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December 9, 2008
File No. 31-380.10B

ORIGINAL: Board Clerk
Copies: Executive Officer
Chair

Ms. Mary Nichols, Chair
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Dear Chair Nichols:

Comments on the October 2008 Climate Change Proposed Scoping Plan

The Sanitation Districts of Los Angeles County (Sanitation Districts) appreciate this opportunity to comment on the Proposed Scoping Plan. The Sanitation Districts provide environmentally sound, cost-effective wastewater and solid waste management for about 5.3 million people in Los Angeles County and, in the process, convert waste into resources such as reclaimed water, energy, and recycled materials. The Sanitation Districts' service area covers approximately 800 square miles and encompasses 78 cities and unincorporated territory within the County through a partnership agreement with 24 independent special districts.

The Sanitation Districts have previously commented August 1, 2008 on the draft Scoping Plan and respectively offer the following comments, first general and then specific.

General Comments

Cap and Trade Programs Not Appropriate for Essential Public Services

The Sanitation Districts have been concerned that essential public services, comprised of wastewater treatment plants and landfills, among other entities, will be included in the cap and trade scheme proposed in the Proposed Scoping Plan. This inclusion would subject these public services and the public welfare to substantial uncertainty over the long run. Please see our attached September 22, 2008 letter to Ms. Spivy-Weber of the State Water Resources Control Board and Mr. Corwin of the Department of Water Resources setting forth our concerns.

A November 14, 2008 Errata Sheet to the Proposed Scoping Plan was released that in part addressed this issue. The Errata Sheet provides definitions for ***Anthropogenic*** and ***Biogenic*** emissions and specifies that only anthropogenic emissions would be covered under the cap specified in the current proposal. While we appreciate this clarification, many questions still remain as to what is actually included in the cap and trade program. There are cases, for instance, where emissions are not purely biogenic. Some fossil fuel co-usage with landfill or digester gas for flame stabilization is one example. The inherent composition of a solid waste stream (e.g., waste-to-energy facilities where the incoming refuse contains components such as plastics) is another example. There are other examples but, fundamentally, these facilities should be considered essential public services since their main function is waste management, not electricity generation, and as such, they should be excluded from cap and trade and regulated instead under command and control.

If subject to a cap and trade program, the ARB cannot guarantee that essential public service providers will not be subjected to the pressures of market fluctuations including high prices and allowance or offset availability issues. The only way to protect public health with certainty is to keep essential public service providers out of the realm of cap and trade. This was recognized in the 1980s when the SCAQMD developed its RECLAIM program that is based on a declining cap and trade philosophy. There, essential public services, landfills and public treatment works were removed because it was clear that administrative burdens and potential price uncertainty might jeopardize their operations, and ultimately public health and welfare. In another example, the east coast RGGI program has also fully excluded waste management facilities from its cap and trade program.

For the reasons better articulated in the attached letter, please recognize that essential public services are at a fundamental competitive disadvantage in the marketplace since they cannot move as fast as private industry because dealing with public funds justifiably requires more approval and check and balance steps. The consequences of said delays are lost purchasing opportunities that equate to higher costs for taxpayers and associated project delays.

Overall, we believe the intent of staff is to exclude all sources that are largely biogenic, however, unless there are strong, clear statements to this effect, we fear that certain facilities, such as waste-to-energy facilities, could be erroneously included under cap and trade.

A Clear Economic Off Ramp Signaling Program Re-Evaluation is Necessary

There must be a clear economic off ramp, triggered by pre-determined economic and other performance markers that will cause the entire regulatory program as set forth

in the Proposed Scoping Plan to be re-evaluated and possibly re-structured. This needs to occur as many times as necessary and should not be constrained by the five year review timeline established in AB 32 or the Governor's emergency authority. ARB should consider a general escape clause if life under the Proposed Scoping Plan simply becomes too expensive or cumbersome for Californians. The escape clause should be triggered by obvious indicators, such as the price of a KWH or the price of consumer goods such as a gallon of tap water. If the hurdles become too formidable, California needs to have the opportunity to re-visit the program in shorter than the statutory five-year intervals. This is especially important to California's small business community.

