to address the Committee on the subject of California's compliance with state and federal ambient air quality standards.

We have come a very long way with our air quality programs. Just to mention some highlights, we've identified the atmospheric reactions that are responsible for ozone formation, placed state-of-the-art controls on all significant industrial sources, imposed progressively tighter emission standards on new motor vehicles, installed vapor recovery systems at gasoline stations and on the trucks that deliver the fuel, implemented a biennial smog check program for passenger cars, and have embarked upon a toxic air contaminant program. We've been through a lot of uncharted territory, and where there wasn't a way we either invented one or created the regulatory incentives - the "stick" if you will - to make it happen.

Yet for all our progress and technical sophistication, the key principles remain unchanged: a successful clean air program depends upon, and has always depended upon, good rules, good permits, and effective enforcement. These three elements are fundamental and have everything to do with the quality of the air we breathe today, tomorrow and in the year 2000.

You may be wondering what I mean by "good" or "effective". Let me define my terms.

Fundamental Air Quality Principles

Good rules are those which match the capabilities of industry's leaders, rather than catering to the lowest common denominator. California has an excellent record in this respect, and routinely sets the pace for the rest of the nation. Good rules are also those which can be readily understood by the regulated industry - because all the stringency in the world is useless if industry does not understand what it is being required to do. We have found that as rules become more complex, the need for education increases proportionately. The Air Resources Board offers several enforcement training classes each year - all well attended by air quality inspectors and industry personnel - but more extensive and more specialized training is needed.

Good permits do good rules one better. I say this because every new source presents an opportunity to push the limits of air pollution control techniques. We have a concept in permitting known as "Best Available Control Technology" or BACT that was specifically designed to capitalize on this opportunity. BACT is the most advanced control technique available at the time each new facility comes through the permit process. BACT constantly changes and thus brings us closer and closer to truly clean industrial facilities. In a nutshell, that's what good permitting is about - a constant movement forward.

Like good rules, good permits are clear and understandable. Yet they must also be thorough. Consider that an industrial facility may be in operation for as long as 50 years. Unless the conditions of legal operation are clearly and exhaustively stated on the original permit, maintaining compliance as the facility ages will be difficult.

I have one more term to define and then I'll move on: effective enforcement. Generally speaking, the number of violations at any one facility is inversely proportional to the frequency of inspections. In other words, industrial plants that are inspected often are far more likely to be in compliance than plants that aren't. This suggests we ought to be doing as many inspections as possible. But having said that, let me point out

that not all facilities have the same tendency to violate air quality requirements and some violations are more serious than others. There is also little benefit to increasing the volume of inspections if the result is rushed, cursory reviews of each facility. Quality inspections are necessary and they take time (4-5 hours, on the average). For these reasons and because the resources of local districts are limited, we believe the most effective approach is to concentrate on the source categories that have the highest potential for violations and whose emissions are the most significant when they lapse into non-compliance. We're just beginning to get a handle on which source categories these are, but we need to do some more investigation and analysis because the problem categories vary from district to district.

Well, that about covers my thoughts on basic enforcement principles. Now I'd like to describe for you what ARB's specific responsibilities are for seeing that those principles get put into practice.

The State's Enforcement Responsibilities

As most of you know, responsibility for maintaining air quality in California is shared between state and local government. Air quality management and air pollution control

districts - 41 in all - have primary responsibility for controlling stationary sources of air pollution. The ARB's chief responsibility is to control vehicular emissions, though we are also responsible for coordinating pollution control efforts throughout the state, and for ensuring that every reasonable step is taken to achieve state and federal ambient air quality standards.

While the ARB conducts a number of facility inspections (or source tests) each year, we are not a direct enforcement authority per se - setting aside our motor vehicle program, of course. It is the districts' responsibility to bring enforcement action against non-complying stationary sources. Our role is to oversee the districts' general enforcement programs. We accomplish this by reviewing each new rule or regulation proposed by the districts, by commenting on preliminary permit decisions, by keeping track of variances issued, and by periodically evaluating districts overall performance.

I want to be sure that I don't leave you with the image of ARB as a stern task master on enforcement, because that only partially describes the relationship between the Board and the districts. A great deal of our activities center around assisting the districts with their enforcement efforts. I have already mentioned the training classes put on by the Board; we

also help with the preparation of cases against major violators, conduct complaint investigations, and are available to bring enforcement actions against noncomplying facilities when the districts lack the time or personnel to address the situation. Our only limitation is that we cannot act as quickly as the circumstances sometimes warrant. Because of the separation of authorities under state law, ARB cannot step in for a district without first assuming the powers of the district through a noticed public hearing. In fact, the Environmental Protection Agency is often more effective than the Board because federal law empowers EPA to enforce any provision of the state implementation plan. Since that includes all permitting rules, EPA is able to get to problem sources at least 45 days sooner than the ARB. Be that as it may, we offer all the support we can.

Statewide Compliance Statistics

In the letter of invitation I received from the Committee, there was a request for any statistical information the Board could provide on compliance rates throughout the state. I have with me a 1982 report to the Legislature on this subject which I will leave with the Committee, but I'm afraid that the data are out of date and hence not as useful as they could be. There is no other published work on compliance rates available at present. *

However, we are in the final stages of completing a comprehensive program evaluation of the South Coast Air Quality Management District that should yield current and fairly concrete information about compliance status in the Los Angeles region. The District is going over the preliminary findings of the program review right now - which I should mention was conducted by ARB and EPA with the full cooperation of the South Coast - and has indicated to us that they will be prepared to comment on the findings after the first of the year. Barring unforeseen difficulties, we should be able to share the results of the South Coast program review with the Committee in January or February.

The Federal Reasonable Extra Efforts Program

The final issue I have been asked to address by the Committee is the Board's reaction to EPA's Reasonable Extra Efforts Program for areas that cannot attain the national ambient air quality standards by 1987. I'd like to begin by making some preliminary remarks about the interplay between federal, state and local air quality programs.

For more than a decade federal law has supported the California air program by reinforcing state and local air pollution policies with parallel federal requirements. The similarity in regulatory approaches has enabled state air quality

agencies to take the tough steps necessary to clean up our air - in the name of public health protection and the Clean Air Act. Now there are ominous signs that federal support may give way to federal hindrance. The problem originates in the basic structure of the Clean Air Act, but has been aggravated by a recent change in EPA's interpretation of the law.

The Clean Air Act as adopted in 1970 and amended in 1977 has never perfectly fit California's air quality situation; it is at once too lax and too harsh. The Act's minimum control requirements have never been sufficient for California and we have consistently gone beyond minimum federal requirements to maintain progress toward clear air. On the other hand, the deadlines for attainment of the federal standards have long been recognized as unrealistic for areas of the state experiencing severe air quality problems. As early as 1979, California informed EPA that the South Coast Air Basin would not be able to attain the ozone and carbon monoxide standards by the 1987 deadline specified in the Act. We now know that no large urban area of the state will attain the ozone standard by the deadline.

The Clean Air Act provides no other option than the imposition of economic sanctions in areas that do not comply with its major provisions, including deadlines for attainment. However, since 1983 EPA has administered the Act with a policy that shields states from sanctions as long as they to their best

to attain the standards as rapidly as possible. The formal manifestation of this policy is the so-called Reasonable Extra Efforts Program, or "REEP" as it is commonly known. REEP was developed by EPA Region IX with the assistance and support of the Air Resources Board, and in consultation with critical air pollution control districts - such as the South Coast Air Quality Management District.

REEP has always been controversial, but until recently EPA has stood solidly behind the concept that sanctions should be reserved for those states which fail to make sufficient effort to attain national standards. Now EPA seems to be pulling away from its earlier position, thereby placing California in jeopardy of sanctions. As a result, we who have done more than what was required and more than any other state, could be punished by EPA and the courts for failing to accomplish what we knew from the outset was impossible.

In a speech to the National Air Pollution Control Association in June of this year, EPA Administrator Lee Thomas said, "EPA is prepared to impose sanctions if a state does not submit a required ozone control plan, or if a state fails to implement part of its plan. However, as in 1983, I do not envision imposing sanctions in every area that does not attain the standard by the end of 1987, simply because of a failure to

attain." With specific reference to our state's program, Thomas added, "We support California's efforts to deal with its ozone problem." However, in a letter last week to Congressman John Dingell of Michigan - a frequent critic of California's vehicle control program - Thomas offered the following legal opinion: "We conclude that while there are legal arguments to defend REEP the risk of an adverse court decision is significant, and the implementation of the program will present numerous opportunities for litigation that could substantially impede or negate our efforts." He added, "Since California does not have a fully approved . . . plan both the construction ban . . . and the highway funding restrictions . . . are clearly applicable."

Administrator Thomas now contends that REEP is not legal and that California stands in grave danger of being sanctioned. It is important to point out at this juncture that the legal issue to which he refers is hardly new. It existed in 1983 and last June when Thomas made his supportive comments to air quality officials. What is new is EPA's pessimism and lack of firm policy support for making the current Clean Air Act work in California. And unfortunately, there's no indication that EPA plans to recommend that Congress amend the law to assist California.

Frankly we are concerned about the shift in EPA policy, and last week Chairwoman Sharpless expressed our misgivings to

Administrator Thomas. At this point we don't know what EPA will do. We doubt that they will move forward with REEP, and we wonder how the Agency would respond to a lawsuit requesting EPA to impose sanctions in California. There are several existing lawsuits which could have that outcome if EPA does not respond to the concerns of the petitioners. Ironically, most of the petitioners want the adoption and implementation of a sound reasonable extra efforts program - the very program Administrator Thomas believes has a shaky legal basis. We are working with all interested parties in an effort to avoid sanctions, and, at the same time, to keep California's air quality program on track.

One thing is certain. As the debate over REEP continues, we must not lose sight of our basic goal. We are urging all local air pollution control districts in California to continue with full speed to adopt and implement new control measures and to vigorously enforce those measures already in place. The Air Resources Board intends to follow this course. Whether the effort is blessed by federal law, is called REEP, or goes by some other name - it is necessary and appropriate that we proceed toward the goal of clean air. Public health must take precedence.

Long-Range Outlook For Air Pollution Control

I think it's important to note here, for perspective, what we see down the road for air pollution control.

In the early 1970's, the South Coast Air Basin already had the nation's most severe smog problem. Since that time the population has grown by approximately 25% and the number of vehicles has increased by more than 50%. Despite enormous growth in the number of sources, air quality has improved rather than deteriorated. Smog precursors have been reduced by well over one third in the South Coast Air Basin. While growth has prevented the dramatic improvement in air quality that the public desires, we take great pride in having made solid, visible progress.

An examination of the pattern of emission reductions over the past 15 years shows that progress has come primarily from the control of motor vehicles and vehicle related sources. While reductions from stationary sources have been largely offset by growth, a dramatic reduction in emissions from motor vehicles has occurred. Individual vehicles emit up to one tenth of the smog precursors they did in the early 1970's. In essence, technological controls have more than offset the increase in the number of vehicles.

Many people are concerned about our ability to continue to further reduce emissions. There is impatience at the lack of dramatic progress. Some are concerned that further control of vehicles and vehicle related sources is impractical and can yield only small improvements in the future. I would like to share

with you our analysis of the pattern of future emission reductions.

We expect that new regulations from stationary sources will produce only modest improvements. That improvement which does occur will be largely offset by further growth. However, as noted elsewhere in this talk, we do believe that improving existing sources' compliance with current regulations can yield substantial, additional reductions in smog producing emissions.

We are pessimistic about achieving major reductions in emissions by reducing vehicle use. Many have cited the Olympic experience as demonstrating the potential to improve air quality by reducing traffic and altering transportation patterns. While the potential is undeniable, its realization would require fundamental changes in our transportation systems and in the expectations of our citizens about personal mobility. To make the Olympic experience an every day reality, huge expenditures are needed for improved public transit. Intrusive government restrictions would also be necessary, such as governing when and where people will drive. While the public's desire for cleaner air is very strong, it is questionable whether public support is broad enough today for such large expenditures and fundamental changes. It is more realistic to expect modest changes through increased utilization of car pools and public transit.

The good news is we believe that substantial additional reductions in motor vehicle emissions can be achieved. The Air Resources Board has adopted a comprehensive plan for achieving these reductions. The plan includes new, more stringent emission limits on new motor vehicles, manufacturer improvements in the durability of emission control devices, and improvements in the way Californians maintain their vehicles. This latter objective will involve improvements to the existing Smog Check program, and some of these improvements will require legislative action.

It must be recognized that the benefits from many of these new programs will have a long gestation period. Lead time is years for these cleaner vehicles to move into and dominate the fleet. Fortunately, the ARB has taken a number of actions over the past several years that are resulting in cleaner vehicles being offered for sale today, and of course the Smog Check program is helping reduce emissions through better vehicle maintenance. These programs will continue to reduce emissions into the 1990's, and the new program we will be adopting will provide additional improvements to beyond the turn of the century. Together these programs will reduce smog forming emissions from vehicles by 650 tons per day by year 2000, despite continued increase in the vehicle population and usage.

We are also pursuing cleaner fuels as an alternative to gasoline and diesel fuel. The most promising fuel to replace

both gasoline and diesel is methanol. We know that if all cars in the South Coast Air Basin burn methanol instead of gasoline, ozone levels would improve substantially, though the exact amount of improvement is still unclear. Since existing vehicles cannot burn methanol without substantial modifications it would be necessary to phase in the use of methanol through the introduction of new vehicles capable of using it. From a purely technical standpoint, we believe such new vehicles could be introduced on a large scale in California in the early 1990's. In our view this cannot happen, however, without intervention by government into the marketplace. Obviously, there are many significant public policy issues involved. The staff is analyzing these issues, working with the Energy Commission and local air pollution control districts. We intend to present a progress report to our Board next spring and will be keeping the Legislature apprised on a regular basis.

In conclusion the prognosis for improving air quality in California during the next decade is good as long as we maintain an aggressive motor vehicle program. To do so we must maintain the authority currently given to us under the Clean Air Act to set our own standards for motor vehicles and vehicle fuels. If successful we expect progress to be steady but not dramatic, primarily because rapid growth in urban areas of the state is expected to continue for the foreseeable future.

Conclusion

In closing, I'd like to point out that no matter what direction we take from here, whatever new and innovative control strategies we come up with, there will always be a need for consistent, effective enforcement. The success of each control measure is entirely dependent upon its implementation in the field - that factor alone determines whether the emissions reduction goal will be realized. I think that the Committee has its finger on an important component of our air quality program and your interest in this issue could not be more timely.

