

EXHIBIT A

§ 39607.5. Calculation of value of credits for emission reductions; methodology; factors

(a) The state board shall develop, and adopt in a public hearing, not later than June 30, 1997, a methodology for use by districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

(b) In developing the methodology, the state board shall do all of the following:

(1) Ensure that the methodology results in the maintenance and improvement of air quality consistent with this division.

(2) Allow those credits to be used in a market-based incentive program adopted pursuant to Section 39616 that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

(3) Ensure that the methodology does not do any of the following:

(A) Result in the crediting of air emissions which already have been identified as emission reductions necessary to achieve state and federal ambient air quality standards.

(B) Provide for an additional discount of credits solely as a result of emission reduction credits trading if a district already has discounted the credit as part of its process of identifying and granting those credits to sources.

(C) Otherwise provide for double-counting emission reductions.

(4) Consult with, and consider the suggestions of, the public and all interested parties, including, but not limited to, the California Air Pollution Control Officers Association and all affected regulated entities.

(5) Ensure that any credits, whether they are derived from stationary, mobile, indirect, or areawide sources, shall be permanent, enforceable, quantifiable, and surplus.

(6) Ensure that any credits derived from a market-based incentive program adopted pursuant to Section 39616 are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with paragraph (2).

(7) Consider all of the following factors:

(A) How long credits should be valid.

(B) Whether, and which, banking opportunities may exist for credits.

(C) How to provide flexibility to sources seeking to use credits so that they remain interchangeable and negotiable until used.

(D) How to ensure a viable trading process for sources wishing to trade credits consistent with this section.

(E) How to ensure that, if credits may be used within and between adjacent districts or air basins where sources are in proximity to one another, the use occurs while maintaining and improving air quality in both districts or air basins.

(c) If necessary, the state board shall periodically update the methodology as it applies to future transactions.

(Added by Stats. 1995, c. 805 (A.B. 1777), § 1.)

§ 40406. Best available retrofit control technology

As used in this chapter, “best available retrofit control technology” means an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source.

(Added by Stats. 1987, c. 1301, § 1.5.)

§ 40714.5. Additional emission reduction credits; permit exempt sources; legislative findings and declarations

(a) The Legislature hereby finds and declares all of the following:

(1) Because of policy considerations, certain sources of air pollution are exempt from district permitting requirements or are not otherwise controlled by districts.

(2) Emissions from some of these sources can be reduced through cost-effective measures, thereby creating additional emission reduction credits.

(3) An increased supply of emission reduction credits is beneficial to local economies.

(4) The purpose of this section is to provide an incentive to generate additional and fully valued emission reduction credits by encouraging emission reductions from these sources without subjecting them to a district permitting process.

(b)(1) With respect to any emission reduction that * * * occurs on or after January 1, 1991, * * * at a source that was and remains exempt from district rules and regulations, the district shall grant emission reduction credits or marketable trading credits without any discount or reduction in the quantity of the emissions reduced at the source unless otherwise provided by law. Emission reduction credits or marketable trading credits issued by the districts for those exempt sources may be reduced only when applied to the permitting of other stationary sources as a result of new source review * * *, or * * * in accordance with any applicable requirement of a marketable trading credit program.

(2) Any credits issued by a district pursuant to this subdivision shall meet all of the requirements of state and federal law, including, but not limited to, all of the following requirements:

(A) * * * The credits shall not result in the crediting of air emissions which are already contemporaneously required by an emission control measure in a plan necessary to achieve state and federal ambient air standards.

(B) * * * The credits shall not provide for an additional discount of credits solely as a result of emission reduction credits trading if a district has already discounted the credit as part of its process of identifying and granting those credits to sources.

(C) * * * The credits shall not, in any manner, result in double-counting of emission reductions.

(D) * * * The credits shall be permanent, enforceable, quantifiable, and surplus.

(3)(A) Until January 1, 1997, this subdivision applies only to sources within the boundaries of the south coast district or in Ventura County.

(B) On and after January 1, 1997, this subdivision shall also apply to sources within the boundaries of the Imperial County, Great Basin Unified, Mojave Desert, Kern County, Santa Barbara County, San Luis Obispo County, bay, Northern Sonoma, Yolo-Solano, Lake County, Colusa County, Mendocino County, and Sacramento districts.

Additions or changes indicated by underline; deletions by asterisks * * *

(C) On and after January 1, 1998, this subdivision shall also apply to sources within the boundaries of the San Diego County, Siskiyou County, Modoc County, Shasta County, Lassen County, Tehama County, Northern Sierra Feather River, Placer County, El Dorado County, Amador County, Calaveras County, Tuolumne County, and Mariposa County districts.

(D) On and after January 1, 1999, this subdivision * * * shall apply statewide.

(Amended by Stats. 1996, c. 610 (A.B.3046), § 1.)

'So in enrolled bill.

§ 40920.6. Best available retrofit control technology and feasible measures; rules; district requirements; emission reduction credits; alternative emission reduction methods

(a) prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 40918, 40919, 40920, and 40920.5, or for a feasible measure pursuant to Section 40914, districts shall, in addition to other requirements of this division, do all of the following:

(1) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.

(2) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this paragraph, "cost-effectiveness" means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons. of the potential control option.

(3) Calculate the incremental cost-effectiveness for the potential control options identified in paragraph (1). To determine the incremental cost-effectiveness under this paragraph, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.

(4) Consider, and review in a public meeting, all of the following:

(A) The effectiveness of the proposed control option in meeting the requirements of this chapter and the requirements adopted by the state board pursuant to subdivision (b) of Section 39610.

(B) The cost-effectiveness of each potential control option as assessed pursuant to paragraph (2).

(C) The incremental cost-effectiveness between the potential control options as calculated pursuant to paragraph (3).

(5) Make findings at the public hearing at which the regulation is adopted stating the reasons for the district's adoption of the proposed control option or options.

(b) A district may establish its own best available retrofit control technology requirement based upon consideration of the factors specified in subdivision (a) and Section 40406 if the requirement complies with subdivision (d) of Section 40001 and is consistent with this chapter, other state law, and federal law, including, but not limited to, the applicable state implementation plan.

(c) A district shall allow the retirement of marketable emission reduction credits under a program which complies with all of the requirements of Section 39616, or emission reduction credits which meet all of the requirements of state and federal law, including, but not limited to, the requirements that those emission reduction credits be permanent, enforceable, quantifiable, and surplus, in lieu of any requirement for best available retrofit control technology, if the credit also complies with all district rules and regulations affecting those credits.

(d) After a district has established the cost-effectiveness, in a dollar amount, for any rule or regulation adopted pursuant to this section or Section 40406, 40703, 40914, 40918, 40919, 40920, 40920.6, or 40922, the district, consistent with subdivision (d) of Section 40001, shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced, including the use of emission reduction credits, for any stationary source that has a demonstrated compliance cost exceeding that established dollar amount.

(Amended by Stats. 1996, c. 442 (S.B.1928), § 2.)

§ 40914. Reduction in districtwide emissions; alternative strategy; calculations

(a) Each district plan shall be designed to achieve a reduction in districtwide emissions of 5 percent or more per year for each nonattainments pollutant or its precursors, averaged every consecutive three-year period, unless an alternative measure of progress is approved pursuant to Section 39607.

(b) A district may use an alternative emission reduction strategy which achieves less than an average of 5 percent per year reduction in districtwide emissions if the district demonstrates to the state board, and the state board concurs in, either of the following:

(1) That the alternative emission reduction strategy is equal to or more effective than districtwide emission reductions in improving air quality.

(2) That despite the inclusion of every feasible measure in the plan, and an expeditious adoption schedule, the district is unable to achieve at least a 5 percent annual reduction in districtwide emissions.

(c) For purposes of this section and Section 41503.1, reductions in emissions shall be calculated with respect to the actual level of emissions which exist in each district during 1990, as determined by the state board. All reductions in emissions occurring after December 31, 1990, including, but not limited to, reductions in emissions resulting from measures adopted prior to December 31, 1990 shall be included in this calculation.

(Amended by Stats. 1996, c. 777 (A.B.3048), § 5.)

Additions or changes indicated by underline; deletions by asterisks * * *

EXHIBIT B

*(Adopted January 8, 1993) (Amended January 14, 1994)
(Amended February 11, 1994) (Amended October 13, 1995)
(Amended March 8, 1996) (Amended April 11, 1997) (Amended May 9, 1997)*

RULE 1610. OLD-VEHICLE SCRAPPING

(a) Purpose

The purpose of this rule is to reduce motor vehicle volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), and particulate matter (PM) exhaust emissions by issuing mobile source emission reduction credits in exchange for the scrapping of old, high emitting vehicles. Procurement of old vehicles could be accomplished by persons voluntarily giving up their vehicle for scrapping upon receiving an incentive payment. This rule provides a mechanism through which stationary source emissions can be brought into compliance with District regulations through mobile source emission reductions. Mobile source emission reduction credits (MSERCs) generated may only be applied towards compliance with designated rules with future compliance dates within District Regulation XI, Source Specific Standards; Regulation XV, Trip Reduction/Indirect Source; Regulation XIII, New Source Review; Regulation XX, Regional Clean Air Incentives Market (RECLAIM); or any other District regulations that allow the use of credits. MSERCs may not be applied towards compliance with federal requirements that do not authorize compliance through emissions trading including those promulgated by U.S. EPA as authorized under Title 42, U.S. Code Sections 7411, 7412(d), and those subsections of 7511b of the U.S. Code that do not authorize compliance through emissions trading. The value of these credits is based on old vehicles having at least three years useful remaining life prior to scrapping.

(b) Definitions

For purposes of this rule, the following definitions shall apply:

1. **MOBILE SOURCE EMISSION REDUCTION CREDIT (MSERC)** means credit for real, quantified emission reductions, approved by the Executive Officer or designee, as authorized by this rule, and surplus to emission reductions required by ARB, District, and U.S. EPA regulations and the most recent District or U.S. EPA approved Air Quality Management Plan, whichever is more stringent.
2. **NITROGEN OXIDES (NO_x)** means the sum of nitric oxides and nitrogen dioxides emitted, collectively expressed as nitrogen dioxide emissions.
3. **OLD-VEHICLE** means 1981 and earlier model-year passenger cars and light-duty trucks.
4. **OLD-VEHICLE SCRAPPING PROGRAM** means a program in which old vehicles are scrapped in exchange for MSERCs.
5. **SCAQMD LICENSED SCRAPPER** means an entity certified by the Executive Officer or designee to generate MSERCs by scrapping vehicles, as authorized by this rule.
6. **SCRAPPING** means the process by which a motor vehicle is permanently removed from service.
7. **VOLATILE ORGANIC COMPOUND (VOC)** means any volatile compound of carbon, excluding: methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and exempt compounds as defined in District Rule 102.

(c) SCAQMD Licensed Scrapper Certification Requirements

1. Certification as an SCAQMD licensed scrapper shall be limited to: VOC, NO_x, CO, or PM stationary emission sources subject to District Regulation XI, Source Specific Standards, rules Reduction/Indirect Source; or Regulation XX, RECLAIM.

2. SCAQMD licensed scrappers shall have vehicles scrapped only by auto dismantlers that are licensed by the California Department of Motor Vehicles.
3. All scrapping plans approved pursuant to paragraph (c)(5) shall require the scrapping of a minimum of 50 old vehicles within six months of the date of approval of the scrapping plan. MSERCs may not be issued for any old vehicles scrapped pursuant to a plan approved after the effective date of this amendment if at least fifty old vehicles have not been scrapped pursuant to the plan within six months of plan approval. Notwithstanding the foregoing, the minimum shall be 10 for the motion picture industry and in cases where the Executive Officer or designee determines that the minimum of 50 should be lowered because hardship has been demonstrated, e.g., if the amount of MSERCs that a facility needs is less than the number of MSERCs generated when 50 vehicles are scrapped.
4. Entities intending to seek certification as an SCAQMD licensed scrapper shall submit a scrapping plan to the Executive Officer or designee at least one month prior to planned initiation of vehicle scrapping. The scrapping plan shall be submitted on forms specified by the Executive Officer or designee, and contain specific information including, but not limited to:
 - (A) information demonstrating the ability to comply with all provisions of this rule relating to vehicle selection, visual and functional inspection, disposal, and recordkeeping.
 - (B) the name and address of the California Department of Motor Vehicles licensed auto dismantler used to comply with paragraph (c)(2) (hereafter referred to as the DMV licensed auto dismantler), and a written statement from the auto dismantler certifying compliance with: local water conservation regulations; state, county, and city energy and hazardous materials response regulations; and local water agency soil, surface, and ground water contamination regulations.
 - (C) anticipated initiation date for scrapping program, and the anticipated use of the MSERCs.
 - (D) a description of the procedure to render the engine inoperable, if subparagraph (e)(2)(C) is employed by the SCAQMD Licensed Scrapper in lieu of subparagraph (e)(2)(A) or (e)(2)(B).
 - (i) The SCAQMD licensed scrapper shall demonstrate the procedure to the Executive Officer or designee.
 - (ii) Scrapping plans approved prior to March 8, 1996 shall be amended within 30 days prior to the start of the next vehicle scrapping program if the procedure will be utilized.
5. Certification as an SCAQMD licensed scrapper shall occur with written approval of the scrapping plan by the Executive Officer or designee. Approval of the scrapping plan shall be based on information denoted in paragraph (c)(3) and subparagraphs (c)(4)(A) and (c)(4)(B). The Executive Officer or designee shall have one month to approve or disapprove the scrapping plan and shall disapprove the scrapping plan unless it complies with paragraph (c)(3) and subparagraphs (c)(4)(A) and (c)(4)(B). The Executive Officer or designee shall also disapprove the scrapping plan if the additional air pollutant emissions, caused by scrapping vehicles in connection with this rule, exceed District significance thresholds.

(d) Notice Requirements for Vehicle Scrapping

SCAQMD licensed scrappers shall submit written notice to the Executive Officer or designee at least two weeks prior to vehicle scrapping, indicating date, location, and estimated number of vehicles to be scrapped.