Incorporation of Local Government Entities Under Numerous Control Measures and Reporting Regimes Is Very Confusing and Makes an Accurate Assessment of Plan Impacts Almost Impossible

We remain very concerned about how local governments will allocate responsibility for emissions inventories and required emissions reductions among competing jurisdictions.

Local governments are comprised of numerous operations that must report to and which are regulated under different sectors of the Proposed Scoping Plan. There is a real possibility of double counting under the Local Government Operations Protocol and the community level protocols being developed. Further, there is the problem of accounting for and spreading out voluntary early emissions reductions among all the components of local government. Thus far, there has been very little discussion of this dilemma. We think it is very important that CARB abide by its promise at the very bottom of page 32 of the earlier June 2008 Draft Scoping Plan that "ARB will work with local governments to reconcile local level accounting with state and regional emissions tracking as the Scoping Plan is implemented."

LACSD, representing a special district charged with both wastewater and solid waste disposal, is very concerned about the very real possibility of an entity such as we having obligations under multiple provisions of the Scoping Plan, all with specific targeted emissions reductions and/or included under cap and trade provisions. For example, the ARB hopes that local governments will use the Local Government Operations Protocol, an inventory tool, to track their progress in achieving reductions from municipal operations. There needs to be a mechanism to assure that a) double counting does not occur and b) "conservation of mass" cannot be violated. By this second point we mean that as soon as one entity within a local government achieves a reduction, that same entity cannot be held responsible for providing more reductions to fulfill obligations of other parts of local government of which they are a member. This is especially true of voluntary early actions.

Voluntary Early Actions, Regardless of When They Were Undertaken Should Be Properly Credited in the Final Scoping Plan

As long as voluntary early actions are appropriately documented and are consistent with approved protocols, they should be recognized in the Proposed Scoping Plan and credited toward the entity making the reduction, irrespective of when they were undertaken. We would be very concerned if early action items after January 2007 would be the only ones to be considered. The footnote at the bottom of Page 68 is troublesome.

CARB Must Maintain Overall Program Control Over CAT Members

It concerns us that there are instances where state regulatory agencies, other than CARB, may move down a regulatory track with blinders on or where the perceived benefits could be outweighed by GHG consequences when lifecycle impacts are fully taken into account. CARB, being the legally designated agency for GHG regulation is California, needs to maintain careful oversight of programs developed by other state agencies such as the SWRCB, to make sure that the overall, big-picture goals and tradeoffs in the Proposed Scoping Plan are assured.

CARB Must Assist Local Government Entities in Implementing and Supporting the Measures Advocated by the Proposed Scoping Plan

Local governments will need ARB assistance implementing many of the Scoping Plan proposals, some of which could be controversial and could be unpopular with community residents such as large CHP projects. The public may not fully understand or appreciate the nexus between the proposed projects and their GHG benefits. Frequently there is community opposition to such projects as waste-to-energy or high density, mixed-use infill projects, for example. CARB needs to allocate resources to partner with the local governments that are making good faith attempts to implement the goals and objectives of the Proposed Scoping Plan.

Project Proponent Actions Consistent With and Which Implement the Scoping Plan Should be Categorically Exempt from CEQA Analyses for the GHG Aspects of the Project

Volume III, the CEQA Functional Equivalent Document appendix, should be expanded to serve as the CEQA document for GHGs for the entire program as laid out by the Proposed Scoping Plan. It is not productive for local governments, for instance, to re-hash GHG arguments in favor of a project that is implementing a measure contained in the Scoping Plan when CARB, better than anyone else, understands the big picture and how the specific action fits into the overall scheme of things. CARB

should weigh in on behalf of project proponents with the applicable state agencies in defending actions that are consistent with the Proposed Scoping Plan as part of their responsibilities imposed by the legislature as a result of AB 32. If an outright categorical exemption cannot be negotiated by CARB, then any actions consistent with and implementing the Proposed Scoping Plan and requiring environmental documentation need only rely upon the documentation prepared for the Proposed Scoping Plan to satisfy at least the GHG portion/aspect of the associated project EIR. In short, CARB should prevail upon the Office of Planning and Research and the Resources Agency and the appropriate responsible agencies that compliance with the Scoping Plan covers a project's GHG issues, if any, under CEQA.