Thank you for your attention.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**215 Fremont Street
San Francisco, Ca. 94105**

Testimony

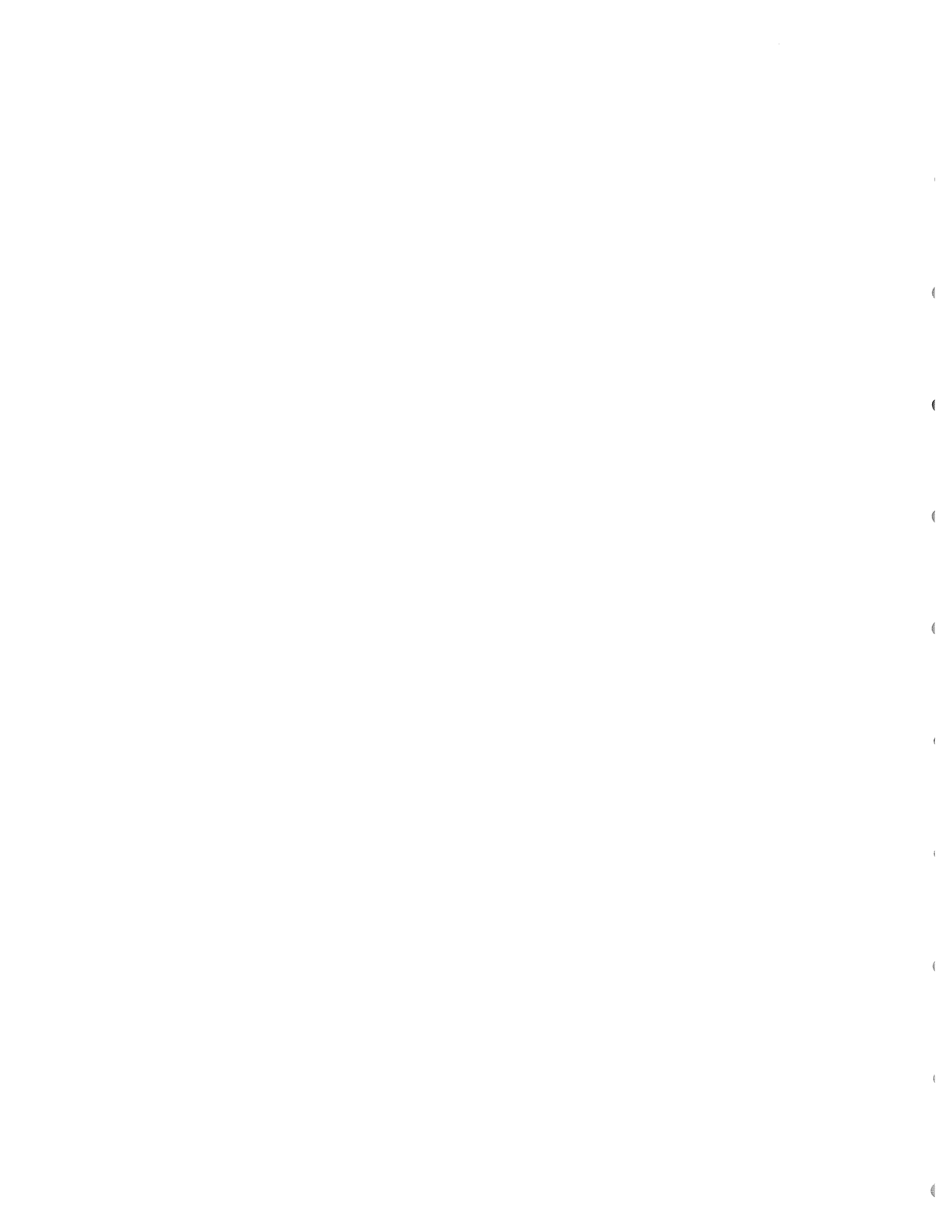
**David P. Howekamp, Director
Air Management Division**

Before

**California State Assembly Natural Resources Committee
Honorable Byron D. Sher, Chairman**

December 5, 1986

**SUBJECT: California's Compliance with State and Federal Air
Quality Standards**



Introduction

In California as well as across the nation, we have seen significant reductions in emissions of all the federal clean air standards -- ozone, carbon monoxide, lead, nitrogen dioxide, sulfur dioxide and particulate matter -- and consequent improvements in ambient air quality. These improvements resulted from the stringent application of control technology on both stationary and mobile sources; more importantly, reductions have been accomplished in the face of continuing population growth and economic development. However, it now appears that emissions reductions in some areas of the Country -- including California -- will not be adequate to lead to attainment of clean air standards. At least four areas in California -- Ventura, Fresno, Sacramento and the South Coast -- will not meet federal clean air standards for ozone or carbon monoxide by 1987 without immediate and drastic changes in people's current lifestyle -- a solution which EPA believes is inconsistent with the intent of the Clean Air Act. It is this post-1987 nonattainment problem about which you have asked us here to speak to you today.

As we are all aware, air pollution or urban "smog" is a problem which directly affects many of us -- both in terms of our health and our well-being. Here in California, people are exposed to some of the worst air pollution levels in the country. EPA estimates that by 1987, over 60 million people across the U.S. will continue to be exposed to violations of the federal clean air standard for ozone, with up to 17.5 million people, or more than one-third the national population, living in California. In Los Angeles, our nation's most populous metro-

politan area, ozone levels continue to go as high as three times the standard.

Regulatory and Statutory Requirements for Nonattainment Areas

Since 1977, both the Clean Air Act and EPA policy have required that attainment of national ambient air quality standards for ozone and carbon monoxide be demonstrated for no later than December 31, 1987. Failure to do so would lead to federal imposition of sanctions including prohibitions on the construction of certain major sources of industrial pollution as well as restrictions on the use of federal grants for highways, air programs and sewage treatment facilities.

In 1979 and 1981, EPA published guidance which established minimum requirements which nonattainment areas would have to meet toward making its attainment demonstration. Much of this guidance related to the types of controls which were to be put into place before EPA would approve an area's demonstration. While mindful of the 1987 deadline which Congress had mandated for all areas -- without exception -- EPA recognized as far back as 1981 the extreme difficulty certain areas would have in meeting the 1987 date. Therefore, in 1981 and again in 1983, EPA instructed these expected "post-1987" areas to analyze additional measures which went beyond minimum federal requirements and which could be implemented beyond 1987 to attain the CO and ozone standards as quickly as possible, albeit beyond the statutory date.

1982 Plans for Post-1987 Areas in California

In 1982, California submitted ozone SIP revisions for the South Coast, Fresno, Ventura and Sacramento nonattainment areas and CO plans for the South Coast and Fresno.

Although the SIP revisions for these four areas included controls that would produce substantial progress toward attainment of the standards -- and in many cases went beyond EPA's control strategy requirements -- they were unable to demonstrate actual attainment by the December 31, 1987 statutory due date.

Based on notice and comment rulemaking for these areas, EPA ruled in 1984 to approve the control strategies contained in the four area plans. Nevertheless, because of the inability of these areas to demonstrate attainment, EPA took no action on the overall approvability of the Plans, pending an evaluation of what controls would be required to demonstrate attainment and a determination of whether reasonable efforts were being made to submit an approvable plan.

Reasonable Extra Efforts Program

Following EPA's final rulemaking on the four plans in 1984 -- and in keeping with its 1981 and 1983 instructions for post-1987 areas -- EPA outlined a process by which nonattainment areas could make continuing progress toward attainment, albeit beyond 1987. In so doing -- and provided all reasonably available control measures were implemented -- sanctions might be indefinitely delayed. This approach was entitled the Reasonable Extra Efforts Program or REEP. While EPA understands that the

legal underpinnings of a "post-1987" program such as REEP are unclear and subject to litigation, EPA has initiated the program as a good government approach to sanctions. This is based on the belief that Congress intended sanctions as a tool to require diligent planning, and not merely as a punishment for a failure to attain federal clean air standards. Since its inception in 1984, REEP has continued to evolve based upon discussions EPA has had with nonattainment area agencies, local and State public elected officials, key industry representatives in the State, and the general public. These discussions in turn have lead to several improvements in the Program.

Roles Under REEP

Under REEP, EPA has federal oversight responsibilities mandated under the Clean Air Act and is also responsible for the development and implementation of nationally applicable measures, e.g., gasoline marketing controls or the investigation and application of alternative non-polluting fuels. The State, i.e., the Air Resources Board and Caltrans, has the lead for mobile source controls and certain transportation control measures, such as ridesharing, commuter computer programs and the development, funding and construction of air quality beneficial projects, such as bike lanes or express bus lanes. Local nonattainment areas are responsible for considering stationary source controls and transportation control measures under the jurisdiction of local governments.

REEP Schedule

In 1986, EPA called upon each post-1987 area to submit an update to the SIP by February 1987 -- and then every two years thereafter. These REEP SIP updates are intended to expand and improve upon the 1982 SIP control strategy through the consideration of additional control measures which could be adopted and implemented in two-year cycles.

The REEP SIP schedule is to be adopted by post-1987 air pollution control districts and regional planning agencies and approved by the State prior to submittal to EPA. The State is also to adopt and submit a REEP SIP schedule of those measures legislatively reserved to the State for adoption and implementation.

The REEP SIP schedule is to contain critical dates for the adoption and implementation of REEP SIP measures, e.g., dates when decisions will be made on proceeding to a public hearing on a specific measure, public hearing dates to consider adoption of REEP SIP measures, and expected implementation dates for those REEP SIP measures which are adopted.

At a minimum, the schedule is to include consideration of those measures contained in EPA's initial investigation of feasible control measure improvements, and corrections to air pollution control program deficiencies identified by REEP program evaluations. (I will discuss both in a moment.) However, limiting a REEP SIP to measures identified by EPA through its initial investigation may not be sufficient. State and local adopting agencies are therefore encouraged to make every effort

to investigate and consider the feasibility of additional measures beyond EPA's list or give higher priority to other, more effective measures.

REEP Control Strategy Development

Since its rulemaking on the 1982 Plans for the four areas in 1984, EPA has conducted investigations of potential control measures which move beyond currently existing controls in the four areas. These investigations have been assisted by other federal, State and local regulatory agencies, regional planning agencies, technical review groups, and EPA-directed consultants. The investigations have included technical analyses covering key emissions inventory categories including mobile, stationary and area sources as well as new source permitting. Since November 1985, EPA has met with the districts and regional planning agencies for the four areas to discuss the results of these technical analyses. This information has also been made available for public review.

Thus far, the following work has been performed in the control strategy development portion of REEP: (1) evaluations of sixteen categories of stationary source controls to identify opportunities where existing controls could be strengthened; (2) identification of twelve categories of currently unregulated sources to be investigated within the next two years for an assessment of their control potential; (3) guidance and information documents for eight broad categories of transportation control measures (TCMs). The eight information documents

identify individual control measures within various TCM categories that appear to have the potential for reducing emissions beyond the current SIP; (4) as the lead for mobile source control strategy development, the State is investigating the feasibility of further motor vehicle controls covering auto emissions standards, excess emissions in cars, and applications of new technology affecting the motor vehicle, including the feasibility of methanol.

Program Evaluations (Audits)

The program evaluation portion of the REEP is intended to provide an in-depth review of a post-1987 district's overall program to assure that each district is implementing its State Implementation Plan (SIP) as fully and effectively as possible. Any potential program improvements identified in the program evaluation are then negotiated with the district and scheduled for implementation in the form of new SIP commitments, EPA air grant objectives, or other appropriate means. The effectiveness of a district's response to program problems identified in the evaluation will assist in EPA's determination of whether the district is demonstrating reasonable extra efforts.

While program evaluations have been conducted in all four areas in past years, the evaluation which most closely follows the REEP objectives is currently underway in the South Coast Air Quality Management District. In this effort, EPA, the State and the District have been working together cooperatively since last June to identify problem areas and to develop program improvements. Based on this work, a joint document is nearing

completion which will contain the recommended program improvements to be presented to the South Coast District Board early in 1987. While it is too early at this time to list for you specific recommendations for program improvements, I am very confident the joint document on the South Coast program evaluation will contain proposed measures which will substantially improve the effectiveness of the District's program by making the District's regulations more enforceable.

Based on what is learned in the South Coast, EPA and the State will schedule similar REEP program evaluations in the next year with all post-1987 area districts. EPA expects each district to cooperate with the program evaluations and to adopt appropriate program improvements pursuant to the individual evaluations.

SIP Implementation

Since the intent of REEP is to go beyond the 1982 SIP commitments and obtain additional air quality improvements, Region 9 has first required the State and the four post-1987 nonattainment areas to analyze and document plan implementation. If commitments in any of the 1982 Plans have not been met and adequate justification is not provided to EPA, then appropriate remedial actions need to be pursued. Since the lead agencies have yet to bring forth all the necessary analysis, EPA has not reached any conclusions regarding the status of Plan implementation. EPA is presently working with the lead 1982 Plan agencies to develop this analysis and intends to release our findings in early 1987.

Sanctions and REEP Implementation

Let me offer some background as to why sanctions are not currently in place in the four post-1987 areas in California. In 1984, in response to public comment on EPA's proposed rule-making on the four area 1982 plans, EPA approved the control strategies contained in each of the plans as they strengthened the SIP and would lead to substantial air quality improvement. At the same time, EPA took no action on the overall approvability of these plans pending further investigation of additional, available measures. This lack of action on the overall plan served to indefinitely delay the imposition of sanctions.

In response to various comments from the public and private sector on the development of REEP, EPA went back to the Federal Register in September of this year to formally solicit comments on EPA's approach for post-1987 nonattainment area planning. Among the questions which EPA specifically requested comment on was whether sanctions should continue to be withheld even if violations of the NAAQS continue to occur beyond 1987. The public comment period on the REEP Federal Register notice closed on November 25. EPA is now in the process of reviewing the comments prior to making a final determination on the issue of sanctions.

At this point, several actions could occur which would lead to plan disapproval or a finding of SIP nonimplementation and thereby bring sanctions into place: (1) EPA could determine that it has no legal basis to further postpone final action on the plan; (2) litigation could result in a court decision to

disapprove the plans; (3) Congress could direct EPA to take final action on the four plans; (4) a SIP revision is not submitted as called for by EPA; or (5) EPA might determine that a post-1987 area was not implementing or making reasonable efforts to implement the SIP.

EPA believes that it has offered to the public initiatives for California's post-1987 areas which can lead to decreased emissions and improved air quality. It is also necessary to state, however, that EPA's Program conflicts with a literal interpretation of the Clean Air Act to achieve clean air standards no later than December 31, 1987. EPA has conducted a preliminary legal analysis of the Agency's efforts to define its post-1987 ozone control program. EPA's assessment is that while defensible, EPA's implementation of a post-1987 ozone program presents high legal risks, particularly if not broadly accepted by the interested public. The agency continues in its commitment to implement the good government approach to improving air quality. We believe the reasonable and equitable solution lies within the flexibility of the REEP program. It is very important to note, that should this good government approach called REEP, using active public participation, not be allowed to solve the problem then the alternative is a literal interpretation of the Clean Air Act which includes plan disapproval and sanctions.