(e) Vehicle Disposal Requirements

1. At a minimum, scrapping shall entail the permanent destruction of the following vehicle components:

- (A) Vehicles Identification Number
 - (B) License Plates
 - (C) Body/Frame
2. The SCAQMD licensed scrapper or DMV licensed auto dismantler shall render the engine inoperable within ten days subsequent to possession of the old vehicle using any of the following procedures:
- (A) permanent destruction of the cylinder block; or
 - (B) introduction of sand into the combustion chamber (the sand shall be introduced by removing spark plugs from two adjacent cylinders, pouring the sand into these cylinders, reinstalling the spark plugs, and attempting to start the engine. This procedure shall be deemed complete when the engine has seized); or
 - (C) an alternative procedure which renders the engine inoperable and which has been proposed by the scrapper or dismantler and is included in a plan submitted pursuant to subparagraph (c)(4)(D) approved by the Executive Officer or designee.
3. Except for components listed in subparagraphs (e)(1)(A) through (e)(1)(C), removal of reusable components, e.g., doors, fenders, bumpers, subframes and disassembled engine components is allowed during the 90-day period subsequent to possession of the old vehicle by the SCAQMD licensed scrapper or DMV licensed auto dismantler.
4. Vehicle components listed in subparagraphs (e)(1)(A) through (e)(1)(C) shall be permanently destroyed no later than 100 days subsequent to possession of the old vehicle by the SCAQMD licensed scrapper or DMV licensed auto dismantler.
5. All activities associated with scrapping vehicles, including but not limited to the disposal of vehicle fluids and vehicle components, shall comply with applicable federal, state, and local laws, regulations, codes, and permitting requirements.

(f) Vehicle Selection Requirements

1. Only 1981 and earlier model-year passenger cars and light-duty trucks (“old vehicles”) shall be eligible for MSERCs through the old-vehicle scrapping program.
2. To be eligible for MSERCs, old vehicles to be scrapped shall meet all of the following requirements.
- (A) For at least two continuous years prior to scrapping, registration with the California Department of Motor Vehicles to one or more addresses located in the District.
 - (B) For at least two continuous years prior to scrapping, registration with Department of Motor Vehicles as an operable vehicle, except that registration as a nonoperable vehicle for up to two months cumulatively, occurring at least three months prior to scrapping, shall be acceptable under this subparagraph. Smog checks must be performed as required by Department of Motor Vehicles in order for the vehicle to be considered registered.
 - (C) Any person submitting a second or successive vehicle to any one Licensed Scrapper shall provide proof of continuous vehicle ownership and continuous registration as an operable vehicle in the District since January 1, 1992 as provided in subparagraph (f)(4)(A) and shall meet all functional and registration requirements of the Rule.

(D) The vehicle owner shall provide California Certificate of Title or DMV application for duplicate title.

3. The requirements contained in subparagraph (f)(2)(B) shall be established through an inspection of Department of Motor Vehicles registration records by the SCAQMD Licensed Scrapper.
4. The requirements contained in subparagraph (f)(2)(A) shall be established through a SCAQMD Licensed Scrapper inspection of documentation supplied by the vehicle owner(s). This documentation shall include the following.

(A) For vehicles that have been owned by one person for two continuous years prior to scrapping, the current vehicle registration card plus one additional document dated at least two years prior to scrapping shall be required. This additional document may be a previous vehicle registration card, a utility statement, a credit card statement, insurance invoice, a California Certificate of Title, California Drivers License, California Identification Card, canceled checks, or equivalent as determined by the Executive Officer or designee and shall contain certain information that has been preprinted by the original issuer of the document, including:

- (i) at least one registered owner's name
- (ii) registered owner's address that is located in the District
- (iii) date prepared

(B) For vehicles with more than one owner during the two year period prior to scrapping, vehicle registration cards, California Certificate of Titles for the current owner and each previous owner, or equivalent documentation as determined by the Executive Officer or designee shall be required, verifying that the vehicle has been continuously registered to address(es) located in the District for the two year period prior to scrapping.

(g) Vehicle Visual and Functional Inspection

In order to be eligible for MSERCs, each vehicle to be scrapped shall pass a visual and functional inspection upon delivery to the DMV licensed auto dismantler. Inspections shall be conducted by the SCAQMD licensed scrapper. The following elements shall be included in the inspection.

1. Vehicle must have been driven under its own power to scrapping site. If a SCAQMD Licensed Scrapper and/or District personnel has knowledge prior to the scrapping of a vehicle that (1) the vehicle was towed or pushed for any portion of the trip to the scrapping site, or (2) one or more items described in subparagraphs (g)(2)(A) through (g)(2)(C) occurred while the vehicle was being driven to the scrapping site, then the vehicle shall not be accepted for scrapping.
2. The vehicle owner, or a person authorized by the vehicle owner, shall switch off the engine, restart the engine, and drive the vehicle in forward and reverse as directed by the SCAQMD Licensed Scrapper and/or District personnel, and perform any other tests indicating operability if the preceding test procedure has not established operability, as directed by SCAQMD Licensed Scrapper and/or District personnel. The vehicle shall not be accepted by the SCAQMD Licensed Scrapper if the following occur:
 - (A) non-operation of the starter motor
 - (B) non-operation of the ignition switch
 - (C) non-operation of the vehicle transmission
3. Vehicle identification numbers from the California Certificate of Title (if available), current vehicle registration card, and vehicle must be matched.

4. Person(s) delivering vehicle to scrapping site must be verified as the vehicle owner(s)
Additionally, the vehicle must not have any liens.
5. The presence of the vehicle components originally supplied when the vehicle was new or functionally equivalent replacement components must be visually verified. The component inspection shall include, but not be limited to, the following:
 - (A) Exhaust system
 - (B) Bumpers
 - (C) Doors
 - (D) Fenders
 - (E) Mirrors
 - (F) Hood and trunk lid
 - (G) Windshields and windows
 - (H) Tires
 - (I) Instrumentation and gauges

(h) Mobile Source Emission Reduction Credits Per Scrapped Vehicle

1. Mobile source emission reduction credits shall be issued upon approval of the application pursuant to subdivision (k). The MSERCs shall be calculated according to the following formula:

$$\text{MSERC} = 3 \times [((\text{SCRAP} - \text{REPLACE}) \times \text{MILESC})/454]/\text{DF}$$

Where:

MSERC = Mobile Source Emission Reduction Credit (total pounds of pollutant)

SCRAP = Emission rate of scrapped vehicle in grams per mile, according to paragraph (h)(2), based on the model-year of the scrapped vehicle.

MILESC = Average annual mileage corresponding to model-year of scrapped vehicle, according to paragraph (h)(3).

REPLACE = Average in-use vehicle emission rate in grams per mile for year in which vehicle is scrapped, according to paragraph (h)(4)

DF = Discount Factor, for the purpose of generating credits, equal to 1.0

2. Emission Rates of Scrapped Vehicle for VOC, NO_x, CO and PM (grams/mile):

Model-year Group	VOC	NO _x	CO	PM
Pre-1972	12.4	4.0	69.5	0.04
1972-1974	9.7	3.8	46.4	0.04
1975-1981	3.9	3.0	36.1	0.01

3. Average Annual Mileage of Scrapped Vehicles (miles)

Year	Annual Mileage
Pre-1972	4,900
1972-1974	5,300
1975-1981	6,400

4. Average In-use Motor Vehicle Emission Rate (grams/mile) for 1993 calendar year, for VOC, NOx, CO and PM:

<u>VOC</u>	<u>NOx</u>	<u>CO</u>	<u>PM</u>	<u>Usage</u>
1.8	1.2	13.6	0.01	Average Vehicle Replaces Pre-1972 Vehicle
1.8	1.2	13.6	0.01	Average Vehicle Replaces 1972-1974 Vehicle
1.6	1.2	13.6	0.01	Average Vehicle Replaces 1975-1981 Vehicle

5. Emission rates and annual mileage rates as shown in paragraphs (h)(2), (h)(3), (h)(4), and (h)(6) are based on ARB’s EMFAC 7F emission factor model and BURDEN 7F vehicle activity model. These rates may be updated and published upon concurrence by ARB and District staffs, based on a revision to ARB’s emission factor model. The Executive Officer shall submit any District Governing Board approved revisions to the emission rates provided in this subdivision to U.S. EPA for inclusion into the State Implementation Plan.

6. MSERCs per scrapped vehicle, as of October 13, 1995, shall be the following:

(A) Using a 1.2 Discount Factor, VOC, NOx, CO and PM, Mobile Source Emission Reduction Credits Per Scrapped Vehicle (total pounds)

Vehicle Model-Year	VOC	NOx	CO	PM
Pre-1972	285	75	1500	0.8
1972-1974	233	75	950	0.9
1975-1981	80	63	800	0

(B) Using a 1.0 Discount Factor, VOC, NOx, CO, and PM, Mobile Source Emission Reduction Credits Per Scrapped Vehicle (total pounds)

Vehicle Model-Year	VOC	NOx	CO	PM
Pre-1972	342	90	1800	1.0
1972-1974	279	90	1140	1.1
1975-1981	96	75	960	0

7. MSERCs generated from vehicle scrapping activities shall be valid for five years from the date of application approval pursuant to subdivision (k), with the limitation that no more than one-third of the MSERCs may be consumed within one year from the date of approval and not more than two-thirds of the MSERCs may be consumed within two years from the date of approval. This paragraph shall also apply to credits that have been issued for vehicle scrapping activities prior to October 13, 1995 provided that these credits have not expired or have not been consumed.

(i) Use of MSERCs

1. MSERCs may be used only for any of the following applications:

(A) As RECLAIM Trading Credits in accordance with Rule 2008.

(B) As an alternative method of compliance with District Regulation XI rules that have future

compliance dates. MSERs shall not be used to offset emission increases caused by the removal of emission control equipment or replacement of complaint with noncomplaint materials subject to Regulation XI.

(C) As an alternative method of compliance with District Regulation XV rules that allow the use of MSERCs. MSERCs generated from vehicle scrapping activities occurring before October 13, 1995, may be used by any entity pursuant to this subparagraph.

(D) As New Source Review (NSR) offsets for emission increases at new or modified facilities that are subject to Rule 1303 (b)(2) pursuant to provisions in Regulation XIII. Pursuant to Rule 504, no variance or series of variances, including emergency and interim variances, shall be granted for a period in excess of 90 days from the initial granting of a variance, from a permit condition implementing a Regulation XIII offset requirement if such permit condition is based upon the use of MSERCs.

(E) For voluntary retirement of MSERCs for air quality benefits.

(F) As an alternative method of compliance with any other District regulations which allow the use of credits.

2. For the purpose of using MSERCs pursuant to subparagraphs (i)(1)(A) and (i)(1)(B), a discount factor equal to 1.2 shall be applied. For the purpose of using MSERCs pursuant to subparagraphs (i)(1)(C) and (i)(1)(D), a discount factor equal to 1.0 shall be applied. For all other uses pursuant to subparagraph (i)(1)(F), a discount factor equal to 1.0 shall be applied unless specified otherwise in District regulations.
3. An entity using MSERCs in accordance to subparagraph (i)(1)(B), (i)(1)(D), and (i)(1)(F) shall demonstrate to the Executive Officer that emissions at the entity's facility are not subject to Risk Reduction Requirements pursuant to Rule 1402, subdivision (f), or use of MSERCs will not result in adverse change in attainment of risk reduction requirements under Rule 1402.
4. In addition to subparagraph (i)(3),

(A) In order to use MSERCs in lieu of compliance with an emission limitation in a Regulation XI rule as authorized in subparagraph (i)(1)(B), an entity must establish that:

(i) use of MSERCs does not result in NO_x emissions greater than or equal to 200 pounds per day, from those portable internal combustion engines where MSERCs will be used, where portable internal combustion engines are defined pursuant to paragraph (a)(5) of Rule 1110.2; or

(ii) NO_x emissions from those portable internal combustion engines where MSERCs will be used, will not cause an exceedance of the state nitrogen dioxide ambient air quality standard.

(B) In order to use MSERCs in lieu of compliance with an emission limitation in a Regulation XI rule as authorized in subparagraphs (i)(1)(B) or (i)(1)(F), an entity must demonstrate that:

(i) use of MSERCs will not result in an increase or forgone reduction in carcinogenic health risk greater than 1×10^{-5} or Hazard Index greater than 1 for all substances listed in Rule 1402; the assessment of health risk shall be conducted in accordance with guidance used in implementing Rules 1401 - New Source Review of Carcinogenic Air Contaminants and 1402 - Control of Toxic Air Contaminants from Existing Sources;

(ii) use of MSERCs will not result in a Significant Risk Level, in accordance with

Rule 1402 paragraph (d)(11), when the increased carcinogenic health risk or Hazard Index as determined pursuant to subclause (i)(4)(B)(i) of this rule are added to the total facility risk for those facilities that were required to prepare a health risk assessment pursuant to the criteria in Rule 1402(c); and

(iii) use of MSERCs will not cause a significant increase in an air quality concentration as determined using the methodology as set forth in Rule 1303, Table A-2 of Appendix A.

5. Compliance plans currently being implemented as of May 9, 1997 shall demonstrate compliance with paragraphs (i)(3) and (i)(4) when their next plan is due or within six months of date of adoption, whichever occurs first.
6. Scrapping plans currently being implemented as of October 13, 1995, for the purpose of delaying compliance of Regulation XI rules shall be permitted to complete their implementation.
7. MSERCs may only be transferred as permitted by Rule 1501.1 or Regulation XX, except that SCAQMD Licensed Scrappers that are not subject to either District Regulation XI or Rule 1301(b)(2) may also transfer MSERCs to other entities that were SCAQMD Licensed Scrappers as of the date the MSERCs were generated.
8. MSERCs shall only be consumed in the air basin corresponding to the registered address of the old vehicle, prior to the DMV licensed auto dismantler or SCAQMD Licensed Scraper taking possession of the vehicle.

(j) Recordkeeping Requirements

1. SCAQMD licensed scrappers shall maintain a copy of the scrapping plan described in subdivision (c) and the notices given pursuant to subdivision (d) for one year following termination of vehicle scrapping.
2. The following information shall also be collected and maintained in written records by the SCAQMD licensed scrapper for one year following termination of vehicle scrapping:
 - (A) Starting and ending dates of the old-vehicle scrapping program.
 - (B) Number of vehicles scrapped.
 - (C) Dates vehicles were scrapped.
 - (D) Complete name, address, and telephone number of the person conducting the old-vehicle scrapping program.
 - (E) Complete name, address, and telephone number of the auto dismantler and any program subcontractors.
 - (F) A detailed description of project organizational structure and logistical arrangements, including location(s) of collection and disposal facilities, and scrapping procedure including disposal procedures for all vehicle components and fluids.
3. SCAQMD licensed scrappers shall be responsible for storing and maintaining computer accessible data records of scrapped vehicles.
4. The computer hardware, software, and communications protocol, to be used for storing and maintaining computer accessible data records, shall be specified by the Executive Officer or designee for compatibility with existing District computer related equipment.