Specific Comments

Water Sector Issues

1. The proposed Scoping Plan Water Sector discussion should be clarified to point out that a great deal (99%) of the non-power plant natural gas usage attributed to the water sector is *end-user* consumption to heat hot water, among other things, and is not controllable by the water or wastewater utilities. Similarly, 73% of the 19% of California's electrical energy usage that the CEC attributes to water sector-related energy use is actually end use consumption. This is an extremely important distinction since otherwise it could be implied that the water sector has *control* over these energy commodities, which is certainly not the case.

2. Overall, ARB proposes five water sector measures for greenhouse gas reductions, but has not provided any estimate of cost. Be aware that any cost would be over and above the cost water and wastewater agencies need to address our decaying infrastructure and the infrastructure needs that will result from climate adaptation. These cost are significant – a recent estimate put the yearly cost shortfall at $37 billion dollars.

3. Page C-132: Section W-1 suggests greater water conservation. Decreased water consumption will not necessarily reduce the emissions potential from POTWs. Those emissions are driven by the organics and nitrogen mass loading which may remain unaffected in spite of efficiency improvements.

4. Page C-133: Section W-2 of the draft Scoping Plan contains recommendations for reduction of GHG emissions from increased usage of recycled water. We fully agree that increased implementation

of recycled water is an important strategy for reducing GHG emissions due to the much lower energy demand to supply recycled water versus imported water, in many parts of the state. However, the Proposed Scoping Plan states that increased usage of recycled water should be accomplished by requiring preparation and implementation of water recycling plans by wastewater management agencies working with water supply agencies. The requirement would apply where imported water is used and where water recycling would consume less energy than current water sources, with priority on locations where water is discharged to water bodies from which it cannot be easily recovered, such as the ocean. We disagree with this proposal because it is overly focused on forcing change through regulation of recycled water producers. Use of such a strategy presumes that the major reason that greater water recycling is not occurring in these areas is because the wastewater agencies have failed to plan for it or are somehow recalcitrant. We submit that this is generally not the case. For the majority of agencies, preparation of a water recycling plan would not serve as a useful tool to increase recycled water usage. The only case where it might do so is when agencies face significant obstacles to expansion of recycled water usage that are of a political nature, and that is rarely the case in our experience.

There are many factors that influence the ability to reuse water, including the level of treatment of the water, proximity to customers and use areas, and permitting requirements imposed by the regional water quality control boards and the California Department of Public Health. There are a number of statutory provisions that limit a wastewater agency's ability to unilaterally maximize recycled water (e.g., Public Utilities Code Section 1501 and Water Code Sections 13579-13583).

Water recycling involves a number of agencies to make a successful project. A wastewater agency produces the recycled water, a water wholesaler transports it, a water retailer sells it, and an end user buys and uses it. Local, state, and federal entities participate in funding. Regulators permit the use of the recycled water and assure the protection of public health and water quality. If any one of these partners does not participate fully, it is unlikely that a recycled water project will be successful. Finally, it is important to recognize that the cost of obtaining and serving recycled water in relation to the costs of alternatives, including local groundwater, conservation, and other supplies, is one of the most important drivers that determines how much water recycling occurs.

There are several other plans and policies being developed by the state to encourage increased recycled water usage. These include the State Water Resource Control Board's Strategic Plan and its Recycled Water Policy. It is recommended that the Proposed Scoping Plan be amended to align with such plans and policies, rather than creating a separate strategy and targets.