Enforcement Program in California

As requested by the committee I would like to comment on EPA's enforcement requirements affecting stationary sources in California. Similar to the California Air Resource Control Board (CAARB) and the local Air pollution Control District (APCD's) EPA enforces the applicable SIP regulations and specific new source permit conditions for stationary sources. Our role in the enforcement of stationary source requirements is a complementary one to the State and local air agencies in California. This fact is due to the strong partnership which exists between the three levels of government, local APCD, ARB, and EPA and to the resources available for ensuring compliance of the stationary sources. EPA relies heavily on the APCD's inspection resources to verify compliance of major stationary sources. In addition, local APCD's report to EPA the compliance status of all sources in California with the potential to emit a 100 tons/year of any of the criteria pollutants regulated under the Clean Air Act, as well as the status of sources subject to delegated provisions of the federal regulation for NSPS and NESHAPS.

EPA's overall assessment of the California enforcement program is that it is one of the strongest in the country. No other State comes close to the number, frequency or comprehensiveness of inspection and enforcement actions found in California. However, since air pollution problems are a major issue in California, EPA continues to provide aggressive oversight and complementary enforcement actions in California.

As far as our specific enforcement program is concerned we put our emphasis in priority non-attainment areas having high population exposure to frequent exceedances of the national ambient air quality standards. This means the major metropolitan areas within the State and within those areas specific stationary sources with VOC emissions. To maximize our effectiveness we are targeting specific source categories in geographic areas for our inspection activity. Some of the specific source categories we have looked at include bulk terminal, metal parts, graphic arts, degreasing, can and coil, plastic parts, and aerospace operations. When looking at these source categories we not only determine compliance, but also determine whether the regulations that apply to the source are effective, enforceable, are equivalent to other regulations in California for similar sources, and can achieve the emission reductions claimed in the current SIP.

One of our principal jobs is to track the status of significant violators (a source with a potential to emit 100 tons/year of a criteria pollutant) and to ensure that they return to compliance. From October 1, 1985 through September 30, 1986, we have been tracking 108 sources in California identified as significant violators. During that same period of time, 56 of these sources were returned to compliance, 26 were placed on variances by local APCD's, and 26 remain unresolved.

In addition to significant violating sources we focus attention on recalcitrant sources, NESHAP sources where public health concerns are evident, such as asbestos sources, and sources that are on extended variances.

During the past year EPA conducted 48 inspections, issued 12 administrative orders, and filed 14 civil actions with the Department of Justice for violating sources in California.

While we believe we have an aggressive stationary source enforcement program in California, GAO reported in 1985 that nationally there was an inadequate inspection program conducted by the States and local agencies as well as EPA during FY84. EPA believes that the findings of this GAO report leave much to be desired. GAO using an outside contractor analyzed only 385 sources from a universe of over 29,000 nationwide and from this analysis extrapolated data showing that 43% of all inspections done nationally are inadequate. Nevertheless, EPA has taken steps to respond to the GAO report by requiring more indepth inspections and clarifying inspection frequency guidelines. In California, however, due to the intensive frequency and depth of inspection already occurring the findings and results of the GAO report have little impact.

In terms of recommendations for improving California's stationary source program we would recommend the following.

1. Improve the quality and extent of training for inspectors in procedures and techniques applicable to complex rules (VOC sources).
2. Improve the sense of professionalism among inspectors. Increased training and more attractive salaries competitive with other professional positions in APCD's would greatly assist in building this professionalism.
3. Increase the proportion of unannounced inspections to ensure continuing compliance of sources.
4. Use the knowledge of inspectors to improve existing rules by providing a feedback loop to rule and permit writers to improve rule enforceability.
5. Improve the management of information with more effective utilization of computer systems. Medium and large sized Districts need centralized data management systems to be more effective in their day to day operations.
6. Limit the issuances of variances to violating sources. In addition increase the use of abatement orders and larger penalties to discourage repeat violators.

Conclusion

While significant progress has already been made in California in lowering harmful levels of smog, we need to pursue a program which will go the extra mile in winning the clean air battle in California while avoiding unnecessary economic disruption. Clean air will not happen overnight in these four areas in California and it will not happen without a full commitment on all our parts to do what is necessary to protect human health. EPA believes that the best way to accomplish clean air will be to enlist the participation and support of the public and private sectors as well as decision-makers at all levels of government to aggressively explore and contribute to the development of a full range of available control options. Provided EPA has additional time beyond 1987 to conduct an ozone control program for severely polluted areas, I believe that whatever approach is ultimately used will lead to clean air. However, the bottom line must always be attainment of the federal air quality standards by the most expeditious date practicable.

It is important to note that any program developed to respond to the smog problem must not be one which avoids the Clean Air Act requirements for attainment of clean air standards; nor can it be a program which delays the earliest possible clean-up; nor a program which avoids sanctions for failing to implement available controls. Rather, through a common and renewed effort to achieve clean air standards in California which involves business, regulatory agencies and the public,

EPA intends to foster a program which:

- (1) Achieves the best air quality reasonable possible, on an expeditious timetable;
- (2) Makes continuing progress toward achievement of all federal clean air standards; and
- (3) Maintains a full commitment to achieving the standards as expeditiously as practicable.

PRESENTATION OF
RICHARD H. BALDWIN
BEFORE THE
ASSEMBLY NATURAL RESOURCES COMMITTEE

December 5, 1986

I appreciate the opportunity to testify before your Committee today. Ventura County has a serious air pollution problem. We do not expect to attain the Federal ozone standard before the end of the century. Furthermore, a recent EPA report shows that our ozone problem is the third worst in the state, and the sixth worst in the nation. While this sounds bad, we have actually made substantial progress since 1966, when the first study of air pollution was made in Ventura County. Peak ozone levels, and the frequency of violating the Federal ozone standard, have been reduced. In earlier years we experienced many first stage smog alerts. In 1973 we had 25 first stage alerts. We have had no alerts in the past three years. Also, the number of days exceeding the Federal standard has been reduced by about half since 1966. This improvement has occurred in large part because we have reduced ozone precursor emissions by more than 25% since 1979.

I believe our program is among the best in the state. We have one of the most stringent new source review rules anywhere. We require the use of Best Available Control Technology, or BACT, on all emission sources of reactive organic compounds and nitrogen oxides, regardless of their size. We require nitrogen oxide reductions as a means to reduce ozone, even though we are in attainment for the Federal nitrogen dioxide standard. And, we continually review our rules, enforcement procedures, and the Air Quality Management Plan. Through this review, we hope to find additional improvements for our program.

My following statements are in response to, and in the order of, the six questions asked in your November 19, 1986, letter.

1. The District Board has not taken a position on EPA's Reasonable Extra Efforts Program, or REEP. However, the REEP program, as currently proposed, will have no impact on the District. This is because we are in the process of a comprehensive revision to our 1982 Air Quality Management Plan. The revision will include projections based on a recently adopted countywide population forecast. We have also developed an updated emission inventory for onshore and offshore emission sources. Current stationary source control strategies are being revised and strengthened, and new stationary source control measures were evaluated for inclusion in the Plan.

Much of our future work will focus on transportation control measures. Using the results of the Technical Air quality Review Group, and a task force formed by our Board, we are pursuing many TCMS. Some incorporate land use strategies to reduce emissions. Also we are actively promoting the idea of Transportation System Management Plans at the project and regional levels. We recently hired a Transportation Systems Management Coordinator to assist in implementation of these measures.

If technically possible, we will also use a regional photochemical grid model to assess the cumulative impacts from all emission sources within the region. Unfortunately, this model may not be available early enough for the current plan revision.

The measures being included in the Plan revision go beyond the REEP requirements. That is why the REEP program will have no impact on the District. Also, EPA used our District in 1984 as the pilot study for the comprehensive program audit proposal in REEP. Our audit, called the Ventura Project, was a good management exercise. It provided an opportunity to make an in-depth analysis of how all the parts of our program fit together, and complement each other. The program review resulted in 40 recommendations; 17 of these were considered high priority. All of the high priority recommendations have been implemented, or are in the process of being implemented. Most of the others have also been implemented. These recommendations have led to overall program improvements.

2. The District has just over 1,000 permitted stationary sources. Our definition of a source includes all equipment at a facility. A source may be anything from a neighborhood dry cleaner to a large oil field with numerous wells and related processing equipment. A single permit is issued to each source. Each source is inspected at least yearly. Major sources, those which could emit more than 25 tons per year of any pollutant, are inspected at least twice each year. Additional inspections are conducted to follow-up on discrepancies and violations to ensure that corrective action is taken.

Most inspections are unannounced. The exception is when we have an access problem, such as in an oil field. The inspection begins with a thorough review of the permit file. Then a site visit is made by an inspector. The site visit will include a check of all equipment to ensure that it is on the permit, has not been modified, and is operating in compliance with all permit conditions and applicable rules and regulations.

Source tests by ARB are conducted on about two dozen sources each year. These tests are made at our request. We will soon be purchasing equipment to perform limited source tests by our enforcement staff. Also, several sources have continuous emission monitoring equipment. The District receives data reports from these monitors each month. The reports are reviewed for emission compliance, and will be used as the basis for a Notice of Violation, if warranted.

3. Currently, three sources are operating under a variance. Most variances are issued for less than six months, and we usually have fewer than three sources operating under variance. No variance has been granted for more than one year. All variances are issued with periodic progress reporting requirements.
4. Our compliance rate ranges from better than 90% for gasoline dispensing facilities, to better than 95% for other sources. While some of the violations are due to excess emissions, others are due to administrative requirements (e.g., no permit). Quantifying the excess emissions is difficult because many of the emissions are fugitive. That is, they are not emitted from a measurable device such as a stack or vent. Therefore, we do not have an emission rate correlated to the non-compliance rate. Follow-up inspections are made for all violations to ensure that compliance has been achieved.
5. The District's two phase permitting process begins with a review of the Authority-to-Construct application for completeness. This is done to ensure that sufficient information has been provided for a thorough engineering evaluation of the application. The Authority-to-Construct is issued or denied on the basis of the engineering evaluation. Usually, a number of specific conditions relative to construction, and future operation, are prescribed in the Authority-to-Construct. Inspection of the source during construction is common, and always occurs upon completion. These inspections are to ensure that the source is built as approved in the Authority-to-Construct.

After construction has been completed, the source is required to submit an application for a Permit-to-Operate. This application is evaluated to ensure that the source is in compliance with all of the prescribed Authority-to-Construct conditions, and that it meets all applicable emission standards. Compliance is determined by visual inspection, and in some cases, with a source test.

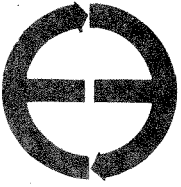
The District's regulations require that a copy of the Permit-to-Operate application shall be returned to the applicant. This copy serves as a temporary Permit-to-Operate, pending our action on the application. The number of sources operating under a temporary permit varies. At this time, there are approximately 70 temporary permits. These temporary permits are in use anywhere from one day to several months. Most are used for less than two months.

6. We routinely review our rules to determine how they can be more effective, or provide additional emission reductions due to new technological advances. Our process for adopting new, or amending existing, rules is to conduct public workshops for all affected sources. After the draft proposal has been reviewed with affected sources, a specific proposal is presented to the Districts' Advisory Committee. The Committee reviews the staff proposal and considers input from affected sources and other interested parties at a public meeting. After discussion, the Committee will recommend a specific proposal for the Board to consider for adoption. The proposal is then taken to the Board for action at a public hearing. Affected sources are notified of each of the above meetings.

The rules contain specific compliance dates. These dates are not tied to any permit renewal date. All affected sources are expected to take whatever action is necessary to achieve compliance by the required date. Frequently, the source must submit an application to amend its permit so that it can achieve the compliance requirements. Usually, source inspections are conducted to ensure that the requirements of the rule are achieved. Emission tests are frequently a part of this inspection. This inspection is not connected with the permit renewal inspection except by coincidence. During the permit renewal inspection, compliance with all District Rules and Regulations is determined.

I hope this information will be helpful to you. I will be pleased to answer any questions at this time.

DBPRES/ple



California Council for Environmental and Economic Balance

1512 - 14th Street, Sacramento, CA 95814 • (916) 443-8252

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FORMER CHAIRMEN

STATEMENT

of the

CALIFORNIA COUNCIL FOR ENVIRONMENTAL AND ECONOMIC BALANCE

before the

ASSEMBLY NATURAL RESOURCES COMMITTEE

of the

CALIFORNIA LEGISLATURE

Los Angeles, California

December 5, 1986



The Council is a non-profit organization that has been working over the past fourteen years to improve the state's environment while ensuring its continued economic vitality. CCEEB's Board of Directors represents a wide spectrum of interests: one-third are labor leaders; one-third represent business and industry; and one-third are community leaders. The Council has been a participant in local and regional air quality management planning processes here in the South Coast Air Basin since 1976, and in the other major metropolitan areas of the state since 1978. CCEEB has also been involved in legislative deliberations pertaining to all significant air-quality related issues during the past decade and has supported many measures to enhance air quality and improve the management of the state's air resources, including the vehicle inspection and maintenance program, the toxic air contaminant regulatory program, the Lewis Air Quality Management Act, and measures to enhance enforcement of air quality regulations.

The Council commends your Committee for focusing the Legislature's attention at this particular time on the progress that has been made to comply with air quality standards, and on the approach that should be taken in the future if real and substantial air quality improvements are to be made in areas of the state that will not attain one or more federal ambient air quality standard by the Clean Air Act's 1987 deadline. Your review coincides with analogous efforts by federal administrative and legislative bodies-- the Environmental Protection Agency and the congressional General Accounting Office-- to take stock of progress to date under the Clean Air Act, and to develop policies and programs providing the framework under which regions with intractable air quality problems can move forward. With the federal Act's attainment deadlines less than 13 months away, the Legislature has a unique opportunity to assist in filling what may be a statutory void.

The Council appreciates this opportunity to offer some observations and recommendations for your consideration in determining whether additional legislative mandates, direction or authority might be needed to ensure that the South Coast Air Basin and the state's three other post-1987 attainment areas are proceeding on a firm and steady course toward real and substantial air quality improvement while minimizing socio-economic costs.

The fact that four areas of the state cannot attain one or more ambient air quality standard by 1987 should not obscure the fact that significant air quality improvements have been made during the past decade. In the South Coast Air Basin, with the nation's most intractable nonattainment problem, ozone concentrations have shown a definite downward trend since 1976 by almost any measure. Of particular note is the significant decline in the amount of time basin residents have been exposed to Stage II and III episodes (see attachment), as well as the fact that from 1975-77 to 1982-84, the basin's per capita dosage of ozone concentrations exceeding the federal health-based standard showed

an overall decrease of 27 percent. Also notable is that weather-adjusted data (which basically "control" for year-to-year meteorological variation) show that Stage I episode days have been decreasing at a rate of four a year since 1976, for an overall 33 percent decline from 1976 to 1985 (see attachment).

These downward trends have been realized despite an increase in population of well over one million people and their associated economic and fuel consumption needs and activities. The air quality improvement is attributable in large measure to technology-forcing regulations affecting both new and existing industrial and mobile sources that have been enacted by the South Coast Air Quality Management District and the Air Resources Board, respectively. Indeed the SCAQMD is generally acknowledged as having the most stringent set of industrial source controls in the nation, having far exceeded federal requirements in controlling existing sources as well as new or modified facilities. These controls have imposed costs of hundreds of millions of dollars upon California business and the consuming public.