5. Data records for each scrapped vehicle shall include the following:
 - (A) Vehicle make
 - (B) Vehicle model
 - (C) Vehicle model-year
 - (D) Vehicle license plate number
 - (E) Vehicle identification number
 - (F) Vehicle mileage
 - (G) Scrapped vehicle owner's name, address, telephone number, and driver license number
 - (H) Date of scrapping
 - (I) VOC, NO_x, CO, and PM mobile source emission reduction credit
 - (J) Name of person(s) conducting vehicle visual and functional inspection as required by subdivision (g), with employer's name, address, and telephone number.
6. Data records shall be made accessible to the Executive Officer or designee for a minimum of one year subsequent to the issuance of MSERCs for each scrapped vehicle.

scrapper shall maintain and make accessible to the Executive Officer or designee upon request the following for a minimum of one year subsequent to the issuance of MSERCs for each scrapped

- (A) A duplicate copy of Report of Vehicle to be Dismantled and Notice of Acquisition (California Department of Motor Vehicles Registration 42 Form) validated by line date stamping on the front
- (B) Copy of documentation, pursuant to paragraphs (f)(3) and (f)(4), and subparagraph (f)(2)(D).
- (C) Copy of California Certificate of Title or DMV application for duplicate title for each

(k) Issuance of MSERCs

1. SCAQMD licensed scrappers shall submit an application to the Executive Officer or designee every six months following certification as an SCAQMD licensed scrapper. The purpose of the application is to document the number of vehicles scrapped and MSERCs earned during the six month period, and demonstrate compliance with rule requirements.
2. The application shall contain the following information for each six month period:
 - (A) Data records for vehicles scrapped;
 - (B) Total MSERCs claimed for scrap program period;
3. MSERCs shall be issued after the Executive Officer or designee has approved the application pursuant to paragraph (k)(1). The application shall be disapproved unless it demonstrates the SCAQMD licensed scrapper has complied with all applicable provisions in this regulation, as determined by the Executive Officer or designee.

4. For the purpose of assessing fees, the application shall be deemed a plan, and the fees shall be assessed in accordance with the provisions of Rule 306.
5. The application, including data records, shall be stored by the Executive Officer or designee for a minimum of five years.

(I) Compliance Plan

1. In order to use MSERCs for the application listed in subparagraphs (i)(1)(B), (i)(1)(D), and (i)(1)(F), the user shall submit a Rule 1610 compliance plan to the Executive Officer or designee. The purpose of the compliance plan is to demonstrate compliance with rule requirements, and specify the use of the MSERCs.
2. The compliance plan shall contain the following information:
 - (A) Total MSERCs (attach certificates)
 - (B) Identification of the specific rule for which the alternative method of compliance is sought;
 - (C) The period of time for the alternative method of compliance;
 - (D) Number of MSERCs used to substantiate the alternative method of compliance;
 - (E) A quantification of emissions that would result from noncompliance with the rule identified in subparagraph (1)(2)(B), and documentation supporting the emissions quantification.
 - (i) This quantification shall be performed using District Governing Board approved quantification methodologies.
 - (ii) The Executive Officer shall submit this rule and associated quantification methodologies to U.S. EPA for inclusion into the State Implementation Plan.
3. Supporting documentation (applicable for MSERC usage for Regulation XI rules) shall include, but is not limited to:
 - (A) a listing of equipment and/or materials that are the source of noncompliant VOC, NO_x, CO, or PM emissions associated with the rule identified in subparagraph (1)(2)(B).
 - (B) a description and operating conditions of equipment listed in subparagraph (1)(3)(A) and/or composition and rate of use of materials listed in subparagraph (1)(3)(A).
 - (C) emission rates associated with the use of equipment and/or materials listed in subparagraph (1)(3)(A).
 - (D) a listing of equipment and/or materials that would result in compliance with the rule identified in subparagraph (1)(2)(B).
 - (E) a description and operating conditions of equipment listed in subparagraph (1)(3)(D) and/or composition and rate of use of materials listed in subparagraph (1)(3)(D).
 - (F) emission rates associated with the use of equipment and/or materials listed in subparagraph (1)(3)(D).
4. The compliance plan shall be written on a form to be specified by the Executive Officer or designee.

5. The Executive Officer or designee shall approve or disapprove the compliance plan. The plan shall be disapproved unless it demonstrates that an equivalent amount of emissions reductions are obtained through the alternative method of compliance.
6. MSERCs may not be used as an alternative method of compliance with Regulation XI rules until the Executive Officer or designee has approved the compliance plan.
7. The user must renew the compliance plan prior to the expiration of the MSERCs upon which the plan is based.
8. The compliance plan, including supporting documentation, shall be stored by the Executive Officer or designee for a minimum of five years.

(m) Compliance Auditing and Enforcement

1. The Executive Officer or designee may audit any files and/or records created to comply with recordkeeping requirements.
2. The Executive Officer or designee shall reserve the right to inspect facilities, including auto dismantlers, for compliance with the requirements specified in this rule. District inspectors shall be afforded immediate access to scrapping/dismantling facilities on request.
3. Violation of any provision of this rule, including falsification of information in the scrapping plan application, or compliance plan, shall be grounds for the Executive Officer or designee to disallow or void any MSERCs resulting from or associated with the violation, by disapproving or seeking revocation of the compliance plan (as appropriate), and shall be subject to the penalties specified in the Health and Safety Code for violation of District rules.

(n) Requirements for Public Notice

Following a completeness determination of the scrapping plan for the use of MSERCs as NSR offsets only, as provided in subparagraph (i)(1)(D), the Executive Officer or designee shall:

1. perform the evaluations required to determine compliance with this regulation and make a preliminary written decision, as appropriate, as to whether or not MSERCs, to be used as emission reduction credits (ERCs), should be approved or disapproved. The decision shall be supported by a succinct written analysis; and
2. publish a notice by prominent advertisement in at least one newspaper of general circulation in the District stating the preliminary decision of the Executive Officer or designee and where the public may inspect the information. The notice shall provide 30 days from the date of publication for the public to submit written comments on the preliminary decision; and
3. at the time notice of the preliminary decision is published, make available for public inspection at the District office the information submitted by the applicant, the supporting analysis for the preliminary decision, and the preliminary decision to grant or deny MSERCs and the reasons therefore. The confidentiality of trade secrets shall be maintained in accordance with Section 6254.7 of the Government Code.

(o) Appeal of Disapproval of MSERC Issuance

An applicant may, within 30 days of receipt of notice of disapproval, request the Hearing Board to hold a hearing on whether the scrapping application was properly refused.

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Saturday, April 25, 1998

Metro Desk

Smog Panel to Overhaul Car Buyback Program Environment: Critics say firms seeking pollution credits are purchasing vehicles that are barely drivable, thereby failing to clear the roads of gross polluters.

MARLA CONE
TIMES ENVIRONMENTAL WRITER

Facing evidence that its pioneering program for scrapping old cars is failing to eliminate pollution as claimed, the Southland's smog-fighting agency is gearing up for an overhaul.

Under a program that has been highly touted as helping to clean up smog, the South Coast Air Quality Management District lets businesses pay to junk pre-1982 cars--the dirtiest ones on the road. In exchange, the businesses are granted pollution credits that allow them to avoid reducing emissions at their own companies.

So far, nearly 22,000 cars have been scrapped, with the AQMD saying that the 4-year-old program has eliminated millions of pounds of pollution.

The program is pivotal to smog control in the Los Angeles Basin. AQMD officials have touted it and other market-based programs as innovative ways to clean up smog by giving businesses a choice in how they reduce pollution.

In fact, the program is scheduled to be greatly expanded. Under the state's smog plan, 75,000 cars are supposed to be scrapped per year in the Los Angeles Basin in order to eliminate enough emissions to achieve healthful air.

But AQMD officials are concerned that the program may not be living up to its promise. Vehicles being purchased and destroyed at times are in such severe disrepair that they are barely roadworthy--which means that spending public money to scrap those cars cleans up little, if any, pollution, the AQMD inspector for the program has charged.

On Friday, AQMD staffers who evaluated the program recommended that the agency's board put a series of safeguards in place. Suggestions include having independent mechanics or AQMD inspectors examine every car to ensure that it is fully operational before it is scrapped.

As now structured, the program "does not exclude vehicles with severe mechanical problems or severe physical damage," the staff members said in their report.

The AQMD's top executive, Barry Wallerstein, said Friday that he will review the recommendations, hold a public forum, and then draft a proposal to take to the AQMD board in July.

"It is clear that there are a number of things we should do to further enhance the program," Wallerstein said. "The bottom line is we want a credible program that the public has confidence in, provides flexibility and allows us to attain clean air."

The goal of the program is to promote the early retirement of highly polluting cars by letting businesses pay into a fund that is used to buy old vehicles from motorists for about \$600 apiece.

In exchange for scrapping old cars, the companies are granted credits exempting them from AQMD rules that require creation of employee ride-share programs or installation of pollution controls at their manufacturing plants.

The agency's effort to fix the program comes after criticisms made last fall by AQMD inspector Bruce Lohmann, who charged that many cars being scrapped are in such poor shape that they conk out after being driven just a few yards.

"I've driven a lot of clunkers, but these are the worst cars I've ever driven in my life," said Lohmann, who monitors the program for the AQMD.

Lohmann's charges were made in a deposition in a lawsuit against the AQMD filed by Communities for a Better Environment. The group is seeking to halt the program.

In addition to the concerns over the scrapped cars, the AQMD board plans to evaluate this summer whether the program creates an "environmental justice" problem. Communities for a Better Environment charges in its lawsuit that the program violates civil rights because it allows oil companies to scrap cars rather than clean up emissions from refineries that are in neighborhoods mostly inhabited by African Americans and Latinos.

The U.S. Environmental Protection Agency, which has oversight over air pollution rules, is investigating whether it should force the AQMD to abandon the program. Environmentalists have urged the AQMD to suspend it, saying that proposed adjustments are inadequate.

"For us that's a Band-Aid, and it doesn't really fix the program, since the problems go to the heart of the program," said Gail Ruderman Feuer, an attorney with the Natural Resources Defense Council.

AQMD officials have defended the program, estimating that it has eliminated 46

million pounds of pollution in the past four years.

Lohmann said many of the cars scrapped were unsafe to drive, with faulty brakes and steering. One 1970s pickup "wouldn't budge," he said. A 1980 BMW had a defective rear axle and brakes and made loud clanking noises when driven. A 1970s Capri went halfway around a 100-foot circle and stopped.

Under the AQMD's rule, the companies that scrap the cars must certify that the cars are drivable. But the staff, in its report, noted that letting the scrappers evaluate the cars themselves "creates the potential for conflict of interest."

----- INDEX REFERENCES -----

KEY WORDS: SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT; AIR POLLUTION CONTROL; VEHICLE EMISSIONS; TAX CREDITS; BUSINESS

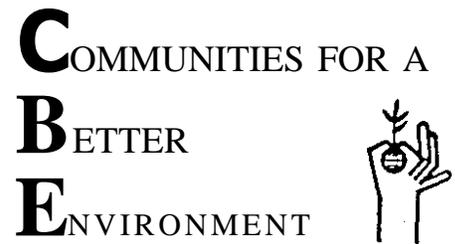
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EXHIBIT D



February 13, 1993

Michael P. Kenny
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812-2815

RE: Request for Immediate Suspension of Rule 1610 and other Car-scrapping Programs

Dear Mr. Kenny:

Communities for a Better Environment ("CBE") writes to inform the California Air Resources Board (CARB) of serious flaws in the South Coast Air Quality Management District (SCAQMD)'s design, implementation and (lack) of enforcement of Rule 1610.¹ The problems with Rule 1610 are so serious and widespread that the entire rule is called into question. The flaws in Rule 1610 go far beyond the very serious environmental justice and Title VI issues that CBE has raised through its Title VI complaint. They go to the very credibility of the SCAQMD and CARB. For the reasons discussed below, CBE respectfully requests that CARB withdraw Rule 1610 from EPA SIP approval consideration and immediately order SCAQMD to stop use of Rule 1610 and all other pollution trading program involving car scrapping until an independent thorough investigation can be completed.²

Mr. Bruce Lohmann, SCAQMD Air Quality Inspector II, one of two inspectors designated by the SCAQMD to enforce Rule 1610, has recently stated under oath that Rule 1610 was designed to be unenforceable, is fraught with lax enforcement, and provides little, if any environmental benefit. (See Transcript of the Declaration of Bruce Lohmann ("Transcript"), Attached hereto as Exhibit A); *See also* Marc Cooper, *Smoke Screen*, L.A. NEW TIMES, February 5-11, 1998 Attached hereto as Exhibit B). Mr. Lohmann's testimony destroys each of the assumptions underlying Rule 1610 and demonstrates that: 1) the vehicles scrapped rarely would have been driven 4,000 to 5,000 miles per year; 2) few of the scrapped vehicles had three years of useful life remaining; 3) people who sell the vehicles rarely buy newer, cleaner vehicles. Lohmann's testimony also demonstrates that

¹CBE is sending a letter to SCAQMD requesting immediate suspension of Rule 1610 and a letter to EPA requesting rejection of Rule 1610, the halting of all credit and trading programs, and an investigation by EPA Region IX.

²CBE agreed with your August 18, 1997 decision to suspend submittal of district credit rules and trading programs as SIP revisions in light of CBE's Title VI complaint. However, on December 19, 1997 you found the delay "unacceptable" and resumed submittal of district credit rules and trading programs, including SCAQMD Rules 1610, 1620, 2202, 2501 and Sacramento Metropolitan District's Rules 107, 204, and 205. Your December 19, 1997 letter further stated that "over the next few months, revisions will be made to these rules as necessary to comply with the emission trading regulation adopted by the ARB in May 1997." Because of the issues raised in this letter, the Title VI issues, and the fact that the rules submitted will most likely be revised, CBE believes that the most prudent course of action at this time is to again suspend submittal of all the emission credit and trading rules.

CBE letter to Michael Kinney re: Problems with Rule 1610

true emission reductions are occurring.” (Transcript, 76)

Given the serious flaws in how cars are scrapped and MSERCs are generated, CBE urges CARB to immediately withdraw its submission of Rule 1610 to the EPA for inclusion in California’s SIP. In essence, Rule 1610 is not taking high polluting vehicles off the road, it is taking cars out of peoples backyards - cars that were rarely if ever driven. As such, the program generates little or no air pollution benefit and it is unjust and illegal to allow oil companies and other polluters to use fraudulent Rule 1610 credits to avoid installing proven pollution control equipment.

SCAQMD has had Knowledge of Rule 1610’s Problems But has Not Acted

As detailed in Mr. Lohmann’s testimony, SCAQMD officials at the highest level, including Acting Director Barry Wallerstein, have known about the serious problems in Rule 1610, but have not acted to remedy these deficiencies. Despite several revisions to Rule 1610, including the most recent in May, 1997, SCAQMD has not addressed the problems raised by Mr. Lohman. In fact, on November 19, 1996, Mr. Lohmann, fellow inspector George Wright, and SCAQMD’s Carol Engelhardt wrote a memo to Peter Greenwald and Peter Meiras (“Greenwald Memo”) (Attached as Exhibit C) in which they outlined some of the problems with Rule 1610 from an enforcement stand point. There was no response from SCAQMD.