5. Page C-136: Section W-6 proposes a public goods charge for water to raise funds for reducing GHG emissions resulting from capturing, storing, conveying, treating, using, and disposing of water. CARB should recognize that the proposed revenue generated by such a charge, $100 million to $500 million per year, is only a very small fraction of the funds that would be necessary to accomplish the actions proposed for reducing the water sector's GHG emissions. It should also be noted that additional charges to the public that already is facing increasing rates, is going to be difficult. For example, the Sanitation Districts Board just approved a 30% increase in surcharge rates over the next three years. Finally, the Proposed Scoping Plan does not address who would control this money and how the equitable distribution of these funds would be assured. If the funds from the Public Goods Charge are to be collected by the water providers, the wastewater agencies will be compelled to petition for their rightful share of the funds. Those water providers may, however, be reluctant to part with those funds because they have to meet their own mandated targets. The funds may be more equitably and wisely distributed by the State Water Resources Control Board than by the water providers.

6. In general, stand-alone septic systems are responsible for roughly 75% of the methane attributed to wastewater. The ARB should direct a study of the feasibility of converting these units to aerobic devices or other methodologies to prevent methane release from these systems. Those systems which can be economically sewered should be encouraged to do so.

Recycling and Waste Sector Issues

1. The Proposed Scoping Plan calls for a reduction of 1 $MMTCO_2e$ from the Solid Waste and Recycling Sector. The industry has strongly called into question its ability to reduce emissions to this extent based because of faulty assumptions in the baseline. The industry has been very active in commenting on this issue (see previous Sanitation

Districts and solid waste industry comment letters), but the underlying issue is that we believe landfills are achieving far greater landfill gas collection efficiencies than what is assumed in the state inventories. In fact, we believe that most California landfills with gas collection systems operating in compliance with federal or local AQMD and/or APCD regulations are capable of achieving 90%+ landfill gas collection efficiencies. Collecting greater amounts of methane from well-controlled landfills brings with it the risk of excessive air intrusion due to over drawing well systems, which in turn can lead to composting within the landfill and underground fires. In addition, excess air intrusion can lead to diluting the methane content of captured landfill gas. This impacts existing energy recovery systems that are sensitive to fuel BTU content, and prevents the development of new energy recovery systems, unless extensive amounts of natural gas are available and used.

2. On Page C-160, ARB describes a *one-time estimated cost for adoption* at $70 per ton of CO_2 reduced. Based upon draft landfill methane reduction rule language proposed as part of the AB32 Early Action Measures, we estimate that the cost of this rule could be as high as $200 per ton. ARB's estimate is not only low, but we are puzzled by the term *one-time estimated cost.* Our analysis shows that a potentially higher cost would be an annual and continuing expenditure.

3. Pages C-161 through 163 provide a description of the *High Recycling/Zero Waste* reductions that could be anticipated with the described actions. ARB correctly points out, but perhaps understates the importance of a comprehensive life cycle analyses in estimating the true reductions from increased waste diversion or composting. For example, a Sanitation Districts analysis for one landfill compared composting green waste and using green waste as an alternative daily cover (ADC). The analysis showed that from a GHG perspective using green waste as an ADC provides more than a four fold reduction in GHG emissions relative to composting. On Page C-162 ARB also points out that composting can be a source of VOCs, another factor to examine in a life cycle analysis. Thus, determining the appropriate method of waste management from a GHG perspective is not always straight forward, as is often suggested, but requires comprehensive life cycle analyses.

4. On Page C-193, the Proposed Scoping Plan suggests that agricultural waste sent to a landfill represents a lost opportunity to create a

renewable energy source. In reality, agricultural waste sent to a well-controlled landfill will generate methane that is efficiently collected and can be used to fuel energy recovery devices. Here, the energy produced will displace fossil fuel resulting in GHG reductions. In addition, the carbon from the non-degradable portions of the waste will remained sequestered in the landfill environment in perpetuity.