Yet, far more needs to be done-- particularly in view of recent upward revisions to the region's population projections-- and industry certainly acknowledges that further emission reductions and tighter controls will be required. As costly as past regulations have been in absolute terms, they may be relatively minor in comparison to the next round of industrial source controls that may be considered, since the marginal cost of the next increment of emission reductions from already heavily controlled sources is extraordinarily steep.

The manufacturing sector of the basin's economy-- which directly accounts for about one-fourth (23.8 percent) of total employment in the region, and which indirectly generates up to several times as many jobs through the multiplier effect-- will undoubtedly bear some share of the future burden of necessary controls. What the business and labor sectors want to see as the foundation for future air quality management planning and regulatory action is a comprehensive, coordinated approach that will consider emissions from all sources-- industrial, mobile, commercial, municipal and miscellaneous "area" sources-- and that will determine action priorities that will produce the greatest air quality improvements at the lowest social and economic costs.

Regrettably, this approach is not embodied in EPA Region 9's proposed Regional Extra Efforts Program (REEP). While the Council fully supports the need to comply with the national ambient air quality standards as expeditiously as possible and supports the concept of alternatives to sanctions for post-1987 nonattainment areas; CCEEB believes that REEP has serious procedural and substantive flaws. I will summarize these deficiencies and then set forth the Council's suggested elements of an effective post-1987 attainment strategy.

The Council is very concerned about the manner in which REEP has been developed. Region 9 is working in an unsanctioned, unprecedented manner to require the four local air districts to amend their parts of the California State Implementation Plan (SIP). To date, the SIP has always been amended in accordance with specific Clean Air Act mandates; uniform nationwide EPA guidance regulations implementing the Clean Air Act; specific Federal Register EPA Region 9 SIP requirements applying to the districts; and written work books and other SIP revision guidance. The EPA Region 9 REEP is not required or sanctioned by the Clean Air Act and in fact may be illegal. EPA headquarters has issued no national guidance regulations defining or requiring REEP, but is in the process of developing a national strategy to address post-1987 nonattainment areas, which are found not only in California but throughout the nation. And, EPA Region 9 has not issued any guidance regulations specifying what the districts should do to implement REEP. EPA Region 9's informal, unpublished, draft REEP guidance documents are no substitute for the thorough SIP technical guidance and requirements which the districts have previously followed.

With regard to the substance of REEP as proposed, the Council supports the program audit element, but believes that the approach to the control measure element is flawed. The program audit element of REEP is needed to ensure that current programs are being properly implemented and enforced. It is important that all sources subject to regulation and permit limitations be in compliance and, further, to establish that the emission reductions projected by the various control strategies have in fact occurred.

It is essential that we get the most out of regulations already on the books prior to the implementation of additional rules for currently controlled sources. While this sequencing of program elements is embodied in the outline of the national post-1987 strategy, it is regrettably not incorporated in Region 9's REEP, which proposes to implement additional controls before the results of the program audit have been reviewed and acted upon.

Further, the control measure element of REEP is simplistic, technically unsound and will be ineffective since the entire focus is on emission reductions-- period. Various studies have demonstrated that not all emission reduction efforts result in the anticipated ambient air quality improvement and public health benefit, due in part to the temporal and spatial characteristics of the emitting sources relative to the areas in which the standard is actually exceeded. Finally, REEP is deficient since it does not consider the cost-effectiveness of possible control measures in terms of real improvements in air quality.

To reiterate, the Council strongly supports the need for a program to bring California's nonattainment areas into compliance with ambient air quality standards as expeditiously as possible. The Council recommends that, in terms of general

structure and interface with related national and local efforts, such a program should:

- proceed under the national post-1987 attainment framework, to ensure a consistent application of criteria for determining the acceptability of potential control measures;
- be integrated with ongoing regional air quality management planning processes to avoid duplication of effort that is wasteful of limited agency resources; and
- be adopted in accordance with all applicable administrative procedures, and incorporate a full, open and ongoing public participation process.

More specifically, the Council believes that the following components, none of which are proposed for REEP, are essential if real and substantial air quality improvement is to be made in the state's severe nonattainment areas while ensuring their continued economic and social welfare:

1. A THOROUGH AUDIT OF THE EXISTING STATE IMPLEMENTATION PLAN.

This is being accomplished by the joint EPA/ARB audit being conducted in all the state's post-1987 areas and in the South Coast Air Basin, also by the GAO. It is essential to know which measures have been most effective, which have been least effective, and why, prior to requiring more control measures on already controlled sources.

2. A FOCUS ON ACHIEVING REAL AIR QUALITY IMPROVEMENT, NOT ON EMISSION REDUCTIONS ALONE, WITH AIR QUALITY IMPROVEMENT MEASURED IN TERMS OF REDUCED POPULATION EXPOSURE TO POLLUTANT CONCENTRATIONS IN EXCESS OF HEALTH-BASED AIR QUALITY STANDARDS.

Merely requiring additional emission reductions without a clear indication of the actual impact on ambient air quality (which could be positive, neutral, or even negative) could very well result in unnecessary costs and further delay in attaining standards.

3. RIGOROUS MODELING ASSESSMENT OF SOURCE AND CONTROL STRATEGY IMPACTS.

Once all emission sources have been inventoried, each ozone nonattainment area should use the Urban Airshed Model for analysis of ozone control strategies. EPA has recognized in its Final Guidelines for Modeling that this is the preferred model, in part because it can distinguish the temporal and spatial contributions of sources and grouping of sources relative to the observed ozone exceedances. Furthermore, this type of analysis allows one to look at both the advantages and disadvantages of specific control strategies relative to control of

hydrocarbons and/or nitrogen oxides, particularly with regard to population exposure.

Industry is willing to pay part of the cost of collecting the extensive data inputs necessary to run these sophisticated models. The consequences of applying ineffective controls can be extremely costly, in terms of health, societal and economic impacts on the affected region. It is preferable to spend money up-front to develop effective control measures than to spend it on measures which later prove to be ineffective or even counterproductive.

4. STRESS AIR QUALITY IMPROVEMENT AT LEAST COST

The full array of potential tactics affecting all emission source types-- industrial, mobile, commercial, municipal, and miscellaneous "area" sources-- should be assessed, using the Urban Airshed Model, in terms of their actual contribution to air quality improvement. Measures providing the greatest reduction in population exposure at the least cost should have highest priority for implementation. The remaining measures should then be ranked in descending order of impact and descending order of cost to determine priority for implementation.

If all potential strategies are not examined, a post-1987 program will miss its target. As an example, recent studies on mobile source emissions conducted in conjunction with the evaluation of the current vehicle inspection and maintenance program show clearly that if all vehicles complied with their emission standards, ozone attainment in the South Coast Air Basin would be a real possibility. Yet, there are no mobile source inspection and maintenance programs that are as rigorous as existing compliance and enforcement programs for industrial sources.

5. OVERHAUL OF PRESENT NEW SOURCE REVIEW RULES TO BETTER RECONCILE AIR QUALITY AND ECONOMIC OBJECTIVES BY REMOVING DISINCENTIVES TO MODERNIZATION OF EXISTING SOURCES, AND TO PROVIDE FOR NEW BUSINESS GROWTH BY ALLOWING INNOVATIVE OFFSETS FROM TRANSPORTATION SECTOR EMISSION REDUCTIONS.

6. ASSESSMENT OF THE AIR QUALITY IMPACTS OF RECENT UPWARD REVISIONS TO POPULATION PROJECTIONS, AND POTENTIAL MEANS TO MITIGATE THESE EFFECTS.

As noted, technological controls on new and existing industrial and mobile sources were sufficient in the past decade to offset increases in emissions from general residential and commercial growth associated with the addition of more than one million people to the South Coast Air Basin's population. SCAG is now projecting a regional population for 2010 that exceeds previous forecasts for the year 2000 by three million people. Future air quality gains from further technological controls on mobile and industrial sources are likely to be wiped out by the sheer

magnitude of this population growth and its inevitable increase in emissions.

7. PROGRAMS TO PROVIDE AN EFFECTIVE FLOW OF HIGH-QUALITY INFORMATION TO AND FROM THE PUBLIC ABOUT THE STATUS OF AIR QUALITY MEASURES-- BOTH VOLUNTARY AND MANDATORY-- THAT COULD BE IMPLEMENTED, AND THE SOCIAL AND ECONOMIC COSTS OF FURTHER IMPROVEMENTS.

8. IMPROVED INTER-AGENCY COORDINATION AND POSSIBLE RESTRUCTURING OF RESPONSIBILITIES, TO PROVIDE A COMPREHENSIVE, SYSTEMATIC AIR QUALITY MANAGEMENT APPROACH.

Responsibility for air quality management in the South Coast Air Basin is highly fragmented among EPA, ARB, SCAQMD, SCAG and the hundreds of local government entities in the region. Despite the best intentions to work together effectively and efficiently, statutory mandates and authorities have created certain apparent gaps, imbalances and sometimes conflicting regulatory objectives.

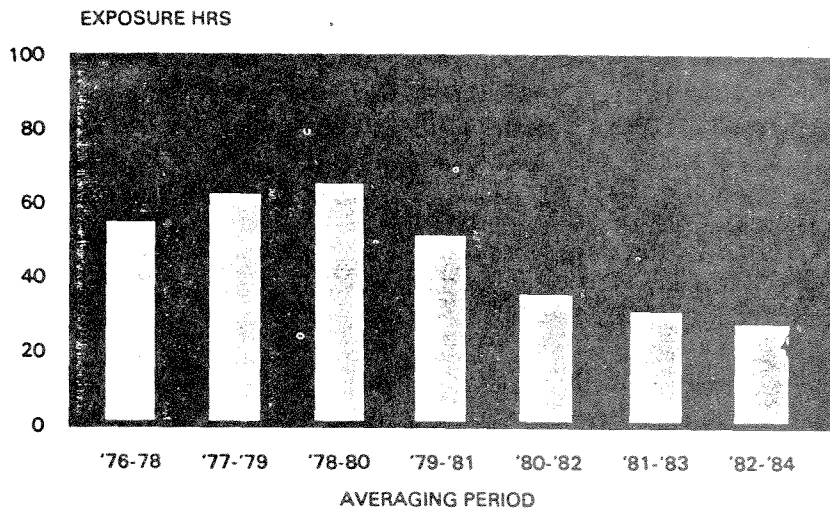
For example, it has become increasingly apparent that the SCAQMD alone, as presently authorized, is seriously constrained in its ability to make significant further improvements in air quality. As noted, the district has adopted the most stringent set of controls and requirements for new and existing industrial sources of any agency in the nation. But the district has no authority over mobile source technology or the transportation system, while mobile sources account for fully 57 and 73 percent of hydrocarbon and nitrogen oxide emissions, respectively.

Findings of the Reasonable Further Progress report for 1985 is also instructive in this regard. While control measures of all types-- industrial, vehicle inspection and maintenance, and transportation system controls-- contributed to the shortfall in actual vs. predicted emission reductions, the largest share of the deficiency was attributable to the transportation control measure strategies, which accounted for a 22.7 ton per day shortfall in hydrocarbon emission reductions. This can be compared to the 3.1 tons per day shortfall in industrial controls (excluding a one-time baseline adjustment).

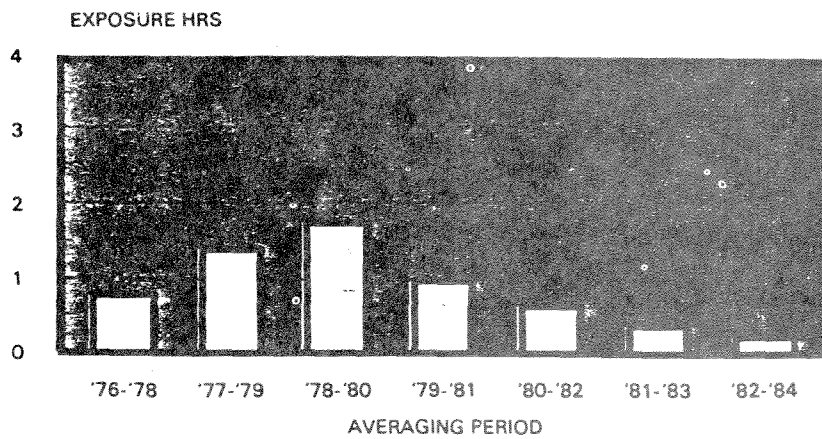
These examples point to the need to thoroughly analyze present institutional roles, responsibilities, resources and authorities. Such an assessment should provide the basis for possible legislative changes designed to create a highly effective and systematic institutional structure to ensure further progress toward attainment of standards.

The Council appreciates the opportunity to present these suggestions. CCEEB believes that all interested and affected parties must work together if we are to make real progress to improve air quality without unduly restricting economic growth, and we pledge our assistance in such cooperative efforts.

3 YEAR RUNNING MEAN OF BASIN POPULATION-WEIGHTED OZONE EXPOSURE



HRS AT OR ABOVE 20 PPHM FOR AVG RESIDENT

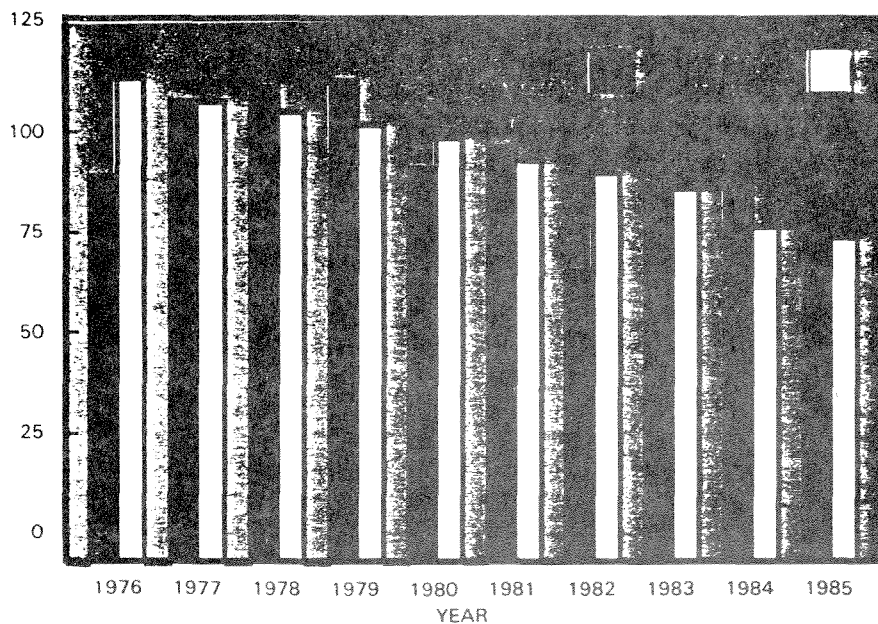


HRS AT OR ABOVE 35 PPHM FOR AVG RESIDENT

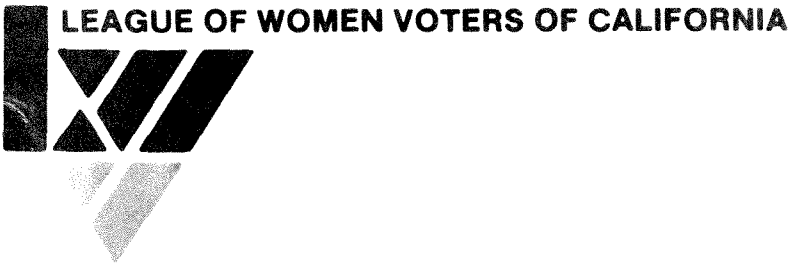
Source: South Coast Air Quality Management District

OZONE EPISODE DAYS, MAY-OCTOBER

Ozone Episodes generally occur during the May-October smog season. This graph shows the number of actual Stage I Episode days in the Basin during this period, and the weather-adjusted days for each year.