On August 16, 1995, Mr. Lohmann wrote an e-mail memo to his supervisor at SCAQMD, David Coel, stating that based on his direct observations a significant percentage of the scrapped vehicles probably do not have three years remaining life.” (See Email Memo to David Coel from Bruce Lohmann (“Coel Memo”) attached as Exhibit D) Mr. Lohmann suggested “a detailed study of the actual vehicles being scrapped under Rule 1610 and a separate study of the replacement vehicles used by the former owners of these scrapped vehicles must be conducted to determine the accuracy of the assumptions on which the Rule bases its quantification of emissions reductions.” (Coel Memo) Again there was no response from SCAQMD

On August 2, 1995, Mr. Lohmann wrote a memo to Laki Tisopulos outlining the problems he had witnessed with Rule 1610 scrapping and requesting that the SCAQMD “consider conducting a comprehensive study” in order to “determine the real and quantifiable emissions reductions achieved by Rule 1610.... Retrospectively, we could survey those who have already scrapped vehicles under the large Chevron and Unocal programs to gain real world data to support the assumptions of average vehicle usage, longevity, and emissions characteristic of the replacement vehicle.” (Memo from Bruce Lohmann to Laki Ticopulos, (“Tisopulos Memo”) at 2) (Attached as Exhibit E). Again no changes to Rule 1610 were made to address the issues raised by Mr. Lohmann.

Perhaps the most’ disturbing aspect of Mr. Lohmann’s testimony is his first-hand observation that political pressure prevented SCAQMD from making changes or admitting mistakes (Transcript 50) As Mr. Lohmann states, the rule was not changed because "as soon as you admit problems with the rule, someone might sit back and study the rule and realize we are not proving that any emissions reductions occur.” (51) As Mr. Lohmann tells it, the “Ride Share program was under heavy political attack and was saved by Rule 1610.” (Transcript, 50) He adds, “[SCAQMD CEO Barry] Wallerstein is sensitive to the needs of the District of avoiding political attack. When legislation was intioduced to kill ridesharing, Wallerstein turned around and created a new rule in record time which was dependent on car scrapping.” (Transcript, 55)

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If true, the alleged actions of top SCAQMD officials seriously undermine the public trust and confidence in its public servants. CBE urges that CARB undertake an investigation of the cover up of problems with Rule 1610 and take necessary disciplinary action to demonstrate to the people of California that such actions will not be tolerated.

Rule 1610 Does not Reduce the Number of Old Vehicles

Mr. Lohmann testified that without Rule 1610, 5,000 to 10,000 vehicles per month are still purchased by car scrappers, usually for \$50 to \$100. (Transcript, 29-30) He testified that 95 to 99 percent of all vehicles scrapped would have naturally been discarded. . (Id. at 26-28). Moreover, there has been no study done of what vehicle sellers now drive as replacement vehicles, (*Id.* at 28-29) and the assumption that scrapped cars were being driven 4,000 to 5,000 miles has never been verified. (*Id.* at 68)

Mr. Lohmann's testimony supports CBE's position that over 75,000 old vehicles are scrapped or abandoned through natural attrition annually in the basin. Therefore any credits generated by scrapping of one of those 75,000 cars are not surplus and therefore represent no air pollution benefit, and do not warrant generation of any pollution credits. Since only 20,000 cars have been scrapped through the life of Rule 1610, it is likely that virtually all of those cars would have been destroyed even without the Rule, simply because they were too old, in need of repair, could not pass smog check, were recently in an accident, or other reasons. We now know that people who intended simply to junk their cars for \$50 are instead scrapping their unused cars for \$600. This is especially obvious since most of the licensed scrapping occurs at junkyards, where people usually take their old cars for disposal. Rule 1610 has basically created a "black market" for old, unused cars.

Rule 1610 Does Not Provide a 20% Environmental Benefit.

Rule 1610 supposedly results in a net pollution reduction by virtue of the 20% discount factor, whereby polluters are ostensibly required by purchase 20% more MSERC's than they have emissions to offset. However, as discussed above and below, Rule 1610 is not providing a 20% benefit, and is providing little if any environmental benefit. As discussed above, the vast majority of the cars scrapped through Rule 1610 would have been naturally discarded without Rule 1610. Mr. Lohmann has "no confidence that all the credits granted by the SCAQMD were justified" (Transcript 47), because "[w]ithout scientifically quantifying whether or not the people who sell old cars drive cleaner cars afterwards . . . the credits are unreal, they are exaggerated and they should be discounted." (Transcript, 75)

Many of the Cars Scrapped Under Rule 1610 were not Being Driven Regularly, let alone the 4-5,000 Miles Assumed by the Program, and did not have Three years of Useful Life Remaining

As Mr. Lohmann wrote to his SCAQMD superiors in the Greenwald memo, cars with "severely smashed-in fenders, wired shut doors, and cracked windshields are not excluded from the Rule 1610 program." (2) Under Rule 1610, scrapped cars are not tested to see if they would pass Smog Check, which is a mandatory requirement for registration. *See also* Transcript, 23 (stating that most cars scrapped could not pass a California-required Smog Check and therefore could be driven, at most, one more year because they cannot be registered without passing a smog check.) Mr. Lohmann concludes that "without registration, it is unlikely that the car would actually be driven for 3 years," (Greenwald Memo, 2)

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Mr. Lohmann observed that many of the scrapped cars had dozens of holes in the roof, smashed fenders, nonoperable doors, broken headlights, without working batteries. (Transcript, 18) Mr. Lohmann observed the same Volkswagens engine was used in several different chasis — the owner scrapped the car, bought back the engine, found another Volkswagen outer shell, installed the engine and repeated the process. (Transcript, 31). He observed people selling their old vehicles under Rule 1610 who would “purchase parts just to make the cars run long enough to pass inspection. Just about any part that an old car would need, shy of a new transmission, could be purchased and installed in the parking lot or inspection line.” (Transcript, 33-34) In fact, “[o]ne car had a Screwdriver instead of an ignition switch.”. (Transcript, 48) One company made hundred dollars a day selling batteris for use in, cars that were scrapped under Rule 1610. (35)

On several different occasions, when a car would fail to start, the scrapping company would sell the vehicle scrappers a freshly charged battery, install it and then accept the car with the battery and then remove the battery and sell it to another customer. (Transcript, 33-34) The Rule 1610 safeguard that sand be placed in an engine was ineffective. The minimal amount of sand placed in engines was easy to remove and make the engine useful again. (Id. at 33-34) The scrapping companies simply fill the cylinders to the top with sand so that engine cannot turn over. This process does absolutely no damage to the engine, which can then be easily cleaned out and are often resold. The engines therefore continue to pollute and there is no environmental benefit.

After witnessing all these problems, Mr. Lohmann suggested to his SCAQMD superiors that cars scrapped meet the standards set by the Highway Patrol, i.e. the vehicle could be operated on a highway without being subject to immediate citation for equipment violation as defined by the vehicle code. (Greenwald Memo, 2) Mr. Lohmann’s suggestions fell on deaf ears and SCAQMD has yet to address his concerns. Even if Mr. Lohmann thought that a car did not have 3 years of useful life remaining, if it passed the visual and functional inspection, he had to accept the car, he did not have the legal authority kick out that car. (Transcript, 28-30)

People who Scrapped Cars Did not Buy or Use “Fleet Average” Replacement Vehicles

Mr. Lohmann didn’t believe that the people selling cars and getting \$600 could go buy an average used car that would cost several thousand dollars. (Transcript 47) The average price paid for scrapping a car under Rule 1610 is between \$600 and \$700, which is not enough to enable the seller to buy anything significantly better than the scrapped car. Therefore, in assuming that people who scrap their cars purchase “fleet average” vehicles, Rule 1610 substantially overestimates air pollution benefits generated by car scrapping. Furthermore, studies indicate that car scrapping schemes such as Rule 1610 are unlikely to achieve their goals.³

³ See Carl B. Moyer, Charlotte J. Pera, and Wendy A. Wool, PERSPECTIVES ON VEHICLE SCRAPPING IN AIR QUALITY PROGRAMS, DRAFT FINAL REPORT, JULY 1995, Prepared for California Electric Transportation Coalition. As the report’s abstract and summary states,

It does not appear likely than scrapping can provide a major attainment strategy for federal ozone nonattainment areas classified as Extreme or Severe. . . . new assessments of scrapping are beginning to provide evidence that scrapping cannot become a major part of hydrocarbon [VOC] and carbon monoxide attainment plans, eyen if the programs can successfully target high-emitting vehicles through remote-sensing or other measurement means. The supply of

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SCAQMD has not and cannot Adequately Inspect and Enforce Rule 1610 to Prevent Abuse

SCAQMD did not adequately inspect cars accepted into Rule 1610 for credits. Only 16% of cars were inspected (2,241 of 13,700) (Transcript, 39); *See also* Letter from Ken Israels to Richard Drury providing information from SCAQMD as a result of the Rule 1610 Environmental Justice Task Force, EPA, and SCAQMD conference call (“Environmental Justice Task Force Letter”) Despite all the problems discussed by Mr. Lohmann, only 7 vehicles— far less than one percent of all vehicles inspected -- were rejected by SCAQMD. This amounts to the rejection of only .05 percent of the 13,700 vehicles scrapped. (Transcript, 42); Environmental Justice Task Force Letter, Statistical Information on Rule 1610 Inspection/Enforcement Activities.

SCAQMD did not properly enforce abuses of Rule 1610. In the four years of the program, only one Notice of Violation has been issued. Environmental Justice Task Force Letter, Statistical Information on Rule 1610 Inspection/Enforcement Activities. Mr. Lohmann was not allowed to issue a Notice of Violation when he believed the scrapping company had inappropriately accepted a vehicle. Despite all of the problems with the cars, no citations were ever issued to car scrappers for violating rule 1610. (Transcript, 36) In fact, Mr. Lohmann and other inspectors would ask their supervisors for permission to issue notices of violations. The answer was always no. Right now, inspectors have to ask Barry Wallerstein, CEO of SCAQMD for permission to enforce rule 2202. (Transcript 54) For three years, Mr. Wallerstein did not authorize a single Notice of Violation for rule 2202 (or its predecessor Rule 1501). In Lohmann's words, SCAQMD repeatedly “bent over backwards to help” companies comply with rules. (55)

In fact, the first and only notice of violation issued for Rule 1610 was issued in December of 1997 because the LA County Fire Department Health and Hazardous Materials section found that one Car scrapper was in violation of hazardous materials regulations. SCAQMD management thought “it would look good to CBE” and show that SCAQMD had a “strong enforcement program.” (Transcript, 40)

Rule 1610 fails to Satisfy CARB’s Requirements for Mobile Source Emission Credits

Rule 1610 fails to meet CARB's Guidelines for the Generation of Mobile Source Emission Reduction Credits Through Purchase and Operation of New, Reduced-Emission Heavy-Duty Vehicles, September 1995 (“Guidelines”). CARB’s Guidelines require that for emission reductions to qualify as mobile source emission reduction credits, several specific fundamental criteria must be met. These criteria include:

- The reductions must be real, and quantified to an acceptable degree of certainty
- To be used as stationary source offsets or to replace other emission reduction requirements, the mechanism used to obtain mobile source emission reductions credits must be enforceable and legally binding.

vehicles . . . appears too limited to yield much more than about 1% reductions in the inventories of these pollutants.

(Attached hereto as Exhibit F)

CBE letter to Michael Kinney re: Problems with Rule 1610

- The life of the reduction must be reasonably established, and commensurate with the proposed use of the credit.

(Guidelines, 4) Rule 1610 fails all three of these criteria. First, as demonstrated by Mr. Lohmann's testimony, the reductions are not real and have not been quantified to any degree of certainty, let alone an acceptable one. Second, Rule 1610 is not enforceable. Third, the trading of combustion VOCs is not commensurate with fugitive VOCs released during oil tanker loading or other uses to which the credits have been or may be put.

Rule 1610 Fails to Meet EPA's Rules for Economic Incentive Programs

Rule 1610 fails to comply with the EPA's regulations under Clean Air Act for an Economic Incentives Program ("EIP"). 59 Fed.Reg. 16690, 40 CFR Part 51, (April 7, 1994) EIPs must be "designed to result in quantifiable, significant reductions in actual emissions." *Id.* at 16694. The EIP rules require that projected emissions reductions be adjusted to reflect the uncertainties inherent in EIPs. *Id.* at 16699. The sources of uncertainty that must be separately addressed are compliance uncertainty (i.e. the extent to which sources will actually comply with program requirements) and programmatic uncertainties (e.g. the extent to which the voluntary market responses to incentives actually occur and/or the use of various quantification methods with differing confidence levels). *Id.* EIPs must also include audit procedures which must be accompanied by reconciliation procedures, designed to compare credited emissions (i.e., adjusted projected emissions) with actual emissions achieved through the implementation of the program." *Id.* at 16700. Credits can only be awarded for emissions reductions from EIPs that are "quantifiable and permanent over the entire duration of the program" (*id.* at 16712), and credit taken must be "surplus to what is otherwise required and credited to other elements of a federally-approved SIP." *Id.* at 16705. Finally, an EIP must include adequate enforcement consequences for noncompliance with any source requirements." *Id.*

As Mr. Lohmann testified, "No violations can be issued at the time the car is inspected and scrapped. Only when the credits from that car are submitted to SCAQMD for pollution credits can a notice of violation be issued. However, once the cars are accepted by the scrappers, they are immediately dismantled, resold, or destroyed. The way the rule is written, you can't enforce a careful inspection program." (Transcript, 49).

The Greenwald memo stated that "the present structure of the rule makes it virtually impossible for a District Inspector to penalize a scrapper who accepts vehicles that should not be accepted." (2) In fact, there is nothing in Rule 1610 that

makes conduct such as failing to comply with the plan filled by the scrapper or 'lackadaisical' inspection and acceptance of a non-qualified vehicle prosecutable as a rule violation. . . . In reality, the rule as drafted makes it almost impossible to prosecute a scrapper. who qualifies and asks for credit for scrapping an unqualified vehicle. The vehicles are accepted and then can remain on the lot for 90 days while parts are sold. The MSERC applications are not made for several months. The car is destroyed long before the application for credit for a nonqualified car is filed. It will be therefore impossible to check the condition of the car at the time the application is made.