Offset Issues

1. Many innovative opportunities for offset generation exist within certain essential public service sectors, especially the waste management sectors. One example listed in the WCI Design Recommendations is wastewater treatment (WCI Chapter, Appendix D, pp. 10,38). Such offsets will very much be needed by the entities under cap and trade, and such a scheme provides the lowest possible costs for the taxpayers.

2. Page 36. Offsets can be developed from activities that reduce emissions if they are "not otherwise regulated, covered under an emissions cap, or resulting from government incentives." Also, "[offsets] used to meet regulatory requirements must be quantified according to Board-adopted methodologies, and ARB must adopt a regulation to verify and enforce the reductions (HSC S38571." These restrictions should be qualified in at least two ways. If a sector is explicitly regulated, *the margin between what is required and what can be achieved through over-control should be available for offset generation.* Also, the non-grant portion of any credit generation scenario should be available for private party credit generation.

3. Page 37: ARB cannot say with certainty that allowing offsets outside of California would reduce co-benefits inside California. It is difficult to envision the type of projects that would be offered up as offsets, and therefore this conclusion seems speculative to us. Take for example, the application of biosolids-derived compost from California on agricultural land in Arizona. This project could generate offsets by reducing nitrous oxide emissions relative to the reduced use of commercial fertilizer and increased carbon retention in the soil. Any co-benefits analysis would include too many variables (tillage and irrigations practices, crop choice, soil conditions, etc.) to say *for certain* that compost application in California is to be preferred over that in Arizona. ARB should not debit or otherwise discourage offsets outside of California unless the lost co-benefits are clear and overwhelming.

Also, if ARB were serious about favoring offsets generated in environmental justice communities, it should also allow those offsets to exceed the 49% limit.

Furthermore, estimates of co-benefits associated with a specific control measure are elusive. This is further complicated in that several air districts have already claimed as theirs any co-pollutants reduced as a result of state climate change strategies (see SCAQMD's 2007 AQMP Control Measure MOB-07 where co-benefits of fuel efficiency improvements and renewable energy sources accrue to the benefit of the SCAQMD).

4. Many stationary sources in California are already at BACT or BARCT levels and little room remains to do better. In SCAQMD's 2007 AQMP, for example, Multiple Component Sources Control Measure (MCS-01) will move most combustion sources in the South Coast Air Basin from BARCT to BACT during the 2010-2023 timeframe. Hence there will be very little opportunity for further in-plant emissions reductions given that BACT is the best that can be done. Most stationary sources therefore, very early into the Proposed Scoping Plan regulatory cycle, will be forced to rely heavily on offsets to meet declining caps under a cap-and-trade (C&T) program. The use of offsets will be critical to survive the early stages of a C&T environment. These offsets must not be arbitrarily limited either numerically or geographically.

Local Government Issues

1. The Volume III CEQA Functional Equivalent Document should be expanded to serve as the CEQA document for GHGs for the entire program as laid out by the Proposed Scoping Plan.

2. Local governments will need ARB assistance implementing many of the Scoping Plan proposals, as many of them will be controversial and unpopular with constituents and local residents.

Scoping Plan – Miscellaneous Issues

1. It appears that the 111th Congress will pass some type of climate change program modeled perhaps after the proposals of Senators Boxer-Lieberman-Warner and/or Representative Edward Markey. We strongly believe that CARB must take affirmative steps in Washington and insert itself into the regulatory process to assure that our early

actions here in California will be protected or that our program here will be deemed equivalent. It would be a significant disadvantage to California if the starting point of a federal program were drawn such that California business would have to re-reduce their GHG emissions. One area (of many) that CARB should focus on in Washington is to make sure that any bill that does work its way through Congress has sufficient free allocations assigned to early action programs contained in state programs.

2. The California GHG regulatory program should be considered a transitional program and should be designed to fit into an eventual federal GHG program that can reasonably be expected to have allocations, auctions, credits and offsets.