Source: South Coast Air Quality Management District



November 7, 1986

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TO: Assembly Natural Resources Committee
Assemblymember Byron Sher, Chairman
State Capitol
Sacramento, CA 95814

FROM: Linda Broder, President, LWVC
Alison Fuller, Chair, LWV-SCRTF

RE: Testimony: Interim Hearing, December 5, 1986
Compliance With State And Federal Clean Air Standards

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Members of the League of Women Voters of California and its Southern California Regional Task Force are concerned about the failure to meet federal ambient air quality standards in several metropolitan areas of the state. Since this legislative hearing is being held in the Los Angeles area, we will focus our comments and recommendations on the situation in the South Coast Air Basin. We believe, however, that some of these recommendations will apply to other non attainment areas as well.

We have divided our statement into two parts: (1) the South Coast Air Quality Management District (SCAQMD); and (2) transportation related air pollution control measures.

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SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)

A major problem has been the lack of implementation by SCAQMD of its plans to control stationary sources. A comprehensive Air Quality Management Plan (AQMP) developed by the District and the Southern California Association of Governments (SCAG) in 1982 was not able to demonstrate attainment of ozone and carbon monoxide standards by 1987. Furthermore, the most recent Reasonable Further Progress (RFP) report showed that there is a significant shortfall in targeted emission reductions. According to EPA, the District failed to fully implement thirteen of the twenty four stationary source control measures scheduled in the AQMP for action in 1984.

It appears to us that the District Board has not shown the necessary determination to implement the AQMP. According to the EPA's REEP policy, if adoption is deferred or a rule is weakened, the District has the obligation to substitute another measure that results in the same reduction in emissions. The League regrets that this has not been done or even seriously considered by the Board.

Although the EPA and Air Resources Board already have the power to act when a local air quality management district fails to pass necessary regulations, this power has been used minimally.

State legislation is needed to increase the effectiveness of the SCAQMD, and possibly other air quality management districts. We recommend the following.

SCAQMD GOVERNING BOARD

- Conflict of interest provisions should be strengthened.
- The District Board should comply with the requirement in current law that officially selected Board members must attend Board meetings at least 50% of the time. In many cases alternates attend regularly. In the League's opinion this results in less accountability to the public.

The law also needs to be clarified as to whether the 50% provision applies annually or over the entire term of the appointment.

ADVISORY COUNCIL

- The role of the Advisory Council in District affairs should be strengthened. The Board should facilitate information gathering by the Advisory Council and seek the Council's input into Board decisions.

PUBLIC ADVISOR'S OFFICE

- The Legislation establishing the Public Advisor's Office has a 1989 "sunset" clause. We urge an extension.

IMPLEMENTATION

- State legislation should tighten up implementation requirements so that measures proposed in the AQMPs of air districts are accomplished and Reasonable Further Progress targets are met.

TRANSPORTATION RELATED AIR POLLUTION CONTROL MEASURES

The other major reason, and the most significant, for failure to demonstrate Reasonable Further Progress (RMP) toward attainment of federal air quality standards is transportation related.

-- The Inspection and Maintenance (I @ M) Program has achieved some success, but the emission reductions were significantly less than anticipated in the 1982 AQMP. According to the 1984 RFP, emission reductions were 94.6 tons/day for carbon monoxide (CO) and 14.2 tons/day for reactive organic gases (ROG), rather than the AQMP estimated reductions of 358 and 27 tons/day respectively. Although the present biennial I @ M Program may result in somewhat greater reductions as the program matures, the League believes that an annual I @ M Program is necessary in order to contribute more substantially toward achieving ambient air quality standards. We urge the legislature to amend the current law to require annual inspections. We are pleased that Senator Presley's Bill, SB 152, which passed in 1985, amends the current law to include diesels in the I @ M Program, and we urge that diesels be included in an annual inspection program as well.

-- Another significant transportation related matter is the increase rather than the decrease in the number of vehicle miles travelled (VMT). An employer-directed ride sharing measure was listed in the 1982 AQMP with an estimated reduction of 50.8 tons/day of CO and 4.0 tons/day of ROG. After more than a year of workshops and hearings the District Board voted against the staff proposed ride sharing regulation.

There are now several jurisdictions that are considering ride sharing ordinances. The legislature should assist cities and counties, possibly by offering incentives, in implementing this and other measures that would improve air quality. Examples of such measures are: alternative (cleaner) fuel use by fleet cars, and use of low emission vehicles.

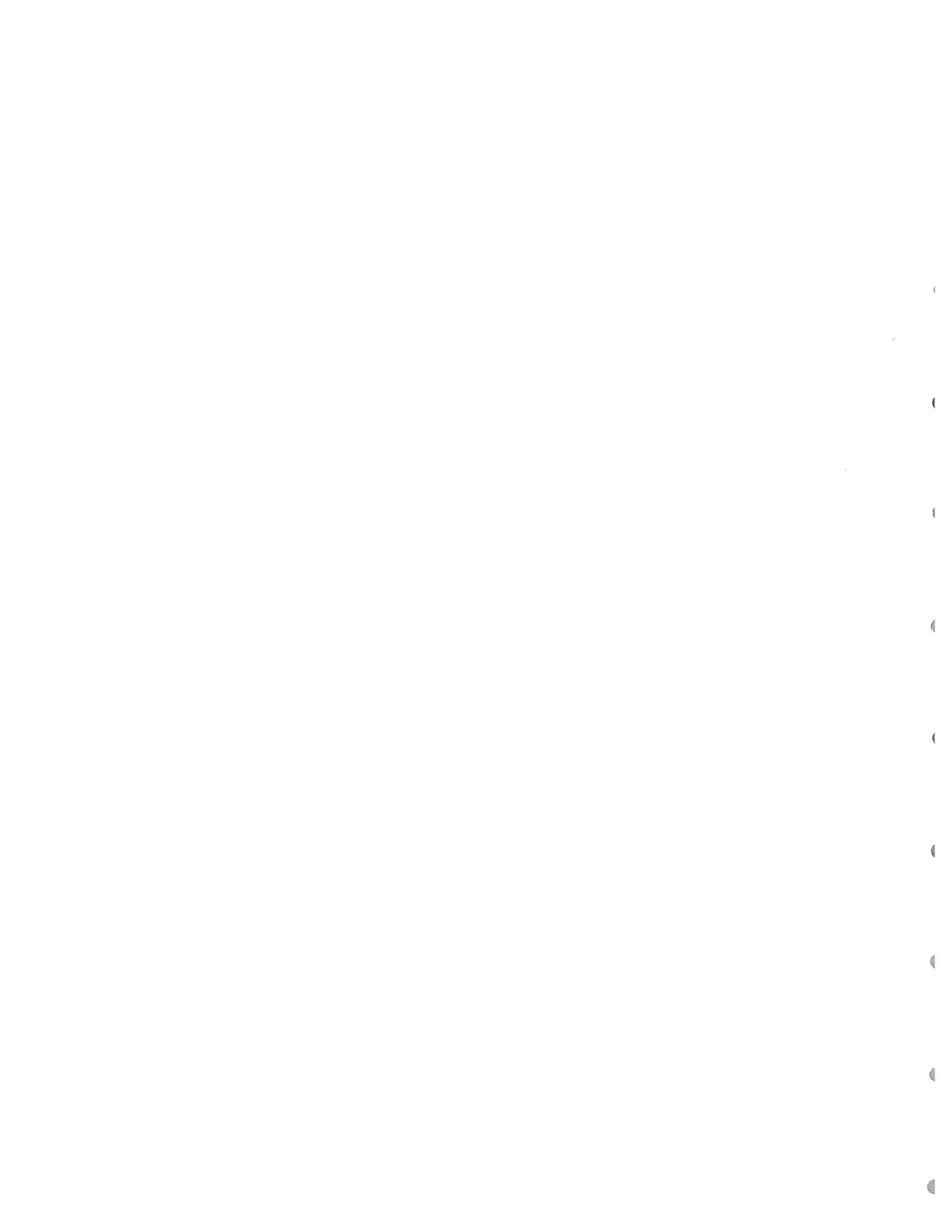
These transportation related measures as well as energy conservation and land use planning measures were developed for the AQMP by SCAG. However SCAG lacks regulatory power.

Considering the intractable nature of air pollution problems in this area, all levels of government need to work together in the most effective manner possible in order to achieve the goal of cleaner air.

Our testimony today is based on air quality positions developed from a consensus of our members. The League supports measures to establish air quality standards that protect the public health and welfare, and the development of effective enforcement and implementation procedures.

Linda Broder, President, LWVC

Alison Fuller, Chair, SCRTF



Presentation
by
James M. Lents, Executive Officer
South Coast Air Quality Management District
before the
Assembly Natural Resources Committee
Byron D. Sher, Chairman
at
Los Angeles, California
December 5, 1986

* * *

Mr. Chairman and Members of the Committee, my name is James M. Lents. I am Executive Officer of the South Coast Air Quality Management District. I appreciate your extending to me the opportunity to appear before this Committee. I will initially share with you some general data concerning air quality problems in this basin and conclude by answering the six questions you addressed to me in your invitation.

This District has some of the worst air quality in the nation. Chart #1 helps to illustrate this point. EPA has set national standards for six criteria pollutants. Los Angeles violates four of those six standards. Ozone standards are violated by more than 300% in some locations while carbon monoxide standards are violated by more than 200% in other locations. Los Angeles ozone levels are the highest in the nation. Similarly, Los Angeles is the only nitrogen dioxide nonattainment area and is among the worst three carbon monoxide nonattainment areas in the nation.

These problems are created by two important factors. First, Los Angeles houses a large mobile population and a large industrial base. Second, the natural ability of the atmosphere to dissipate pollutants is severely restrained due to meteorological conditions in this Basin. Chart #2 illustrates this latter point. In order to meet ozone standards in Los Angeles, the District has to find ways to keep emissions of organics to .042 pounds per day per capita which is equivalent to approximately 227 tons per day. The control agency in San Francisco need only to hold such emissions to .165 pounds per day which is equivalent to approximately 430 tons per day. Since population in the South Coast Air Basin is approximately double that in the Bay Area, the South Coast can allow only one-fourth the emissions on a per capita basis as San Francisco.

When the District attempts to solve these problems, it is faced with a broad range of sources which must be controlled. Chart #3 illustrates the major source categories of reactive organic gases which enhance the formation of ozone. As can be seen, mobile sources, as well as solvent use, other mobile, petroleum processing and industrial processing, are major contributors. Charts #4 (CO), #5 (NOx), and #6 (PM10) illustrate this same point for carbon monoxide, nitrogen oxides, and directly emitted particulate matter.

The District has made progress in improving air quality in the South Coast Basin. Today, the worst air pollution levels of ozone, carbon monoxide, and nitrogen dioxides have decreased generally by about 20% from 1970 levels. This is in spite of significant population growth in the District. Public exposures to air pollution above federal health standards have declined by 33% to 60%.

Unfortunately, we are still significantly above safe levels of air pollution. Thus, the Legislature, the ARB, and the District must put into place significant additional control measures in order to enhance our progress. The District, in cooperation with the ARB and the EPA, is in the early stages of developing a program for this process. Chart #7 illustrates some potential future scenarios which I will review for the year 2000. The impact of these scenarios on reactive organic gases (ROG) is illustrated in Chart #8.

Scenario "A" represents the situation in which mobile source and stationary source regulations are maintained as they exist today and growth occurs as presently predicted by the Southern California Association of Governments. This scenario shows that there will be a reduction in ROG even if little else is done, due to regulations already passed by the ARB and the District. This reduction, however, will still leave the area considerably short of full attainment. If most of the regulations suggested in the District's just-released Short Range Control document (Scenario "C") are implemented, organic emissions will be lowered significantly further. If our policy-makers would find a way to remove or mitigate the emissions associated with projected population growth (Scenario "D"), ROG emissions could be reduced to less than one-half of what they are today. This would still not lead to attainment, but would result in very few ozone alerts in the basin. Today alert levels of ozone occur on about 100 days per year.

Chart #9 illustrates the same scenarios for carbon monoxide. Chart #10 shows the situation for nitrogen oxides, and Chart #11 shows the situation for fine particulates. In all cases emissions can be significantly improved, resulting in attainment of carbon monoxide and nitrogen oxide standards, and reductions in exceedances of the fine particulate standard.

In summary, attainment or near-attainment of air pollution standards can be achieved in the District if the District, ARB, and the Legislature work together to:

- Increase the effectiveness of existing District control programs
- Add further tough stationary source controls
- Fully offset stationary source growth
- Continue tough policies with respect to vehicular tailpipe emissions including continuation of, and innovation with respect to, the Inspection and Maintenance Program
- Manage expected growth in vehicular traffic in the Basin
- Achieve a significant infusion of methanol or similar fuel into the District's vehicular populations.

The legislature can facilitate progress in the District if it would:

- A. Clearly assign authority for regulation of indirect sources with respect to Travel Routing and Vehicular Trip Reduction;
- B. Require air quality elements in all "general Plans" to address Traffic Management, Job/Housing Balance, and Accounting for Growth-Induced Emissions Increases;
- C. Give the District authority to specify fuel quality and types of fuel to be used in certain motor vehicles;
- D. Give the District authority to allow use of fees as emission reduction incentives, restrict time and location of stationary source emissions, ban sales and use of products that contribute to air pollution;
- E. Extend and improve the Inspection and Maintenance program to increase its effectiveness.
- F. Expand state research efforts to develop low-reactivity, low-toxicity solvents and develop demonstration projects of potential new control strategies.

Turning now to the questions you addressed to me in your invitation, I have the following response.

The Reasonable Extra Efforts Program--REEP--as proposed by the EPA is consistent with the District's belief that further air pollution control strategies must be implemented in the District. We are determined, however, that the REEP program not

be allowed to pull the District away from proper long-range planning and prioritization of control strategies or result in inadequate local review of air pollution control strategies. I believe that it is possible to reconcile our concerns with respect to the REEP program and still maintain the District's planning process.

In the remainder of my presentation, I will address your questions regarding our enforcement program. For Fiscal Year 1985-86, there were more than 59,000 compliance inspections made at facilities ranging from small dry cleaners, paint shops and service stations to the more complex operations encountered at refineries, steel plants, chemical plants, resource recovery facilities, cogeneration facilities, waste disposal sites, power plants and auto manufacturing facilities. There are approximately 65,000 units of equipment under permit at over 32,000 sites operated by more than 20,000 firms.