(Greenwald Memo, 2) Finally, as the memo points out, "there is no penalty a vehicle owner

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doctors up a car in attempt to have it pass the inspection.” (3)

The lack of adequate enforcement of Rule 1610 is evident in the fact that out of 20,288 vehicles scrapped, only 34 were rejected, all for registration related reasons and none because the cars did not meet the functional requirements of Rule 1610. *See* Rule 1610 - Old Vehicles Scrapping Vehicles Rejected, Attachment 2 to a letter from SCAQMD’s Henry Hogo to EPA’s Ken Israels (Hogo Letter). Moreover, SCAQMD inspected only 2,241 out of 13,717 vehicles scrapped - 16 percent. *Id.* at Attachment 3.

Thus, for the reasons discussed above, Rule 1610 fails to meet the, EPA's EIP requirements and should not be approved by EPA. Because Rule 1610 produces “no additional emission reductions” and is “without quantifiable benefits” it therefore does not satisfy the criteria for an acceptable EIP. 59 Fed.Reg. at 16704.

Rule 1610 Does not Provide 'Necessary Assurances' Required by Clean Air Act

Clean Air Action section 110(a)(2)(E)(iii), 42 U.S.C. section 7410 requires that each State Implementation Plan (SIP) shall provide “necessary assurances that, where the State has relied on a local or regional government agency, or instrumentality for the implmentation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.” For the reasons discussed above, the SCAQMD has not provided CARB with the necessary assurances required to have Rule 1610 approved as part of California’s SIP. Further, the registered car scrappers, as instrumentalities for implementing Rule 1610, have not complied with the “necessary assurances” requirement.

Rule 1610 Invites Fraud Because Licensed-Scrapers are Allowd to Purchased Credits from Themselves.

Moreover, the fact that Unocal and Chevron both operate Rule 1610 scrapping programs and buy and utilize MSERCs generated by their scrapping programs raises serious conflicts of interest issues and is an invitation for fraud.⁴ This situation creates a financial incentive for the companies to fraudulently scrap vehicles since such scrapping is the most cost-effective means to avoid installing pollution control equipment.

CARB Should Immediately Suspend Rule 1610 and Forbid use of all MSERCs

CBE requests that CARB immediately instruct SCAQMD to suspend Rule 1610 MSERCs pending a thorough investigation of the issues raised by Mr. Lohmann’s testimony. CARB should further require SCAQMD to forbid use of all MSERCs generated to date since those credits cannot be verified as being real, surplus or quantifiable.

⁴Unocal owns Eco-Scrap and previously contracted with Ecology Auto Wrecking to perform scrapping for it. Chevron operates a scrapping program. Together, the two companies have performed the overwhelming majority of Rule 1610 scrapping. *See* SCAQMD Response to CBE’s Title VI Complaint, Attachment 4 (Attachment 4 is attached hereto as Exhibit G) (complete copy was sent by SCAQMD to CARB’S Kathleen Walsh)

CBE letter to Michael Kinney re: Problems with Rule 1610

CARB and EPA should forbid SCAQMD from allowing Rule 1610 MSERCs to be used for compliance with Rule 2202, which allows companies to avoid ride-sharing requirements by instead scrapping old-vehicle under Rule 1610. At least 68% of the MSERC's traded under Rule 1610 have been used for Rule 2202 compliance. Because of the serious problems with Rule 1610 discussed above, CBE requests that CARB immediately halt the use of Rule 1610 credits to comply with Rule 2202 or for any other purpose.

CARB should to immediately suspend its submission of Rule 1610 and Rules 1612; 1620, 2202, 2501, 107, 204, and 205 to the EPA for inclusion in California's SIP.

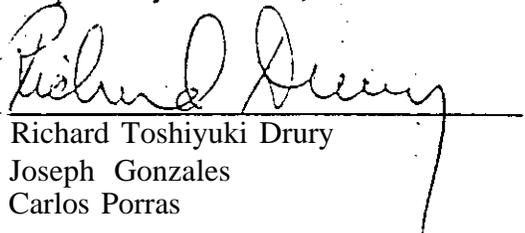
Because of the issues raised in this letter, the Title VI issues involved in Rule 1610⁵, and the fact that the rules submitted will most likely be revised, CBE believes that the most prudent course of action at this time is to again suspend Submittal of all the emission credit and trading rules.

Conclusion

In addition to transferring pollution from the entire South Coast Air Basin, which is only 36 percent people of color, the Wilmington-San Pedro area which is 75 to 90 percent people of color, Rule 1610 has serious and fatal flaws in how cars are scrapped and MSERCs are generated. For these reasons, CBE urges CARB to immediately suspend its submission of Rule 1610 and Rules 1612, 1620, 2202, 2501, 107, 204, and 205 to the EPA for inclusion in California's SIP. CBE further urges CARB to work with EPA, CBE, and other stakeholders to examine the problems with Rule 1610 and explore ways to develop necessary safeguards and enforcement mechanisms to ensure that any MSERCs generated are real, quantifiable, and surplus.

CBE looks forward to continued dialogue on these issues as we all work to improve the environment. Should you have any questions, please contact us.

Respectfully submitted,



Richard Toshuyuki Drury
Joseph Gonzales
Carlos Porras

J. Scott Kuhn

COMMUNITIES FOR A BETTER ENVIRONMENT

cc: Carol Browner, EPA Administrator
Felicia Marcus, EPA Region IX Administrator
Rob Brenner, EPA Office of Air Trading
Kevin Parikh, EPA Office of Civil Rights
David P. Howekamp, EPA Region IX
Members of the National Environmental Justice Advisory Council

⁵ CBE believes that SMAQMD Rules 107, 204, and 205 may pose environmental justice and Title VI problems.

TO: PETER GREENWALD
PETER MIERAS

RE: RULE 1610 VEHICLE SCRAPPING
ENFORCEMENT PROBLEMS

FROM: CAROL ENGELHARDT
GEORGE WRIGHT
BRUCE LOHMANN

DATE: NOVEMBER 19, 1996

Rule 1610 as currently drafted presents certain problems from an enforcement stand point.

Rule 1610 authorizes the generation of credits which exits for three years based upon the theoretical projected three year life span of a car that is crushed. With the onset of Rule 2501 (AQIP), Rule 2202 and the state program, it is imperative that the integrity of the program be maintained

The validity of the method by which cars are accepted for scrapping is therefore critical. However, the method by which cars are qualified and accepted for scrapping is dependent on the exercise of judgment by the individual who inspects the cars and determines whether that car has an actual future life of three years.

The following areas of Rule 1610 present potential problems if enforcement action is required to be taken against an individual who attempts to scrap or accepts for scrapping an unqualified vehicle:

1. There is no provision for canceling or revoking the license of an SCAQMD Licensed Scrapper
2. The standards for accepting or rejecting a vehicle are not tightly defined. The existing standards do not realistically exclude from the program vehicles which have no possibility of operating for three more years.
 - A. There is no requirement that the vehicle be able to pass an emission test.

Under the present law, unless the car can obtain a smog certificate, it cannot be registered. Without registration, it is unlikely the car would actually be operated for 3 years. Under the present Rule 1610, the ability of the car to meet the requirements for a smog certificate is not considered and no deduction from the three years of credits is made.

B. 1610(g) Visual and Functional Inspection (at subsection (5) requires visual verification that the car has certain specified "components" but does not specify that these items need to meet a standard of functionality.

Cars with severely smashed-in fenders, wired shut doors and cracked windshields are not excluded from the 1610 program.

The Rule should at a minimum require the vehicle meet the standards set by the Highway Patrol i.e. the vehicle could be operated on the highway without being subject to immediate citation for equipment violation as defined by the vehicle code.

3. The present structure of the rule makes it virtually impossible for a District Inspector to penalize a scrapper who accepts vehicles that should not be accepted.

1610m3 does allow a penalty to be imposed if a falsification of a scrapping plan, application, or compliance plan occurs, or, if the rule is violated.

A fraudulent MSERC application for a "defective" car could be prosecuted.

However, there is no operative language in the rule which makes conduct such as failing to comply with the plan filed by the scrapper or "lackadaisical" inspection and acceptance of a non-qualified vehicle prosecutable as a rule violation

In reality, the rule as drafted makes it almost impossible to prosecute a scrapper who qualifies and asks for credit for scrapping an unqualified vehicle. The vehicles are accepted and then can remain on the lot for 90 days while parts are sold. The MSERC applications are not made for several months. The car is destroyed long before the application for credit for a nonqualified car is filled. It will be therefore impossible to check the condition of the car at the time the application is made. If an inspector challenges a scrapper before the application is

made, the scrapper can merely state that he never intended to apply for credits.

4. The rule (intentionally after Governing Board debate) fails to require actual destruction of the engine or the parts. The rule requires that sand be put in the engines but this is a reversible process. More Significantly, what the rule does is allow two cars which would not each run more than a short period of time to be parted out and combined into one vehicle that will remain on the road for an extended period of time

5. There is no penalty if a vehicle owner doctors up a car in attempt to have it pass the inspection.

To: David Coel@AQ Eval@PTA
cc:
Bcc:
From: Bruce Lohmann@Prog Support@TPD
Subject: Rule 1610:Study Scrapped & Replacement Vehicles
Date: Wednesday, August 16, 1995 15:42:09 PDT
Attach:
Certify: N
Forwarded by:

I believe that a detailed study of the actual vehicles being scrapped under Rule 1610 and a separate study of the replacement vehicles used by the former owners of these scrapped vehicles must be conducted to determine the accuracy of the assumptions on which the Rule bases its quantification of emissions reductions. My reading of the 11/92 original Rule 1610 Staff Report tells me that on average the scrapped vehicles must have 3 years useful remaining life and be used about 4-6000 miles per year (Burden 7C). The Rule assumes that the replacement vehicles will be "average" on road vehicles (EMFAC 7E) which are approx. 80% less polluting than the scrapped vehicles. These assumptions are basic to the determination of the amount of MSERCs the District grants to the scrappers.

My direct observations of the physical condition of hundreds of vehicles recently scrapped by Unocal and those of the other inspectors and statements made to me by their owners regarding problems with the vehicles, lead me to voice this concern: A significant percentage of the scrapped vehicles probably do not have three years remaining life.

My conversations with some of the vehicles owners and observations of their dress and apparent economic condition, cause me concern as to whether the majority of the owners of these scrapped vehicles will be economically able to replace the scrapped vehicle with the average fleet vehicle of EMFAC 7E. My belief is that most will continue to drive an older vehicle, one with significantly higher emission than the fleet average vehicle assumed by Rule 1610.

If my observations and conclusions are accurate even in part, then the District should significantly discount MSERCs granted under Rule 1610 or recalculate them to the correct level of emissions reductions and then grant only those MSERCs that are truly justifiable.

To determine the accuracy of the replacement vehicle emissions assumption in Rule 1610, the District or an outside consultant, could review DMV records to determine the model year of vehicle(s) currently registered to those who Scrapped vehicles under the recent Unocal or other large scrapping programs. Analysis could be done to determine the average age of these actual replacement vehicles. Using ARB data for emissions by vehicle age group, we could then correct the MSERC calculation to account for the real world vehicles typically owned by the former owners of scrapped vehicles.

A mechanically qualified consultant could be used to inspect a random sampling of vehicles accepted for scrapping at a future scrapping program to make comprehensive evaluations as to their remaining useful life to test the 3 year assumption in Rule 1610. My observation and comments by those scrapping vehicles, and I have no particular training beyond being a motor vehicle driver for 25 years and a previous owner of clunkers, cause me to conclude that a significant percentage (up to 40%) of the vehicles scrapped are "on their last legs" with only 0-12 months remaining Life unless they underwent major repair.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT,
PLANNING, TRANSPORTATION AND INFORMATION MANAGEMENT
MEMORANDUM.

DATE: August 2, 1995
TO: Laki Tisopoulos
FROM: Bruce Lohmann 
SUBJECT: MSERCS granted for old vehicle scrapping

The assumption that old vehicle scrapping results in real and quantifiable mobile source emissions reductions may be flawed: Does the elimination of a small portion of the registered pre-82 vehicle universe result in the amount of basin emissions reductions which we are now crediting to Rule 1501 and other sources?

My understanding is that we grant credits based on the several factors, primary of which is the BAR data for average annual emissions based on the vehicle age group of the scrapped vehicle. The vehicle is thus assumed to be in use at an average usage of, I believe, approx. 5,000 miles per year. A second assumption is that these vehicle would have been used an average of three additional years (beyond the date of scrapping) before they would have been natural scrapped. A critical third apparent assumption. is that the vehicle owner will, after scrapping the old vehicle, then use a cleaner vehicle to accomplish the vehicle trips for which the scrapped vehicle was formerly needed (a cleaner vehicle whose emission characteristics would then be at or nearer to those of the basin fleet average vehicle).

If these assumptions are close to the mark, then the current level of emissions credits granted by the District for the scrapping of these older vehicles would be both appropriate and defensible and meet our goal of providing equivalent lower cost options to compliance with Rule 1501 and other rules.

My direct observations of vehicles scrapped under Rule 1610 by Western Fuel Oil, Unocal and The Old Vehicle Clearinghouse and my impromptu interviews of some of the owners, cause me concern as to the accuracy of these basic assumptions.

My confidence in the accuracy of the average usage and remaining usable life assumptions (5,000 miles/year for three years) was tested when I was faced with vehicles whose owners towed them to the site, whose owners could not get the vehicle to restart, whose owners freely admit having transmission and engine problems, whose owners flat out stated that the vehicle was "on its last legs", whose owners had to purchase body or mechanical parts at the scrap site to pass the Rule 1610 requirements that the vehicle have most originally supplied parts, whose vehicles had major body damage such that doors/windows/hoods were no longer operable and vehicles whose damaged/broken suspension elements made wheels appear to be almost falling off. Could most of these vehicles, on average, been used, without major repairs, for three additional years? Were some of them not in use at all prior to being taken to the

Scrapping site? Were they en route to the junkyard-anyway or to the oblivion of abandonment in an alley or backyard?

The third assumption, and perhaps the most important, is that the old vehicle owners who scrap vehicles under Rule 1610 would then accomplish the trips previously accomplished with the scrapped vehicles using lower emitting vehicles thus reducing emissions arising from their transportation needs. Are their alternate vehicles cleaner (approximately equivalent to the basin fleet average vehicle) or not? If they are not then what was gained by eliminating from our basin the vehicles formerly used by these individuals. While I do not know the answer to these questions, I will share my experience as an inspector watching the scrapping process.

Of the owners with whom I struck up a casual conversation at the scrapping site, I recall only a couple who told that they had purchased a new vehicle recently and were now scrapping "old faithful". Most said they had another car they would use: none said they would start using public transit or depend on carpooling for their mobility needs.