We have tailored our frequency of inspection for these sources based on the emission potential, equipment complexity, compliance history, complaints received and to some extent the size of the facility. Major sources, sources subject to National Emission Standards for Hazardous Air Pollutants (NESHAPS), New Source Performance Standards and Regulation XI (Source Specific Standards) are generally inspected at least once annually; others may be inspected quarterly and some, depending on their compliance problems, may be inspected several times a month. Sources such as landfill-waste sites having a potential for toxic emissions or public nuisance may require almost weekly inspections. Sources with low pollution potential on the other hand may be inspected every two or three years.

In performing a compliance inspection, we make a visible emission evaluation at all potential emission points; inspect all equipment for required permits, make specific tests where appropriate, and determine whether or not the equipment is operating in conformity with all permit conditions and applicable air pollution laws.

The inspection will include a review of operation, production, material usage and stack monitoring records. Samples of fuels, solvents and coatings are collected and emission points may be tested with portable equipment.

Inspectors will respond to approximately 10,000 complaints this year from citizens who, as you probably know, are becoming increasingly aware of the effects of air pollution and the potential health effects of toxic and hazardous materials. When we receive a complaint, an inspector is dispatched to the location where he or she interviews the complainant, investigates to identify the source, nature, and extent of the problem and takes appropriate action to abate the problem.

The District's Enforcement policy is to issue a Notice of Violation for every exceedance of an emission limitation. For procedural rules, the inspector will issue a

notice to comply or a violation notice depending on the circumstances. The disposition of violation notices falls in three general categories: criminal prosecution, civil litigation, or settlement prior to filing in court. More than \$1,500,000 in total penalties are expected to be imposed as a result of about 4,800 violation notices issued in Fiscal Year 1986-87.

VARIANCES

Variations are an often misunderstood but necessary element of an effective enforcement program. Occasionally a source operator may find certain equipment out of compliance and wish to continue operating it while he or she works to solve the problem. This may be legally done by obtaining a variance, a temporary administrative exception to a law, rule or regulation. A variance cannot be granted by the South Coast Air Quality Management District Board or its' staff. It may be granted only by the Hearing Board--an independent quasi-judicial body which must make the following findings (California Health and Safety Code Section 42352): (a) that a violation is or will be taking place, (b) that, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing or elimination of a lawful business, and (c) that such taking or closing would be without a corresponding benefit in reducing air contaminants.

Variance proceedings are initiated by the source owner/operator by filing a petition. After due public notice the petition is heard with all parties presenting their evidence. The District may oppose the variance if it believes it is unwarranted. Members of the public may testify at these proceedings. In judging the case, the Hearing Board considers the law, rule or regulation that has been violated, the severity of the violation, technical problems, and the advantages and disadvantages to the public and the business involved.

If the variance is granted, the Hearing Board may impose conditions to bring about compliance at the earliest possible date and to limit emissions during the term of the variance. District inspectors are responsible for assuring that all variance conditions are met and that the source has returned to compliance upon expiration of the variance.

During Fiscal Year 1985-86 a total of 339 variances were granted. The number of sources under variance is small compared to the total number of sources. Sources operating under variance are responsible for a maximum daily emission rate for volatile organic compounds of 0.8 tons per day. This is some one-tenth of one percent of all non-vehicular sources. This level of emissions does not contribute to measurable air quality degradation.

COMPLIANCE RATE

During Fiscal Year 1985-86 there were 59,560 inspections resulting in 5,029 Notices of Violation for an overall compliance rate of 91.6%, or non-compliance of 8.4%. For non-complying sources, the District has a two-pronged approach to bringing them into compliance. For the near term, we will vigorously continue to seek the penalties provided for under existing law of a maximum of \$1,000 per day per violation of District Rules and Regulations or the Health and Safety Code, and abatement orders which carry a penalty of a maximum of \$6,000 per day if violated. In addition, we can seek injunctive relief and permit revocation.

For the longer term, we have several programs underway including:

1. Stiffer penalties up to \$25,000 per day starting January 1, 1987. These penalties are made possible through legislation enacted this year (AB 1276).
2. A major review of all existing regulations to identify and correct loopholes, ambiguities and obstacles to effective enforcement.
3. Enhanced training of inspectors to more readily recognize violations in complex operations.
4. A review of the need for additional field personnel.

PERMIT SYSTEM - GENERAL

In our permitting process for stationary sources, State law and District Rules and Regulations require that before a new source is built or an existing source modified, the operator must first secure a permit from the District.

The permit system operates in two phases: a Permit to Construct followed by a Permit to Operate. In the Permit to Construct phase, the applicant provides detailed plans and specifications to a District engineer. Those plans are then evaluated by engineering calculation against the District rules in the areas of emission limits, toxics, and New Source Review. If that evaluation shows compliance with the rules, then a Permit to Construct is issued.

At that time the applicant can begin construction and, upon completion, place the equipment in operation. The Permit to Construct acts as a temporary operating permit. The District engineer then conducts an evaluation on the constructed equipment and may specify testing to ensure that the actual operations conform to the

theoretical analysis originally made on the project. If all is well, a Permit to Operate is issued.

Compliance with the New Source Review (NSR) regulation is evaluated prior to granting a Permit to Construct. That process includes:

1. Providing emission decreases somewhere else which more than compensate for increases associated with the project--this is called an emissions offset;
2. Determining, through a mathematical simulation, whether or not the new emissions will adversely affect air quality in the immediate vicinity--this is called modeling;
3. Providing Best Available Control Technology (BACT) to minimize emissions on a case-by-case evaluation.

The District's engineers in evaluating a new source of pollution for compliance with state law and District requirements will also evaluate the emissions of toxic materials. Where toxics are emitted in quantity (in excess of Regulation XIII thresholds) or in sensitive areas (such as residential, schools, hospitals, etc.), the engineers will require that a health risk assessment be carried out by the applicant using standard emission estimating and modeling techniques to evaluate ambient concentrations followed by a multiple pathway risk assessment.

The engineers will then evaluate the correctness of those emissions and modelers will evaluate the modeling process used in the risk assessment. It is essential to have a sound risk assessment. Since the District does not have health expertise, we must rely on outside help to evaluate the risk assessment document. We have had very excellent help and cooperation from the California Department of Health Services (DOHS) in reviewing such risk assessments.

PERMIT SYSTEM - SOURCES NOT HAVING PERMITS TO OPERATE

After the District has issued a Permit to Construct, the source proponent can construct the equipment and place it into operation. The Permit to Construct acts as a temporary Permit to Operate until the final permit can be issued. In addition, a number of small items of equipment are installed without first securing the required Permit to Construct. When those items of equipment are found by the District's Enforcement Division, the operators are required to submit applications for Permits to Operate. The evaluation is based upon a combined Permit to Construct and Permit to Operate.

The District issues about 11,000 Permits to Construct and Permits to Operate each year. At any one time, there are about 4,500 applications awaiting Permits to Operate. That number includes those that were installed prior to obtaining a permit and those items of equipment which were placed in operation following a Permit to Construct.

It is important to note that these statistics represent individual items of equipment and that a new facility will have a number of items of equipment applied for at the time the permit process begins.

In carrying out new emissions reduction policies, as new rules are passed, there is a materials use situation, such as solvent content, and an emissions control situation. In both cases the District contacts sources and notifies them of the new requirements. Enforcement follows up by inspecting affected sources for compliance. In the control situation, new applications for permits would be filed for air pollution control equipment. In addition, District staff believes it to be appropriate for rule changes to provide for the periodic review and updating of permits to reflect Best Available Control Technology and other rule changes.

COALITION FOR CLEAN AIR

309 Santa Monica Blvd., Suite 212.
Santa Monica, CA 90401 (213) 451-0651



OCTOBER 22, 1986

FOR IMMEDIATE RELEASE

CONTACT: Kelly Hayes-Raitt, (213) 451-0651

LA'S FUZZY AIR UNDER SCRUTINY BY SENATE OVERSIGHT HEARING:
CITIZENS GROUP CALLS FOR REMOVAL OF SOUTH COAST DISTRICT BOARDMEMBERS

Southern Californians choke on unhealthful air, primarily because the South Coast Air Quality Management District (SCAQMD) "treats air pollution as a nuisance, rather than as a public health problem," charged Mark Abramowitz, Project Director of the Coalition for Clean Air. The comment was made today during an oversight hearing on the regional regulatory agency sponsored by Senator Robert Presley (D-Riverside).

The South Coast Air Basin, which includes Los Angeles, Orange, Riverside, and San Bernardino Counties, suffers from the worst air pollution in the nation. Although the federal health-based ozone standard has been determined to "provide little margin of safety," according to Environmental Protection Agency Administrator Lee Thomas, Southern California's air exceeded that inadequate ozone standard by 160 days last year -- nearly half the year.

The SCAQMD does not expect ozone levels to meet the current federal standard for at least another 34 years. "That's a whole generation of kids growing up with weakened lungs and hazy horizons," said Coalition for Clean Air Executive Director Kelly Hayes-Raitt.

Citing an April 25, 1986, letter from the Environmental Protection Agency to the SCAQMD, Abramowitz stated that the District's failure to fully implement 53 of 99 clean air measures outlined in the SCAQMD's Air Quality Management Plan in 1982, indicated a "poor enforcement attitude."

Noting that the SCAQMD has "only about 100 field inspectors to inspect 60,000 permit units," Abramowitz charged that "the District leadership seems intent on doing only the minimum, rather than on doing its job with maximum effectiveness and efficiency."

Last May, the Coalition for Clean Air released a report card grading the

Remember?

SCAQMD Boardmembers on ten key clean air votes. Nine of the 14 Boardmembers "flunked their clean air quotients," according to Hayes-Raitt. "These are public officials entrusted with protecting and improving air quality. If they aren't doing their job, who can we trust to safeguard our health and clean our air?"

The release of the report card began a flood of inquiries into the SCAQMD Board's activities. Five federal and state agencies and committees are scrutinizing the South Coast's air problems. According to Hayes-Raitt, the Federal Government Accounting Office, the EPA, the California Air Resources Board, Senator Presley's Budget and Fiscal Review Subcommittee, and State Assembly Representative Byron Sher's Natural Resources Committee all have ongoing or pending investigations.

Because the SCAQMD Boardmembers representing cities in each of the four counties consistently vote to weaken or delay important clean air measures, Abramowitz called for removing these positions from the Board. "When a cities' representative is performing poorly, can some accountability reasonably be exercised through 50 or more entities?"

[Rolling Hills Estates Mayor Tom Heinsheimer (Los Angeles County) scored 40%. Anaheim Mayor Don Roth (Orange) scored 30%. Palm Springs Council Representative John Doyle and Hemet Council Representative Pat Herron (Riverside) scored 20%. Ontario Mayor Faye Myers Dastrup (San Bernardino) scored 30%. The Coalition determined the scores by selecting the ten major issues considered by Board in the last two years.]

Abramowitz summarized, "The District's mischaracterization of the magnitude and causes of the smog problem is nothing less than a great scam perpetrated on the public."

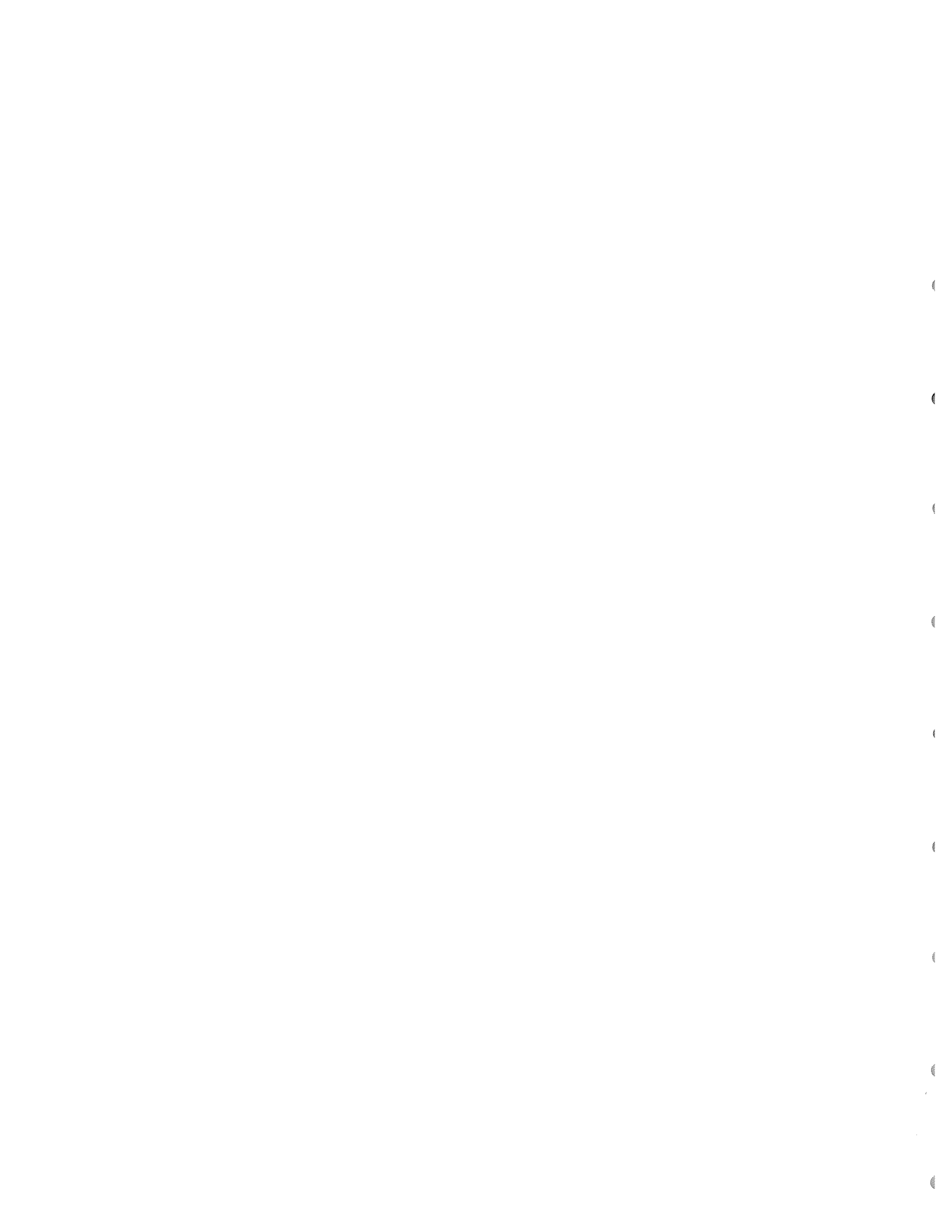
New health data from the Environmental Protection Agency indicate that currently-allowed levels of ozone result in a significant reduction in respiratory function, even in healthy exercising adult males. Children have suffered from impaired lung function for as long as a week following four days of breathing ozone at typical Southern California levels.