While I have no data on the socioeconomic levels of the people who scrap vehicles, my observation and that of inspector John Zapfel, is that the vast majority are lower middle class and below. Can less economically empowered individuals, those who typically would be found driving/scrapping these older vehicles, once given \$700 by a Rule 1610 scrapper, then be able go out and be able to buy a fleet average used vehicle?

As a member of the Mexican-American and Mexican immigrant community for some 16 years, the group to which many of the old vehicle owners that I interviewed are part of, I know that many in this group are at the lower economic rungs of our economy. I believe that the funds given them by scrappers would more likely be used to patch up another old vehicle so that the individual could satisfy continuing mobility needs or the funds would be used to satisfy other pressing financial obligations. Unless the alternate vehicles used by those who scrap old vehicles are demonstrably cleaner on average than the scrapped vehicles, should emissions reductions credits be given to the businesses that scrap them?

I suggest that we consider conducting a comprehensive study of these issues to determine the real and quantifiable emissions reductions achieved by Rule 1610. A possible outcome would be a correction to the amount of MSERCS granted when old vehicles are scrapped. Retrospectively we could survey those who have already scrapped vehicles under the large Chevron and Unocal programs to gain real world data to support the assumptions of average vehicle usage, longevity and emissions characteristics of the replacement vehicles.

NOTE: Authority cited: Sections 39600, 39601 and 415 Code. Reference: Sections 41510, 41511 and 41512, Hea

§ 91211. Oversight.

All testing requested by the Executive Officer and dependent tester may be observed by an authorized representative of the Executive Officer.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91212. Audit Testing of Independent Testers.

Without prior notice the responsible party must allow personnel and equipment authorized by the Executive Officer entry for the purpose of testing the capability of the independent tester during the performance of a test.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91213. Availability of Independent Tester.

The responsible party must notify the designated independent tester that he or she may be called upon to perform testing with at least 24 hours advance notice from the Executive Officer. If the tester cannot respond within the required time, then the Executive Officer may conduct the required testing. In such cases the responsible party will be charged for the testing in accordance with Section 91201, Title 17, California Administrative Code.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91214. Fee and Payment for Testing by Independent Testers.

Fees and payment for testing conducted by independent testers shall be arranged by agreement between the independent tester and the responsible party. In no case will the State Board be responsible for collection of fees for any independent tester.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91215. Confidentiality of Test Information.

Without prior approval of the Executive Officer, the independent tester shall not disclose to the responsible party or the responsible party's personnel in advance of the test the dates, locations, or times of testing. The independent tester shall not disclose to the responsible party the results of the test prior to disclosure to the Air Resources Board. Failure to keep such information confidential for such a period may result in indefinite disqualification of the tester.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91216. Records and Reports.

All original records made during testing requested by the State Board shall become the property of the State Board. All or part of such records may be requested by the Executive Officer at any time during or after the test period. All original records and the report of results from the tester should be provided to the Executive Officer no later than 30 days after the testing is complete. Failure to provide the required records or reports may result in disqualification of the tester for further testing required by the State Board.

NOTE: Authority cited: Sections 39600, 39601, and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91217. Conformity During Testing.

An independent tester shall conform to reasonable requests made by the Executive Officer during the test period. Failure to conform as such may result in disqualification from testing as required by the State Board.

NOTE: Authority cited: Sections 39600, 39601, and 41512, Health and Safety Code. Reference: Sections 41510 41511 and 41512, Health and Safety Code.

§ 91218. Testimony.

When requested by the Executive Officer, the independent tester shall provide testimony in court or other prosecutorial assistance related to violations discovered as a result of the independent tester's compliance

EXHIBIT E

Charges of the independent tester to the State Board for such not exceed the actual travel costs, the per diem rate for state applicable at the time of the services, and remuneration for ices on an hourly basis not to exceed the hourly cost to the

State of an employee of the State Board whose job functions are mostly closely equivalent to the functions of the representative of the independent tester rendering the personal services.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91219. Validity of Independent Tester's Compliance Test Data.

Test data produced during compliance testing of a source by an independent tester will be reviewed by the Executive Officer to determine its validity. If such data is determined after consultation with the independent tester and the responsible party to be invalid, the Executive Officer may require a repeat compliance test of the source.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

§ 91220. Unannounced Testing.

When there is reasonable cause to believe that a violation has occurred, is occurring, or will occur, the Executive Officer may test directly without prior notice and without allowing such testing to be conducted by an independent tester.

NOTE: Authority cited: Sections 39600, 39601 and 41512, Health and Safety Code. Reference: Sections 41510, 41511 and 41512, Health and Safety Code.

Subchapter 5.5.

Article 1.

§ 91400. Equipment and Process Precertification.

The Executive Officer may precertify simple, commonly used equipment and processes in accordance with the Air Resources Board's "Criteria for Equipment and Process Precertification" which is incorporated by reference herein. (Adopted: June 14, 1996). The "Criteria for Equipment and Process Precertification" is available upon request from the Air Resources Board's Business Assistance Center, 2020 L Street, Sacramento, California, 95814, telephone 1-800-ARB-HLP2. The Air Resources Board may also be contacted via its Internet home page at: <http://www.arb.ca.gov>.

NOTE: Authority cited: Sections 39600, 39601 and 39620, Health and Safety Code. Reference: Sections 39000, 39001, 39002, 39003, 39010, 39500, 39515, 39516, 39620, 41511, 41512, 42322 and 57001, Health and Safety Code.

HISTORY

1. New subchapter 5.5 (article 1), article 1 (section 91400) and section filed 10-31-96; operative 11-30-96 (Register 96, No. 44).

Subchapter 5.6. Interchangeable Air Pollution Emission Reduction Credits

Article 1. Scope and Policy; Definitions

§ 91500. Purpose.

This regulation establishes a statewide methodology for use by air pollution control and air quality management districts (Districts) when calculating the value of emission reduction credits from stationary, mobile, or area sources. As such, this regulation (1) provides a uniform exchange mechanism for stationary, mobile, and area source credits; and (2) provides for the use of credits as a compliance alternative for meeting specified District control requirements. The regulation is intended to ensure that interchangeable credits represent verified emission reductions that are real, permanent, quantifiable, enforceable, and surplus to those emission reductions which are needed to comply with existing requirements and with District air quality plans.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39605, 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New subchapter 5.6 (articles 1-3), article 1 (sections 91500-91501) and section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

§ 91501. Definitions.

The following definitions shall apply in this sub-chapter.

(a) "Air quality plan" includes, but is not limited to, attainment, rate-of-progress, and maintenance plans adopted by Districts pursuant to State requirements specified in Chapter 10 (commencing with section 40910) of Part 3 of Division 26 of the Health & Safety Code (the California Clean Air Act), and federal requirements specified in the Clean Air Act governing the State Implementation Plan (SIP).

(b) "Certified" means an interchangeable credit has been evaluated by the air pollution control officer of the affected District pursuant to the requirements of this sub-chapter and found to comply with all applicable District, state, and federal requirements.

(c) "Credit generation period" means the period of time, specified by year, in which interchangeable credits are generated.

(d) "Emission reduction duration" means the length of time during which the action generating the emission reduction credit results in verifiable and surplus emission reductions.

(e) "Hazard Index" means the ratio of the concentration of a toxic pollutant with non-cancer health effects and the reference exposure level for that pollutant.

(f) "Interchangeable credit" means an emission reduction credit generated from a stationary, mobile, or area source that can be used, traded, or banked among programs and/or source categories as specified in this regulation and in accordance with state and federal law.

(g) "Reference Exposure Level" means a concentration level at or below which no adverse health effects are anticipated.

(h) "Registered" means that an interchangeable credit has been deposited, withdrawn, or transferred through the act of recording a transaction in a District's banking register.

(i) "Surplus" means that the reduction is not required or assumed throughout the time of the emission reduction duration by any local, state or federal permit, rule, regulation, law, ordinance or the most recent locally approved air quality plan, or control measure implementation date. If the control efficiency or emission standard in the most recent locally approved air quality plan is less stringent than the control efficiency or emission standard in the applicable SIP for a specific source category, then the federally approved SIP will be used for purposes of determining surplus reductions.

(j) "Total Hazard Index" means the sum of hazard indices for pollutants with non-cancer health effects that have same or similar adverse health effects.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-4714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

Article 2. Credit Exchange Function

§ 91502. Certified Credits.

District certified credits that are generated pursuant to relevant district, state, and federal requirements and calculation protocols can be used interchangeably among programs and/or source categories to meet applicable district requirements to the extent provided by district rules.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New article 2 (sections 91502-91504) and section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

§ 91503. Credit Denomination.

Credits that are used interchangeably shall be certified and registered as pounds of pollutant in one year increments.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-30714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

§ 91504. Banking.

(a) Interchangeable credits shall comply with the requirements set forth in Health and Safety Code sections 40709 through 40714.5, and applicable federal requirements governing the creation, banking, and use of credits. Emission reductions proposed to offset simultaneous emissions increases within the same stationary source need not be banked prior to use as offsets, pursuant to section 40709(c).

(b) The District shall specify the earliest year in which an interchangeable credit can be used.

(c) An interchangeable credit cannot be used prior to its certification and registration, or in any instances in which the District determines such use would not comply with section 91506(d).

(d) Credits can be used interchangeably within the time period specified by the District or ARB, consistent with the air quality plan, applicable state and federal requirements and section 91507(b)(6).

(e) While banked, a certified and registered credit will retain its full value. At the time of use, credits will be subject to prevailing federal, state, and district requirements.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

Article 3. Criteria and Methodology for Generation and Use of Interchangeable Credits

§ 91505. Applicability.

(a) The provisions set forth in this subchapter shall apply to any District which adopts, implements, or amends a rule or regulation which provides for the generation and use of interchangeable credits from stationary, mobile, or area sources.

(b) Districts with existing interchangeable credit and trading rules and regulations shall make amendments as necessary to comply with this regulation within nine months of its effective date, unless the District can demonstrate to the satisfaction of the Executive Officer that more time, not to exceed one year total, is necessary.

(c) Districts with market incentive programs authorized by Health and Safety Code sections 39616 and 40440.1 that propose to expand such programs to allow the use of interchangeable credits shall ensure compliance with the criteria set forth in section 39616(c), and this sub-chapter.

(d) Districts may maintain a separate account of emission reduction credits for new source review offset purposes consistent with sections 40709 et seq. and 40918 through 40920.5 of the Health and Safety Code without complying with the provisions of this sub-chapter.

(e) Credits that are used interchangeably must meet all applicable federal, state, and district requirements, including but not limited to the provisions of this subchapter, the adopted air quality plan, and those pertaining to the generation and use of emission reduction credits.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New article 3 (sections 91505-91508) and section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

§ 91506. Generation and Use.

(a) Districts shall adopt rules which, at a minimum, comply with the provisions of this subchapter and with sections 40920.6(c) & (d) and 40709-40714.5 of the Health and Safety Code prior to allowing the use of interchangeable credits to meet District requirements other than the offset provisions of their new source review programs.

(b) Interchangeable credits must be certified by the District in which the generation occurs and registered in that District's emission reduction credit bank prior to use. Districts within the same nonattainment area may establish a multi-district banking program.

(c) Districts, in consultation with the Air Resources Board, shall adopt enforceable technical protocols that define how emission reductions will be calculated for purposes of certifying them as interchangeable credits.

(d) Use of interchangeable credits must, in the aggregate, result in no greater annual pollutant-specific emissions than would have occurred in lieu of trading, consistent with the District's portion of the air quality plan. The assessment of equivalency shall take into account the exceedance season for each affected nonattainment pollutant.

(e) Districts shall ensure compliance with federal, state and District requirements governing credit generation and use through permit conditions or other enforceable instruments.

(f) Districts shall not allow the use of emission reduction credits to comply with the "best available control technology" requirements of sections 40405 and 40918-40920.5 of the Health and Safety Code, or with any technology-based requirements of sections 111, 169, 171 and 173 of the federal Clean Air Act (42 U.S.C. 7411, 7479, 7501, 7503).

(g) Districts may authorize the use of interchangeable credits consistent with any federal, state, or local requirements applicable to toxic air contaminants, only if allowed by regulations established pursuant to section 39665 et seq. of the Health and Safety Code, and section 112 of the federal Clean Air Act (42 U.S.C. 7412).

(h) Surplus emission reductions that meet the requirements of Health and Safety Code section 40714.5 can be used to create interchangeable credits. If not already accounted for in District air quality plans, baseline emissions from qualifying sources must be included and accounted for in the next update to the plan.

(i) Emission reduction credits from permitted stationary sources that were certified and banked solely for use in a District's new source review program must be included and accounted for in the air quality plan prior to use in a interchangeable credit trading program.

(j) Emission reduction credits or market-based trading instruments generated under programs authorized by Health and Safety Code sections 39616 and 40440.1 may be used interchangeably outside the market incentive program only upon a determination by the District, based upon a study conducted by the District that, in the aggregate, such credits represent real reductions, and provided that:

(1) The District submits its request and the above study to the ARB at least 120 days prior to the intended interchangeable use of those credits outside of the original market incentive program.

(2) ARB concurs in writing that the District's submittal regarding the interchangeable use of such credits complies with all applicable requirements including the criteria in Health and Safety Code section 39616(c); as it pertains to this program. ARB shall provide a written response containing its finding within 90 days of receipt of the District's submittal.

(k) District rules shall provide for assessment and consideration of potential localized impacts that use of interchangeable credits may have on the public's exposure to air pollution.

(l) In no case shall the generation and use of credits result in a total facility-wide health risk from toxic air contaminants identified pursuant to Health and Safety code section 39657 that exceeds a district established significance threshold applicable to emissions trading. Health risk shall

be assessed using cancer potency values and reference exposure levels established by the Office of Environmental Health Hazard Assessment, pursuant to section 44360(b)(2) of the Health & Safety Code. District programs shall provide for public disclosure of any increase in emissions of toxic air contaminants which results in a total facility-wide cancer health risk above ten in one million or a total facility hazard index greater than 1.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

§ 91507. Calculation Methodology.

(a) Interchangeable credits shall be calculated based on a District's adoption calculation protocol. The calculation protocol shall include the elements specified in subparagraph (b) and shall be consistent with the following criteria:

(1) Emission reductions used to generate interchangeable credits shall be real, permanent for the term of credit generation, enforceable, surplus, and quantifiable.

(2) Emission reductions shall be calculated using the most stringent of historic actual emissions, applicable requirements, the District's air quality plan, the federally approved SIP, or, where applicable, other more stringent levels as established in an implementing rule or regulation.

(b) Districts shall provide for enforceable credit calculation protocols and procedures that contain the following elements:

(1) Calculation methods to determine the amount of reductions being generated as credits, including formulae accounting for emissions rate, operating period, activity level, and technical uncertainty.

(2) Procedures for calculating, certifying, and registering credits in one year increments when credits are generated from multi-year emission reductions.

(3) Procedures for certifying that emission reductions are surplus and available for use as interchangeable credits.

(4) Procedures to incorporate emission inventory updates and changes in source category baselines, air quality plans, and applicable regulatory requirements into the credit calculation protocols.

(5) Methodologies used to determine the time period in which a banked credit is available for use, consistent with the air quality plan.

(6) Provisions for the use of ARB calculation methodologies, emission factors, certification standards, emission baseline data, and timeframes for credit use for mobile sources and for products under ARB regulatory authority.

(7) Provisions for monitoring, recordkeeping, and reporting requirements to verify and enforce credit generation at the specified value over the full generation period.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

§ 91508. Program Reporting.

(a) Districts shall prepare an annual report on their interchangeable credit trading programs that document the following:

(1) Quantity of interchangeable credits generated and used, by pollutant;

(2) Extent to which emission reduction credits were used, by rule and source category, to comply with Best Available Retrofit Control Technology and how they were accounted for in the air quality plan;

(3) Summary of changes made affecting the calculation methodology elements defined in section 91507(b); and,

(4) Actions taken to comply with applicable credit generation and use requirements contained in section 91506.

(5) A finding as to whether use of interchangeable credits complied with section 91506(d) requirements.

(b) As part of the triennial progress assessment of the air quality plan, Districts with interchangeable credit trading programs shall evaluate the performance of the program as an alternative compliance approach to meet applicable District requirements. The evaluation shall include the results of the annual reports and identify what, if any, changes were incorporated into the emission inventory update as a result of program implementation.

NOTE: Authority cited: Sections 39600, 39601 and 39607.5(a), Health and Safety Code. Reference: Sections 39607.5(b), 40709-40714.5 and 40920.6(c), Health and Safety Code.

HISTORY

1. New section filed 4-14-98; operative 4-14-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 16).

Subchapter 6. Abrasive Blasting

Article 1. General Provisions

§ 92000. Definitions.

For the purposes of this subchapter:

(a) "Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

(b) "Abrasive blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

(c) "Abrasive blasting equipment" means any equipment utilized in abrasive blasting operations.

(d) "Air contaminant" includes smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids or any combination thereof.

(e) "Certified abrasive" means an abrasive which has been certified by the Air Resources Board (ARB) in accordance with section 92530.

(f) "Cut-point for fineness" means the smallest United States Standard Sieve size through which no more than one percent by weight of abrasive material will pass before blasting when tested in accordance with California Test method No. 202-G, dated July 1, 1982.

(g) "Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

(h) "Multiple nozzles" means more than one nozzle being used to abrasive blast the same surface in such close proximity that their separate plumes are indistinguishable.

(i) "Permanent building" means a building which is used, in whole or in part, for sandblasting operations.

(j) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, contractor, supplier, installer, user or owner, or any state or local governmental agency or public district or any officer or employee thereof. "Person" also means the United States Government or its agencies to the extent authorized by federal law.

(k) "Sandblasting" means abrasive blasting.

(l) "Source" means the impact surface from any single abrasive blasting nozzle.

(m) "Steel or iron shot/grit" means abrasives which meet either the Society of Automotive Engineers (SAE) recommended practices J827 and J444 or Steel Founders' Society of America Standards 21-68 or 20T-66, as those practices and standards existed on 2-24-84.

(n) "Sweep abrasive blasting" means a method of cleanup performed in order to achieve surface uniformity or impurity removal after wet blasting, hydroblasting, or vacuum blasting operations.

(o) "Vacuum blasting" means any abrasive blasting in which the spent abrasive, surface material, and dust are immediately collected by a vacuum device.

(p) "Wet abrasive blasting" means any abrasive blasting using compressed air as the propelling force, which in the judgment of the air pollu-

tion control officer uses an amount of water adequate to minimize the plume.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 41900, 41902, 41904 and 41905, Health and Safety Code.

HISTORY

1. New subchapter 6 (sections 92000-92520, not consecutive) filed 8-23-74; effective thirtieth day thereafter (Register 74, No. 34).
2. Amendment filed 3-1 1-76; effective thirtieth day thereafter (Register 76, No. 11).
3. Amendment of NOTE filed 3-1 8-77; effective thirtieth day thereafter (Register 77, No. 12).
4. Amendment of NOTE filed 10-18-82; effective thirtieth day thereafter (Register 82, No. 43).
5. Amendment filed 8-30-84; effective thirtieth day thereafter (Register 84, No. 35).
6. Repealer of subsections (e), (f), (g), (j) and (o); new subsections (e), (f), (i) and (n); renumbering of subsections (h)-(i) to (g)-(h), (k)-(n) to (j)-(m), and subsection (p) to subsection (o); and amendment and renumbering of subsection (q) to (p) filed 5-1-91; operative 5-31-91 (Register 91, No. 24).

§ 92100. Scope and Policy.

These standards in this subchapter are not intended to prohibit air pollution control districts from enforcing their permit regulations as they apply to abrasive blasting equipment.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 41900, 41902, 41904 and 41905, Health and Safety Code.

HISTORY

1. Amendment of subsection (d) filed 3-14-75 as an emergency; effective upon filing (Register 75, No. 11).
2. Amendment filed 7-10-75 as procedural and organizational; effective upon filing (Register 75, No. 28).
3. Amendment and new NOTE filed 3-18-77; effective thirtieth day thereafter (Register 77, No. 12).
4. Amendment filed 10-18-82; effective thirtieth day thereafter (Register 82, No. 43).

Article 2. Prohibitions

§ 92200. Visible Emission Standards.

(a) No person shall, discharge into the atmosphere from any abrasive blasting which is conducted outside a permanent building any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

(1) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (a)(1).

(b) No person shall, discharge into the atmosphere from any abrasive blasting which is conducted within any permanent building any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

(1) As dark or darker in shade as that designated as No. 1 on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subdivision (b)(1).

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 41900, 41902, 41904 and 41905, Health and Safety Code.

HISTORY

1. New NOTE filed 3-18-77; effective thirtieth day thereafter (Register 77, NO. 12).
2. Amendment of NOTE filed 10-1 8-82; effective thirtieth day thereafter (Register 82, No. 43).
3. Amendment filed 8-30-84; effective thirtieth day thereafter (Register 84, No. 35).
4. Amendment of subsections (a) and (b) filed 5-131-91 (Register 91, No. 24).

§ 92210. Nuisance Prohibition.

Compliance with all rules and regulations in this subchapter does not exempt any person from complying with Section 41700 of the Health and Safety Code, nor from complying With any state statutory or common law nuisance prohibition.

**REGULATION 2
PERMITS
RULE 9
INTERCHANGEABLE EMISSION REDUCTION CREDITS**

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REGULATION 2
PERMITS
RULE 9
INTERCHANGEABLE EMISSION REDUCTION CREDITS
(Adopted "date of adoption")

2-9-100 GENERAL

2-9-101 Purpose: The purpose of this regulation is to provide a methodology to calculate and track the generation, use and trading of Interchangeable Emission Reduction Credits (IERC's) from stationary, mobile and area sources in order to provide a voluntary, cost-effective, alternate means of compliance with certain District rules and regulations.

2-9-200 DEFINITIONS

2-9-201 Area Source: An emitting activity from a non-mobile source within the District which is not subject to District permitting requirements, including but not limited to the following:
201.1 consumer products;
201.2 a source which is exempt from permit requirements per Regulation 2 Rule 1.

2-9-202 Bankable Pollutants: Interchangeable emission reduction credits (IERC's) of the following pollutants may be deposited in the IERC Bank: precursor organic compounds, non-precursor organic compounds, PM10, PM2.5, sulfur dioxide, nitrogen oxides, and carbon monoxide.

2-9-203 Banking Certificate: A document issued by the APCO which indicates the amount of pollutant-specific IERC's which are available for use, trade, purchase, sale or other means of commercial transaction during the credit use life, as established by the effective and expiration dates on the banking certificate. A banking certificate does not constitute a property right. A banking certificate is not intended to recognize any pre-existing right to emit air contaminants, but to provide a mechanism for the APCO to recognize the existence of reductions of air contaminants that can be used or traded in accordance with the provisions of this rule.

2-9-204 Best Available Retrofit Control Technology (BARCT): Any provision in Regulation 8 or Regulation 9 that was adopted pursuant to the Health and Safety Code Section 40918 requirement for ozone non-attainment areas to implement all feasible control measures for ozone precursors.

2-9-205 Credit Generation Period: A consecutive time period of twelve months or less during which emissions are permanently and enforceably reduced relative to a baseline period. The maximum number of credit generation periods for specific types of emission reductions are as follows:
205.1 For a curtailment, the maximum number of credit generation periods is not limited. The APCO shall re-evaluate the emission reductions from a curtailment every three years to ensure that the reductions continue to meet the provisions of this rule. The baseline does not change upon re-evaluation.

- 205.2 For any other type of emission reduction from a permitted stationary source, the maximum number of credit generation periods is five.
- 205.3 For emission reductions from all other sources, the maximum number of credit generation periods is three.

- 2-9-206 Credit Use Life:** The time period during which an IERC may be used, traded, purchased, sold or made part of a commercial transaction. IERC's retain their full value until their expiration date.
- 2-9-207 Curtailment:** An emission reduction from a permitted stationary source that is due to additional abatement equipment, increased abatement efficiency, or process modification, excluding an emission reduction due to reduced hours of operation, throughput, material usage or fuel usage.
- 2-9-208 Effective Date:** The first day on which an IERC may be used. An effective date may be the date of issuance of the IERC Certificate, or it may be a future date, typically in one-year increments from the date of issuance of the IERC Certificate.
- 2-9-209 Emission Inventory:** Emissions based on the most recent reliable data available to the District.
- 2-9-210 Emission Reduction Credit (ERC):** An emission reduction which was generated and banked in accordance with Regulation 2, Rule 4.
- 2-9-211 Enforceable:** The District has determined that credible and relevant evidence exists throughout the duration of the credit generation period with which to evaluate compliance with the terms of this rule.
- 2-9-212 Expiration Date:** The date after which an IERC can no longer be used.
- 2-9-213 Interchangeable Emission Reduction Credit (IERC):** A real, permanent, quantifiable, enforceable and surplus emission reduction in excess of the reductions achieved by, or achievable by a stationary, mobile or area source using Reasonably Available Control Technology (RACT), Best Available Retrofit Control Technology (BARCT), or other applicable California or federal emission standard for that source. Such credits are expressed in the unit of pounds of a specific pollutant in the year generated, and have a specified, non-permanent lifetime (expiration date). IERC's are subject to the prevailing "offset ratio" (per Regulation 2, Rule 2 Sections 302 and 303) and "environmental benefit discount" at the time of credit usage.
- 2-9-214 Mobile Source:** Mobile sources consist of on-road and off-road motor vehicles; boats; ships; aircraft; light and heavy duty industrial/construction equipment; farm equipment; lawn, garden and utility equipment; and other similar sources.
- 2-9-215 Permanent:** An emission reduction which exists for the duration of the credit generation period.
- 2-9-216 Quantifiable:** An emission reduction with a magnitude that can be measured or estimated by accurate and replicable techniques, such as accepted emission calculation procedures, emission factors, source test data, emission monitoring data, parametric data, or other method approved by the APCO.
- 2-9-217 Real:** An emission reduction that constitutes an actual decrease in air emissions.

2-9-218 Reasonably Available Control Technology (RACT): For sources which are to continue operating, RACT is the lowest emission limit that can be achieved by the specific source by the application of control technology taking into account technological feasibility and cost-effectiveness, and the specific design features or extent of necessary modifications to the source. For sources which are or will be shut-down, RACT is the lowest emission limit that can be achieved by the application of control technology to similar, but not necessarily identical categories of sources, taking into account technological feasibility and cost-effectiveness of the application of the control technology to the category of sources only and not to the shut-down source.

2-9-219 Stationary Source: Any article, machine, equipment, operation, contrivance or related grouping of such which may produce and/or emit air pollutants, and which possesses or possessed a valid District permit during the credit generation period.

2-9-220 Surplus: An emission reduction calculated in accordance with this regulation that is not required or assumed during the credit generation period, and which exceeds the emission reductions required by any District, California or federal permit, rule, regulation, law, ordinance or the most recent District approved Clean Air Plan or Air Quality Management Plan, or control measure implementation date. If the control measure or emission standard in the most recently District approved rule or air quality plan is less stringent than the control efficiency or emission standard in the approved California State Implementation Plan (SIP) for a specific source category, then the federally approved SIP will be used for purposes of determining surplus reductions.

2-9-300 STANDARDS

2-9-301 Bankable Interchangeable Emission Reduction Credits - General Provisions: IERC's are subject to the following general provisions.

301.1 An emission reduction of a bankable pollutant may be banked as an Interchangeable Emission Reduction Credit, provided that the reduction meets the following criteria:

1.1 The emission reduction is generated by an area, mobile or stationary source that the District includes in its Emission Inventory. A source is included in the Emission Inventory if it has a District Permit to Operate (if one is required) or is a member of a source category included in the Emission Inventory (if no permit is required).

1.2 The emission reduction is real, permanent, quantifiable, enforceable and surplus.

301.2 An emission reduction from a permitted or exempt stationary source that was banked in accordance with the procedures described in Regulation 2-4, can be converted to an IERC, in accordance with Section 2-9-306.

301.3 An IERC is expressed in the unit of pounds of a specific pollutant(s) in the year generated, and has a specified, credit use life.

301.4 An IERC retains its full value during its credit use life.

301.5 If used to provide offsets, an IERC is subject to the prevailing offset ratio in Regulation 2, Rule 2, Sections 302 and 303 at the time of its usage.

301.6 An IERC is subject to the prevailing environmental benefit discount at the time of its usage.

301.7 For IERC's resulting from multi-year credit generation periods, the APCO shall issue individual banking certificates for each year of credit generation.

301.8 An IERC may be combined with one or more additional IERC's and used at the same time (i.e., stacked) provided the credit use life of each IERC has commenced and not yet expired at the time of the stacked IERC use.