High levels of ozone, the main component of smog, damage plants, reduce crop yields, deteriorate fabrics and rubber, and reduce lung and respiratory function. Oxides of nitrogen (NOx), a main component of ozone and the major pollution problem in the Basin, help create acid fog, which corrodes aluminum, cement, galvanized steel, and paint.

Agriculture, California's second largest industry, loses as much as \$1 billion each year from smog damage, according to the California Air Resources Board. Crops in contact with ozone suffer from stunted growth, reduced yield,

and increased susceptibility to disease and insects. Beans, spinach, lettuce, and grapes are no longer grown commercially in Los Angeles County, due to smog damage.

The Coalition for Clean Air is a statewide, non-profit citizens' organization dedicated solely to the elimination of air pollution.



JOINT STATEMENT

ON

Air Quality Progress in the Southcoast Air Basin
presented by

Kelly Hayes-Raitt, Executive Director, Coalition for Clean Air

and

Stanley L. Zwicker, Manager Environmental Programs, Unocal

Before the

Budget and Fiscal Review Subcommittee # 2

Ontario, California

October 22, 1986

This statement is intended to convey the observations and recommendations of a diverse group of individuals from the public interest, regulatory and industrial communities on some fundamental issues regarding the air quality problems of the South Coast Air Basin and of the difficult decisions that lie ahead to improve our air.

We are all acutely aware of these problems and it is noteworthy that representatives from these diverse perspectives have agreed on such fundamental issues. Clearly, there are institutional problems which have contributed to our continuing concern for clean air. We are presenting this

statement jointly to signal our strong desire to have all interested parties work together to make meaningful progress toward better air quality.

This statement reflects our areas of general agreement. It is by no means exhaustive and there are additional issues upon which no consensus exists. However, the issues that we have agreed upon are focused on some fundamental problems: the stumbling blocks within the system that complicate meaningful progress toward achievement of air quality goals.

We have identified eight issues that warrant attention:

1. It is becoming increasingly apparent that our regulatory agencies need a common commitment and the aggressive leadership to achieve clean air goals.

2. The EPA, ARB, AQMD and SCAG have related responsibilities which often appear to be implemented autonomously and which tend to confuse the regulated community and the general public. Improvements can be made only if the EPA, ARB, AQMD and SCAG work together to implement a systems approach toward attaining air quality standards.

3. This systems approach clearly must involve all sources of emissions: stationary, mobile, domestic, commercial, transportation and municipal. Each of the four agencies has an essential role in the overall effort to meet federal health-based and other air quality standards and goals.

4. This approach must also be applied fairly, openly and equitably in all aspects of rulemaking, permitting and enforcement.

5. There must be strict enforcement of all rules and regulations and no incentives for noncompliance.

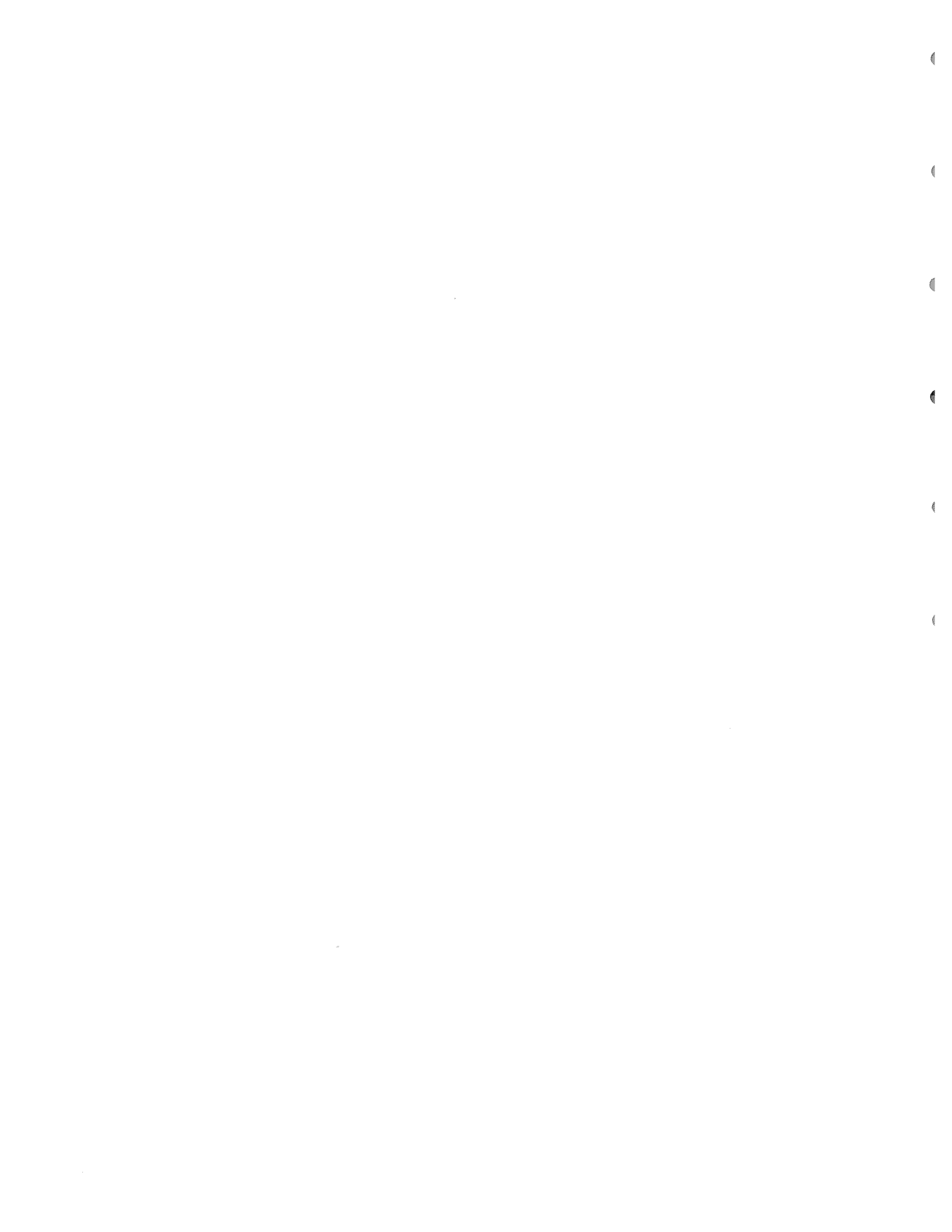
6. The impact of residential and commercial growth in the Basin on air quality must be addressed. Improved land use planning would begin to address this problem.

7. This systems approach must ensure a proper balancing of authority and resources, between the regulatory agencies to effectively reduce the air quality impacts of land use and transportation.

8. Unhealthy air is a community-wide concern. The public health implications of non-attainment have not been made sufficiently clear to the public. Therefore, all four regulatory agencies must candidly communicate with the public in order to gain community support for improved air quality.

New approaches for consideration include: legislation that is more responsive to the air quality problems of the 1980's; revised inter-agency memoranda of understanding which more definitively outline and clarify each regional agency's responsibility; and a review of the lines of authority and the allocation of resources necessary to make these new initiatives effective. These options are not mutually exclusive or exhaustive.

There is a statutory and regulatory vacuum which lies less than 14 months away with the approach of the attainment deadlines of the Clean Air Act. We, from the public interest, regulatory and industrial communities, wish to work with the legislators in solving these problems. We encourage your Committee to take a leadership role in establishing effective procedures whereby we can work with you in making meaningful progress toward cleaning up the air.





COUNTY OF SACRAMENTO

AIR POLLUTION CONTROL DISTRICT

NORM COVELL
AIR POLLUTION CONTROL OFFICER
9323 Tech Center Drive, Suite 800
Sacramento, California 95826
(916) 366-2107

December 2, 1986

Honorable Byron D. Sher, Chairman
Assembly Natural Resources Committee
State Capitol
Sacramento, CA 95814

Dear Assemblyman Sher:

As a result of scheduling conflicts on December 5, 1986, I will be unable to attend the Interim Hearing of your committee in Los Angeles. I have attempted to answer the questions set forth in your letter of November 19th. The response is attached.

I understand your committee's concern for the stationary source contribution to the air quality problems throughout California. Sacramento has been attempting to reduce emissions from such sources for a number of years, and for the most part has been successful. Sacramento is not heavily industrialized as evidenced in the attached responses to your questions. Emissions from permitted stationary sources contribute approximately 6% of the Volatile Organic Compound emissions, while area sources, such as, application of paints, paving roads, applying pesticides etc. contribute an additional 27%. The remaining 67% result from motor vehicle use. In addition, over 95% of the carbon monoxide emissions in the Sacramento area are emitted by the use of motor vehicles.

The California Air Resources Board has done a credible job in reducing emissions from new vehicles manufactured for sale and use in California. The effectiveness however, has reached a point of diminishing return as a result of increasing population and use of motor vehicles. This is evidenced by recent statistics which show that the vehicle miles traveled in Sacramento have increased more than 70% above the state wide average increase over a period from 1981-1985. The single occupant use of vehicles is the major contributor to degraded air, and such use of vehicles is the major remaining unregulated source. Local APCDs can continue to chip away at additional stationary source control strategy, and become more efficient at present programs, which we will be doing, but until a serious effort is directed at the transportation contribution to the problem, exceedence of air quality standards will be reality. Legislation and funding to deal with transportation control measure development, implementation and enforcement is greatly needed.

APCDs in California currently implement rules and regulations, many of which are technology forcing, and final compliance dates have been relaxed when technology has been unable to keep pace. Our program will be looking at some

Honorable Byron D. Sher

Page 2

December 2, 1986

additional sources for reduction of emissions such as paper film and fabric coating and fiberglass and resins, but for the most part, the major reductions in emissions from stationary sources have already occurred.

We are in the process of expanding staff to address a permit review backlog and increase coverage of source inspections. A permit fee increase approved by our Board will provide the funding for additional staff. It must be understood that permit fees charged to stationary sources can not be utilized to cover the cost of local district involvement in land use/transportation related issues. We must rely on subvention funds from the state or EPA grant funds which are available to some local districts. Local districts are faced with increasing mandates from the state and federal government that compete with existing dollars. Additional funds are needed which are dedicated for work by local government in dealing with transportation/air quality related problems.

I trust this information will be helpful to you and your committee and I thank you for the opportunity to provide comments.

Sincerely,



NORM COVELL
Air Pollution Control Officer

NC3:rj

Attachment

SACRAMENTO COUNTY
AIR POLLUTION CONTROL DISTRICT
RESPONSE TO QUESTIONS OF
ASSEMBLY NATURAL RESOURCE COMMITTEE

QUESTION 1

What is the reaction of your district to EPA's proposed Reasonable Extra Efforts Program (REEP)?

Sacramento County is one of four areas in California that will not achieve the National Ambient Air Quality Standard for ozone by the end of 1987. This was predicted in our 1982 Air Quality Plan required of the Federal Clean Air Act. We therefore support the REEP as a mechanism whereby additional time, and to a degree, additional resources become available to deal with a very pervasive problem. While REEP will afford the opportunity to evaluate further control strategies for implementation, it most certainly can not be viewed as the answer to 1987 nonattainment problems. Issue of concern regarding REEP are:

- * Fairness - Many areas of the country will not attain the air quality standard by 1987. Yet it appears only four areas in California are subject to all of the EPA sanctions. At the end of 1987 there will be no real distinction - all areas that exceed the ozone standard should be handled in a similar manner.
- * Process - Negotiation has to be part of the process in order to determine the most appropriate package of strategies for a particular area. Technical, social and economic factors must be considered, but appear absent from the Federal Register notice.
- * State Implementation Plan - We are concerned that REEP focuses on stationary source control. In areas such as Sacramento, transportation controls must receive the primary focus since they are the dominate emission source. EPA recommendations need to be formulated detailed and formally transmitted to the state and local agencies for negotiation.

REEP is not the ultimate solution, but in the absence of Congressional action to amend the Clean Air Act, it does provide a process whereby we can progress toward attainment and the protection of public health.

QUESTION 2

How many stationary sources are located in your district? How frequently are those sources inspected by the District? Please briefly describe a routine stationary source inspection.

There are 298 permitted industrial sources in Sacramento County with a total of 1270 permit units. Smaller sources have a single permit unit associated with them. (i.e. tire buffing plants, small dry cleaners, etc.) while larger sources have numerous permitted processes. Additionally, there are 759 permitted gasoline dispensing facilities in the district with a total number of 1910 vapor recovery nozzles and associated systems.

One of our program goals is to inspect all permitted sources at least one annually. In addition, we respond to complaints against permitted or other sources. However, this past fiscal year, we inspected 59% of our permitted industrial sources and 87% of the total permit unit inventory. Inspection coverage of permitted gasoline dispensing facilities was 32% with 44% of all nozzles in the District being inspected at least once.

The annual inspections can be announced or unannounced, but typically they are unannounced. The inspector prepares for the inspection by reviewing the permit folder(s) associated with the plant and will typically take a copy of the permit on the inspection along with the appropriate inspection form for the source. Most of our larger sources have individualized inspection forms that have been created by field staff to streamline the inspection process. For smaller sources, we use a generic inspection form applicable to all such sources (i.e. boilers, perchloroethylene dry cleaners, individual degreasers, etc.)

The inspection is conducted and the form completed. If a significant violation is observed, a Notice of Violation is issued at the completion of the inspection. Followup inspections to assure compliance or document additional days of violation are made as required. Violations worthy of enforcement action are then processed through our mutual settlement program.

QUESTION 3

How many sources in the District are currently operating under variance? Are variances periodically reviewed to ensure that sources do not continue to operate under variance indefinitely?

There are currently three sources operating under a variance. Because we do not have large numbers of sources seeking variances, we can keep a close watch on those who do apply for and receive variances. Our Hearing Board is keenly aware of sources that apply and re-apply for variances. The Board has not granted indefinite and repetitious variances.

QUESTION 4

What is the compliance rate of stationary sources in the district? What rate does this translate into in terms of amounts of emissions? What efforts are being made to bring those sources under compliance?

The compliance rate of stationary sources in the district can generally be described as good. Most sources comply voluntarily with their permit conditions. There is no way to correlate compliance rates into amounts of emissions.

Sources in violation of district rules are brought into compliance through the mutual settlement program, through court actions and by Hearing Board abatement orders.

In FY 1985/86, the District initiated 27 legal actions through the civil settlement process and one action through criminal procedures. Of the 27 civil actions, 26 were settled without court action. The remaining case has yet to be tried. From the 26 cases resolved, \$63,415 in settlements was received.

QUESTION 5A

Please describe briefly the two phase permitting process for stationary sources (e.g. issuance of Authority To Construct/Permit to Operate).

Prior to beginning any actual construction the operator of the proposed stationary source must obtain "Authority To Construct" from the Air Pollution Control District. This allows any potential emissions to be reviewed for compliance with prohibitive regulations, New Source Review, Best Available Control Technology and emission offset requirements. After construction is completed and the stationary source begins operation, there is further evaluation for the Permit To Operate. This may include a physical inspection of the equipment, a test of the pollutants being emitted and a demonstration of proper operation and recordkeeping.