- 2-9-302 Use of IERC's:** An IERC may be used to comply with any of the following:
- 302.1 Total or partial compliance with an emission standard of a rule in Regulations 8 and 9, or permit condition that is based on an emission standard of a rule in Regulations 8 and 9, except as limited in Section 2-9-302.2. IERC's must be supplied prior to generating emissions in excess of the regulatory standards.
 - 302.2 Only an IERC which was generated at the same facility (on-site) shall be used to comply with the following rules.
 - 2.1 Regulation 8, Rules 10, 27, 40, 44, 46 and 47;
 - 2.2 Regulation 9, Rules 1, 2, 4, 5 and 6;
 - 2.3 Any rule adopted or modified subsequent to the adoption of Regulation 2, Rule 9, which is explicitly intended, at least in part, to reduce emissions of one or more toxic air contaminants, or to reduce local impacts from the affected source.
 - 302.3 The offset provisions of Regulation 2-2-302 or 303 for a source with a pre-determined limited lifetime, provided sufficient offsets to cover the entire lifetime of the source are surrendered before start-up of the source. The offset ratio in Regulation 2-2-302 or 303 is only applicable for this use, and is in addition to any other reduction required by this rule.
 - 302.4 To temporarily increase an existing emission cap, provided that the increase does not trigger New Source Review requirements of Regulation 2, Rule 2.
 - 302.5 Mitigation of air quality impacts, subject to the approval of the APCO.

2-9-303 Inter-pollutant Trading: For the purposes of this rule, IERC's for POC and NOx may be used interchangeably, on a 1:1 weight basis. IERC's for PM2.5 may be used for PM10, on a 1:1 weight basis. IERC's for NOx or SO2 may be used for PM10 or PM2.5 offsets, provided the applicant can demonstrate an appropriate offset ratio, to the satisfaction of the APCO.

- 2-9-304 Restrictions on the use of IERC's:** An IERC cannot be used in lieu of full or partial compliance with:
- 304.1 Best Available Control Technology, per Regulation 2-2-301
 - 304.2 New Source Performance Standards, per Regulation 10
 - 304.3 National Emission Standards for Hazardous Air Pollutants (NESHAP)
 - 304.4 Federal MACT standards
 - 304.5 Emission limitations or control requirements on toxic emissions imposed by the District's Risk Management Policy.
 - 304.6 Any requirement in Regulation 8 or Regulation 9 that is effective on or before January 1, 1998, ~~or sooner~~. This section specifically prohibits "backsliding" on compliance with any existing emission standard, emission limitation, concentration limit, or efficiency standard of an existing District required abatement device.

2-9-305 Localized Toxic Impacts: The use of IERC's shall not result in a total facility-wide carcinogenic risk exceeding 100 in one million or a total facility-wide hazard index greater than 1. Carcinogenic risk and hazard index shall be assessed in a manner consistent with the District Risk Management Policy, using the cancer potency values and reference exposure levels established by the State Office of Environmental Health Hazard Assessment.

- 2-9-306 Conversion of an ERC to an IERC:** An existing stationary source emission reduction credit (ERC) that was banked in accordance with the procedures in Regulation 2, Rule 4, may be converted to an Interchangeable Emission Reduction Credit for the same pollutant, in accordance with the procedure in Section 2-9-605.
- 2-9-307 Environmental Benefit Discount:** Prior to any IERC being used, the APCO will discount such IERC by 10 percent of its denominated value. This reduction shall be in addition to, and subsequent to any RACT and/or BARCT adjustment required by other sections of this rule, and any offset ratio required by Regulation 2, Rule 2.
- 2-9-400 ADMINISTRATIVE REQUIREMENTS**
- 2-9-401 IERC Application:** An application is required in order to conduct any of the transactions listed below. Such applications shall be submitted on forms specified by the APCO. Fees for such applications are provided in Regulation 3 (to be determined).
- 401.1 Deposit IERC's in the bank;
 - 401.2 Transfer ownership of IERC's to another party;
 - 401.3 Convert emission reduction credits (ERC's) that were banked under Regulation 2, Rule 4 into IERC's;
 - 401.4 Use IERC's to satisfy the new source review offsets requirements of Regulation 2, Rule 2;
 - 401.5 Use IERC's in lieu of compliance with the BARCT rule(s) specified in Section 2-9-302.1.
- 2-9-402 Complete IERC Banking Application:** The APCO shall determine whether a banking application is complete not later than 30 calendar days following receipt of the application, or after a longer time period agreed upon in writing by both the applicant and the APCO. If the APCO determines that the application is not complete, the applicant shall be notified in writing of the decision, specifying the information that is required. The applicant shall have 90 days to submit the requested information. Upon receipt of all requested information, no new 30 day period to determine completeness shall be initiated. If no data is submitted or the application is still incomplete, the APCO may cancel the banking application with written notification to the applicant. Upon a determination that the application is complete, the APCO shall notify the applicant in writing. Thereafter, only information to clarify, correct, or otherwise supplement the information submitted in the application, may be requested. Withdrawal of a banking application by an applicant shall result in cancellation of the application; any re-submittal may be evaluated using a new baseline or credit generation period. An applicant seeking to deposit an interchangeable emission reduction credit shall have 18 months to complete an application from the date of: closure of the equipment, implementation of additional controls, changes in process or equipment, fuel switching or other such reductions. An applicant may submit a banking application in advance of the credit generation period for the purpose of establishing the baseline and calculation procedures. Such an application will also be subject to the review, processing and approval procedures in this section.
- 2-9-403 Issuance of Banking Certificate:** Following completion of the application, the APCO shall make a decision and notify the applicant in writing as to whether the APCO intends to approve, conditionally approve, or deny the application within the timeframes listed below in subsections 403.1 and 403.2. These timeframes may be extended with the consent of the applicant. The APCO shall issue a banking certificate if the banking application is approved. The certificate shall identify the

owner of the certificate, the quantity of the emission reduction credits' of each pollutant for deposit in the emissions bank in the units of "pounds" in the year generated, the effective date and expiration date of the credits, the location of the facility at which the reduction was created (if applicable), the area or mobile source category that generated the reduction (if applicable), any conditions on use of the emission reduction credits, and any other data deemed appropriate by the APCO.

403.1 Within 90 days if the application requires the District to develop an IERC Calculation Protocol, as described in Section 2-9-604.

403.2 Within 60 days for all other applications.

2-9-404 Appeal to the Hearing Board, Banking: Any person dissatisfied with the decision of the APCO regarding the approval or disapproval of an application for banking air contaminants may appeal that decision within 10 calendar days in accordance with the provisions of Regulation 2-I-410.

2-9-405 Banking Register: The APCO shall maintain a "banking register", which shall consist of a record of all deposits, deposit applications, withdrawals, and transfers.

2-9-406 Transfer and Withdrawal Procedures for Deposits: The following procedures are for withdrawal (use) or transfer of banked IERC's:

406.1 Transfer for Later Use: If the banked IERC's are transferred to a new owner for later use, the owner of record shall submit the old Certificate signed by the owner of record and by the new owner. The APCO shall retain the old Certificate, issue a new Certificate in the name of the new owner for the amount transferred, and issue a new Certificate to the existing owner for any portion not transferred.

406.2 Transfer for Immediate Use: If the banked IERC's are transferred to a new owner for immediate use, the owner of record shall submit the old Certificate signed by the owner of record and by the new owner. The APCO shall retain the old Certificate, and issue a new Certificate to the existing owner for any portion not transferred. A new Certificate will be issued to the new owner only if the amount transferred exceeds the amount to be used.

406.3 Environmental Benefit Discount upon Use: Upon withdrawal for use, an IERC's will be subject to the applicable environmental benefit reduction requirement of Section 2-9-307.

406.4 Withdrawal for Full or Partial Use: The owner of record shown in the APCO's banking register shall surrender the IERC Banking Certificate in order to withdraw the banked IERC's. If all of the banked IERC's are used, the APCO shall retain the Certificate. If only a portion of the banked IERC's is used, the APCO shall retain the old Certificate and issue a new Certificate identifying the remaining portion of the IERC's. The APCO shall identify the use of the IERC's in the authority to construct issued to the user of the IERC's.

406.5 Use as NSR Offsets: If IERC's are used to meet NSR offset requirements, the IERC's will be subject to the applicable offset ratios in effect at the time of withdrawal as specified in Regulations 2-2-302 and 303.

2-9-407 IERC Liability: For any transfer, the generator of the IERC's shall continue to have enforceable conditions in the appropriate permits to operate to assure any required permanency of the emission reduction and shall be held responsible for compliance with those conditions. The user of any transferred IERC's shall not be held liable for any failure of the IERC generator to comply with District requirements.

2-9-408 Annual Report to California Air Resources Board: The APCO shall provide an annual report to the California Air Resources Board on all IERC banking transactions

which have occurred during the preceding year. This report shall include the following:

- 408.1 The quantity of IERC's generated and used, by pollutant;
- 408.2 The extent to which IERC's were used to comply with Best Available Retrofit Control Technology, by rule and source category;
- 408.3 Summary of changes made to the source-specific calculation protocols, as described in Regulation 2-9-604.
- 408.4 A discussion of the impact that use of IERC's had on annual pollutant-specific emissions, relative to the District's emission inventory and Clean Air Plan.
- 408.5 On a triennial basis, the District's report shall provide an evaluation of the IERC rule as an alternative means of compliance with applicable District rules.

2-9-500 MONITORING AND RECORDS

2-9-501 Monitoring and Record Keeping: The APCO has the authority to impose monitoring, record keeping, and/or condition requirements deemed necessary to determine, verify and enforce compliance with the provisions of this rule.

2-9-600 MANUAL OF PROCEDURES

2-9-601 Emission Reduction Calculations - General Requirements: The emission reductions which are used to generate IERC's shall meet all of the following requirements, as well as the applicable requirements in sections 2-9-602 through 2-9-606.

- 601.1 The applicant must demonstrate that the reduction is real, permanent, quantifiable, enforceable and surplus.
- 601.2 IERC's shall be registered in one-year increments in the units of pounds of each specific bankable pollutant.
- 601.3 Each IERC banking certificate shall include the effective date and expiration date of the credits.
- 601.4 The effective date for the first one-year increment shall be the last day of the initial credit generation period. The effective date of each successive one-year increment shall be the day following the last day of the previous increment.
- 601.5 IERC's from stationary sources shall expire five years after their effective date.
- 601.6 IERC's from mobile and area sources which are under the regulatory authority of CARB shall have an expiration date consistent with the CARB calculation protocol for that source category.
- 601.7 IERC's from mobile and area sources which are not under the regulatory authority of the California Air Resources Board (CARB) shall expire three years after their effective date.

2-9-602 Emission Reduction Calculations - Baseline Determination: The following methodology shall be used to calculate baseline emissions.

- 602.1 The baseline period consists of a consecutive 12-month period selected by the applicant, which occurred during the 5 year period immediately preceding the initial emission reduction. The applicant must have sufficient records of the source's operation to calculate emissions during the baseline period.
- 602.2 Baseline throughput is the lesser of:
 - 2.1 actual throughput;

- 2.2 permitted throughput, if limited by permit condition.
- 602.3 Baseline emissions are the lesser of:
 - 3.1 actual emissions during the baseline period;
 - 3.2 baseline throughput, multiplied by an emission factor based upon RACT and Rules and Regulations applicable during the credit generation period.

2-9-603 Calculation Methodology of Interchangeable Emission Reduction Credits from a Stationary Source: The APCO shall determine the emission reduction credits which qualify as IERC's from stationary source as follows:

- 603.1 For the shutdown of a stationary source, IERC's are equal to the annual baseline emissions.
- 603.2 For a curtailment or other reduction from a stationary source, IERC's shall be calculated by either of the following methods, as selected by the applicant at the time of application.
 - 2.1 Subtract the actual emissions during the credit generation period from the baseline emissions; or
 - 2.2 Subtract the new maximum District approved permitted emission levels from the baseline emissions

2-9-604 Calculation Methodology of Interchangeable Emission Reduction Credits from Mobile and Area Sources: IERC's from a mobile or area source shall be calculated according to the IERC Calculation Protocol for that specific source category. Prior to approving an application for IERC's from a mobile or area source category or an emission reduction scenario which the District has not previously evaluated, the APCO shall develop an IERC Calculation Protocol for that source category or emission reduction scenario. Each IERC Calculation Protocol shall include the following elements:

- 604.1 Detailed emission calculation method including emission factors, equations, operating parameters and any other information necessary to calculate emissions.
- 604.2 For mobile and area sources which are regulated by the California Air Resources Board (CARB), the District's IERC Calculation Protocol shall incorporate CARB calculation methodologies, emission factors, certification standards, emission baseline data, and effective date and expiration date timeframes.
- 604.3 A review of the District's emission inventory, District regulations, District Clean Air Plan, and all local (within the District), California and federal requirements to ensure that the emission reductions are surplus.
- 604.4 A methodology to determine the timeframe during which the IERC's are available for use.
- 604.5 A mechanism to update the protocol to reflect changes to the District's emission inventory, source category baseline, Clean Air Plan, and regulatory requirements.
- 604.6 Conditions, monitoring, record keeping and reporting necessary to verify and enforce the credit generation at the specified magnitude over the entire credit generation period.

2-9-605 Procedure to Convert an ERC to an IERC: The following is the method to convert any ERC to an IERC.

- 605.1 Determine the original ERC generation period, based on information from the original ERC banking application, and any supplemental information provided by the applicant.
- 605.2 Determine the number of credit generation periods for the type of emission reduction involved, based on Section 2-9-205. For curtailments, the number of credit generation periods which may be evaluated under a single

application is three. New sets of three credit generation periods may be re-evaluated under a subsequent IERC applications. All subsequent IERC applications may use the same baseline that was established for the original IERC application for that curtailment.

- 605.3 Issue IERC certificates for the number of credit generation periods determined above. The first certificate will have an effective date immediately following the end of the original ERC generation period. Each subsequent certificate will have an effective date one year later than the preceding certificate.
- 605.4 The expiration date of each certificate will be five years following its effective date.

2-9-606 Calculation Procedure to Determine the Useable Amount of IERC's in Lieu of BARCT Compliance: The following is the method to determine the amount of IERC's required in lieu of BARCT compliance.

- 606.1 Actual Emissions **(A)**: Calculate the actual emissions from the source(s) based on the maximum operating rate that is allowed during the emission trading period. Emission shall be calculated using CEM, source test, generally accepted emission factors or other emission data approved by the District.
- 606.2 Allowable Emissions **(B)**: Apply the applicable BARCT requirement to the same operating rate that is used to calculate actual emissions to determine the allowable emissions under the BARCT rule, in the absence of IERC trading.
- 606.3 Required IERC's: Subtract the allowable BARCT emissions that were determined per Section 2-9-606.2 (B) from the actual emissions that were determined per Section 2-9-606.1 (A). Increase this difference by applying the 10 percent environmental discount rate specified in Section 2-9-307, as illustrated in the equation below. This total is the amount of IERC's that must be supplied in lieu of BARCT compliance.

$$\text{Required IERC's} = (A - B) \times [(100\% + 10\%) / (100\%)]$$