QUESTION 5B

Does the district have sources which have begun operations but which have not received Permits to Operate? If so, how many?

Approximately 150 permit units are operating with no permit to operate. The main reason is lack of staff to carry out the initial permit functions. The sources have been operating between one month and eight months with no initial inspection to confirm compliance with applicable regulations. The initial permit inspections compete for priority with annual permit inspections, complaint investigations and other tasks assigned to field staff.

QUESTION 6A

What procedure does the District use to monitor progress in compliance status?

For sources granted a variance the progress towards compliance is monitored by insuring that the "increments of progress" stated in the variance findings are being met. As near as possible to the date an "increment of progress" is due to source's compliance with the requirement is checked.

QUESTION 6B

Does the District routinely review its rules affecting stationary sources?

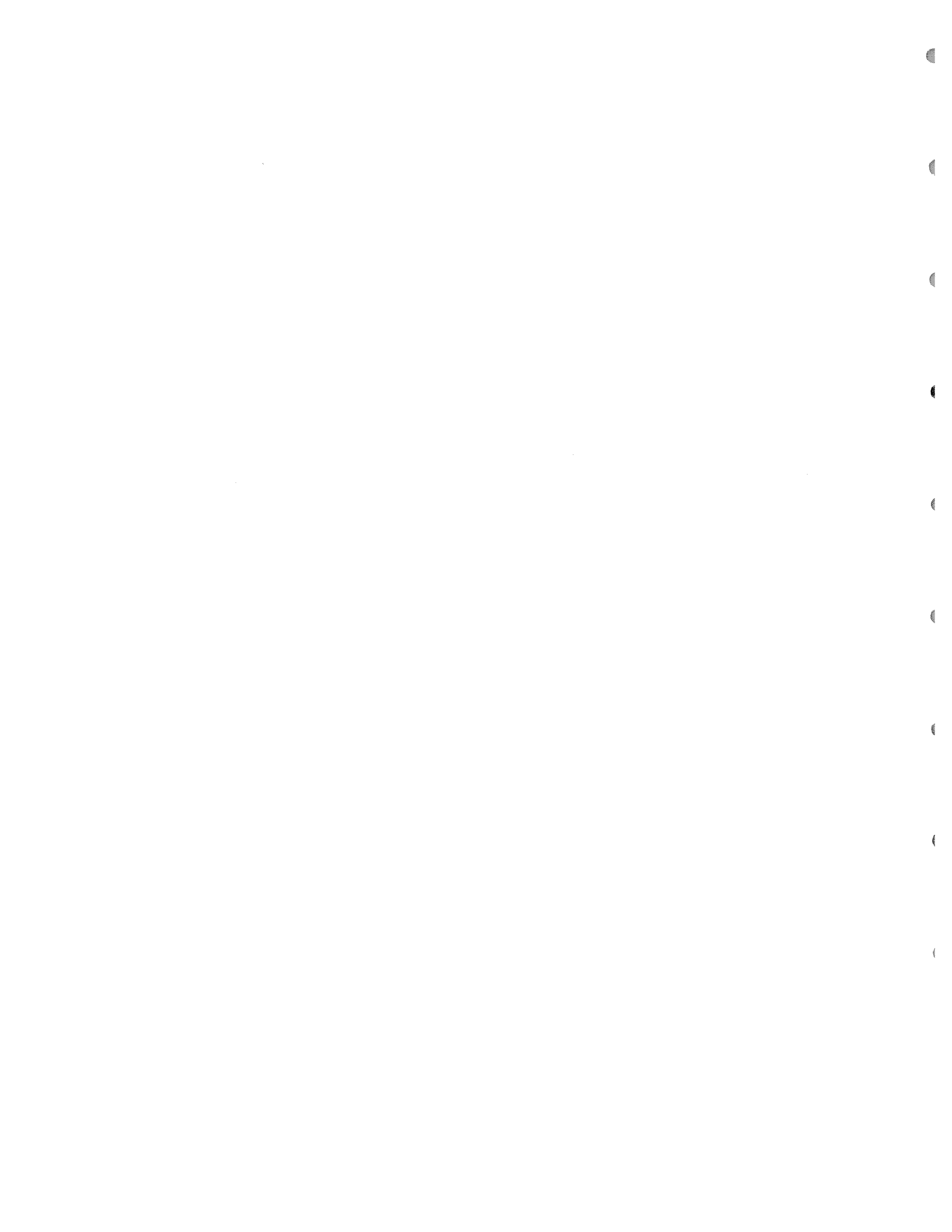
Our rule review process primarily involves comparing the rules of the Bay Area AQMD, South Coast AQMD and San Diego APCD to our existing rules. We rely on their research for rule amendments. Rule review also occurs as a result of a request from industry to consider specific amendments.

QUESTION 6C

Upon annual renewal, are permits revised and updated to reflect and changes in rules?

When the situation occurs that a source is affected by a change in a rule then the Permit to Operate for that source is changed to reflect that rule amendment. The process may occur at the annual renewal date or earlier.

NC16/2





November 25, 1986

Judith E. Ayers
Regional Administrator
U.S. EPA Region 9
215 Fremont Street
San Francisco, CA 94105

Attn: Air Management Division (A-2)

Comments of the Los Angeles Area Chamber of Commerce
on the Reasonable Extra Efforts Program

Dear Ms. Ayers:

On September 26, 1986, EPA published an advanced notice in the Federal Register on the reasonable extra effort program ("REEP"). The Program addresses four post-1987 ozone and/or carbon monoxide nonattainment areas in California. I am submitting these comments on REEP on behalf of members of the Los Angeles Area Chamber of Commerce.

The Los Angeles Chamber represents the business community in the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura. The Chamber focuses private sector action on major issues affecting the economy and quality of life in the greater L.A. area. We are a constructive partner in resolving concerns such as making progress in attaining air quality standards.

I. EPA'S REEP PROPOSAL IS NOT LEGALLY BASED

EPA Has Specific Responsibility Under the Act. The Clean Air Act ("Act") provides EPA with distinct boundaries on its responsibilities for State Implementation Plan ("SIP") revision and approval. Section 110(a)(2)(H) requires EPA to approve a SIP that is adequate to attain air quality standards. This section of the Act requires: "...revision, after public hearing...whenever the Administrator finds...that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard." Section 110(c)(1) requires EPA to adopt a SIP for a state, if a state fails to revise a SIP pursuant to Section 110(a)(2)(H).

The Act clearly requires EPA to revise and approve a SIP so that it is adequate to attain air quality standards. Unfortunately, the Act does not address what EPA should do when attaining the standard is impossible. EPA's SIP revision and approval mandate for attaining the ozone standard by 1987 still remains.

EPA's Proposed "REEP-SIP" Program Requires Notice and Comment. The proposed REEP-SIP will require more stringent measures than reasonably available control measures (RACM). This is not expressly required in the Act. Such actions are "quasi-legislative" in nature requiring public notice and comment under the Administrative Procedures Act (APA):

- 1) The APA requires publishing of notice of proposed quasi-legislative actions and request for public comment. The APA requires EPA to state the basis for its proposed action.
- 2) We believe that EPA's proposed call for a "REEP-SIP submittal" is an expansion of the Agency's SIP review process. This approach is legislative in nature.

The REEP Program May Require a Regulatory Impact Analysis ("RIA"). Executive Order ("E.O.") 12291 requires that agencies proposing a "major rule" submit a RIA to the Office of Management and Budget. This review checks whether the regulation is within the authority of the agency and consistent with Congressional intent. E.O. 12498 requires that each agency submit to the OMB its annual policies to be sure they are consistent with Administration goals.

- 1) Significantly, EPA considers its "control technology guidelines" (CTGs) as rules under E.O. 12291, but not "major rules". EPA's position has been that CTGs contain no new requirements beyond the RACM or RACT standards already provided by the ACT.
- 2) The Act does not expressly provide for REEP's proposed application of "RACT Plus" or lowest achievable emission rate ("LAER") on existing sources. Such REEP provisions may require EPA to conduct an RIA.

The Proposed REEP-SIP Approval Criteria for Controls Appears to be Illegal. As outlined in the notice, EPA is currently developing control measures that it considers to be reasonable for REEP-SIPs. In 51 Fed. Reg. 34433, EPA states: "Unless shown by an adopting agency to be totally inapplicable or ineffective for a specific community, EPA would presume that the REEP-SIP measures specifically identified by EPA would be included for consideration in the REEP SIP (emphasis added)."

The criteria proposed for REEP SIP approval on page 34435 of the Notice states, "...extent to which the State commits to...new federally-mandated controls which EPA may identify...as presumptively reasonable for...urban area...[and] whether the State adequately justifies any failure to adopt and implement controls which EPA identifies...as presumptively reasonable...(emphasis added)."

- 1) We believe it is illegal for EPA to use RACM/RACT standards that go beyond provisions of the Act as presumptive criteria for REEP-SIP approval. This activity violates legal requirements for adequate public notice and comment.
- 2) In essence, EPA is deciding for itself what measures are reasonable. The Agency is imposing a burden on the states to rebut EPA's decisions. Failure to meet that burden could result in SIP disapproval and potential sanctions.

EPA has the burden of demonstrating that SIP control measures are inadequate to attain air quality standards (Sec 110(c)(1)). In effect, EPA is reversing the burden of proof that a SIP is inadequate. The Agency does this by use of a rebuttable presumption in the REEP-SIP approval process for evaluating control measures. This is turning Section 110 on its head and beyond EPA's statutory authority.

II. THE CRUX OF EPA'S PROPOSED REEP: WHAT IS REASONABLE?

The Act is silent about dealing with areas where it is impossible to attain air quality standards by 1987. Sections 110 and 172 of the Act provide states and EPA with clear authority to adopt all reasonably available control measures.

The Crux of the Problem is Determining What is Reasonable. The Administrator's June 1986 speech before the Air Pollution Control Association suggested that states avoid sanctions for intractable nonattainment area by adopting "...all control measures found to be reasonably available at the time..." The REEP notice is internally inconsistent on this issue.

- 1) At one point the notice describes REEP control measures as those "...which are necessary to demonstrate reasonable efforts under Part D..." of the Act. The Agency later describes these control measures as those that are strictly "feasible" (51 Fed. Reg. 34435).
- 2) In requesting comments on how to determine reasonableness, EPA asks whether, "...all available control measures be presumed to be mandatory unless demonstrated to EPA to be infeasible for a specific area" (51 Fed. Reg. 34435).

These contradictions suggest the Agency is thinking of requiring technology without the test of reasonableness provided by Sec. 172 of the Act. As commented above, Agency requirements for states to demonstrate that a measure is "infeasible" goes beyond the Act.

This requirement would trigger an APA mandate for public notice and comment.

We Need New Regulatory Tools to Determine Reasonableness. Until Congress provides clarification on handling impossible nonattainment areas, agencies can adopt additional RACM as currently provided in the Act.

Most existing RACT is already in place. As control technology advances, agencies should assess their cost-benefit and set priority for implementation.

Because ozone exceeds the federal air quality primary standard by 300 percent, the most cost effective controls should receive priority. To arbitrarily apply all technologically available controls is ineffective.

- 1) Not all controls will reduce concentrations of the most harmful pollutant, ozone. Control of elevated sources of NOx can significantly increase ozone or hinder ozone reductions. (Hearing on Controls of Oxides of Nitrogen, Staff Report, SCAQMD, February 1986, pp IV-5 to IV-9).
- 2) Not all hydrocarbon controls are equally effective. Application of all technologically available controls could deleteriously affect the economics and productive capacity of the area's population. Section 101(a)(4)(1) of the Act states Congress' intent to "...promote the public health and welfare and the productive capacity of its population..."

Clearly, cost effectiveness in reducing exposure to unhealthy levels of ozone is the test of reasonableness for RACT.

The SCAQMD has initiated a comprehensive program to assess cost benefit of controls. The results of this effort will provide regulatory tools to determine reasonableness.

- 1) The SCAQMD has launched a Cooperative Air Quality Study. It will develop data and advanced modeling technology to evaluate controls based on their cost effectiveness for improving air quality. With support from the scientific community and industry, the SCAQMD is developing the capability to set priority for controls based on cost per unit of air quality improvement (\$/ppm)
- 2) EPA's guidance document for SIP ozone modeling already gives priority to using advanced photochemical air shed modeling. (EPA's Guideline on Air Quality Models (Revised), July 1986, EPA-450/2-78-027R, Sec.6.2.1, and Appendix "A", Sec.A.8). This modeling approach provides for explicit evaluation of ozone improvements (or decrements) from control proposals.

EPA also recognizes and supports the use of plume dispersion models commonly available. These models are available to make similar evaluations of controls for non-reactive pollutants.

- 3) This approach for determining cost-benefit provides a definitive test of reasonableness relating to effectiveness in reducing exposure to unhealthy air pollution. The REEP program should be explicit in providing such criteria for assessing reasonableness.

III. GOALS FOR MAKING SUSTAINED PROGRESS.

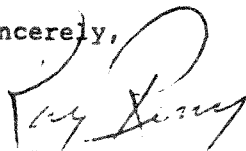
We believe there is substantial opportunity within the Act to help severe nonattainment areas make sustained progress. EPA's REEP proposal should focus on making long range regulatory improvements that will make sustained progress. Listed below are several goals we consider to be important to REEP.

- 1) REEP should redefine interim air quality goals in terms of reducing exposure to peak ozone levels. While we are making progress toward attainment, we should strive to shave peak exposure to unhealthy ozone levels.
- 2) REEP should measure progress toward attainment after 1987 based on reduction in exposure to unhealthy levels of ozone.
- 3) REEP should help states carry out an intensive public education program about the ozone problem. The public needs to know what it will take to make significant progress. The public needs to understand that it is estimated that only about 1/3 of the emissions result from stationary sources. Projected population growth, with its resultant increase in vehicle and domestic and commercial emissions, will exacerbate the problem. The public must realize that any real, lasting solution to ozone reduction requires major changes in transportation control measure and alternative transportation systems.
- 4) REEP should help improve agency coordination and implementation of systematic strategies to deal with the population growth/mobile source emissions problem. Sustained progress will mandate developing long term, cost effective mobile source strategies (ridersharing, electric vehicles, public transit, etc.).
- 5) REEP should help overhaul New Source Review regulations to remove disincentives for existing source modernization to reduce emissions. We also need to encourage use of innovative offsets to allow new business growth.

Judith Ayers - EPA
November 25, 1986
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In conclusion, the Los Angeles Area Chamber strongly believes that reasonable efforts toward attainment can continue in post-1987 areas. However, EPA's REEP proposal goes significantly beyond provisions in the Act and, therefore, appears to us to be illegal. We urge EPA to revise its proposal to bring it within the Act. The Chamber and its members offer to work with EPA in proposing Clean Air Act amendments to address the post-1987 attainment problem. We appreciate the opportunity to comment.

Sincerely,



Ray Remy
President

RR/lep