3. The Scoping Plan should contain a discussion of what will happen to California's program in the event of federal pre-emption.

4. Reciprocating engine installation and operation in California as a result of various AQMPs and distributed generation legislation and regulations have all but removed this prime mover as a viable motive force in the South Coast. We urge the ARB not to insist upon across the board electrification as this will seriously impact California's ability to respond to emergencies such as earthquakes. Portable equipment will be needed to "dig us out" and stationary equipment will be needed in the event central utility plants and/or transmission lines are knocked out.

5. Introduction, Page 12: The text mentions that the forest sector is unique in that forests both emit greenhouse gases and uptake CO_2. We feel that both the landfill industry and wastewater treatment also share that same capability. Carbon is sequestered in both biosolids products and in landfills, and the application of compost in lieu of industrial fertilizer not only is a net benefit in terms of life-cycle emissions, but also increases soil uptake of carbon. Both sectors may constitute significant sinks for carbon that are currently unaccounted for in the state's inventory. Research to better define the sequestration potential of these industries should be supported by the CAT.

6. Pages 31, 84: The Proposed Scoping Plan postpones many fundamental regulatory policy decisions until formal rulemaking ensues without setting down minimum principles and guidelines for staff to work by. For example, while the Proposed Scoping Plan contains a definition of cost effectiveness, nowhere does the Plan define the criteria by

which such a determination will be made which we think is critical for regulation writing. We simply do not understand how the Board can proceed without understanding if the measures that staff is proposing are cost-effective or not.

7. Recommended Actions, Page 46: The Low Carbon Fuel Standard (LCFS) needs to be modified to include more credit generation opportunities for waste-derived fuels especially sewage biosolids, a large potential energy source. Please see the LACSD comment letter on this subject dated July 15, 2008 in the LCFS docket.

8. Recommended Actions, Page 42: On-site clean distributed generation (DG) to accomplish "zero net energy" buildings will be limited in the South Coast Air Basin because of stringent regulations that in effect remove reciprocating engines from the DG prime mover list. Furthermore, requirements to satisfy EPA Method 204 average face velocity of 200 feet per minute will require tremendous consumption of electricity to drive the high volume fans needed in industrial buildings with openings for heavy-duty trucks and equipment. This tremendous energy consumption will be nearly impossible to make up for with on-site power generation. This energy efficiency requirement should be relaxed for facilities with intermodal capability or for facilities where aggressive building ventilation is needed for worker protection.

9. Recommended Actions, Page 43: Besides market barriers, significant regulatory barriers stand in the way of CHP reaching its full market potential, not the least of which is availability of emission reduction credits (ERCs), at least in the South Coast Air Basin, and local AQMPs that make it difficult to install small reciprocating engine CHP systems that would run for any length of time.

10. Recommended Actions (A-1), page C-194: It may be overly optimistic that "Joe the Farmer" may wish to operate combustion turbines. Going through the exercise of purchasing criteria pollutant offsets, complying with CEQA and possibly Title V requirements, getting the engine source tested, maintaining CEMS, managing allocations and offsets, reporting, maintaining a complicated gas pre-treatment system and negotiating with the electric utility over rates, collectively is formidable. If California wishes to advance this technology, these operators will need assistance to overcome regulatory hurdles they heretofore have had little experience with or tolerance for.

11. Recommended Actions (A-1), Page C-194: The digesters envisioned in this action will be more feasible where there is a municipal sewage treatment plant nearby to handle the resulting high-strength liquid waste.

Thank you for the opportunity to comment on the Draft Scoping Plan. Please do not hesitate to contact Mr. Frank Caponi or Mr. Patrick Griffith of this office if you have questions or comments.

Very truly yours,

Stephen R. Maguin

Gregory M. Adams

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Assistant Departmental Engineer
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Technical Services Department

GMA:bb

Attachments

cc: Kevin Kennedy – CARB
Edie Chang-CARB
Richard Bode-CARB
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STEPHEN R. MAGUIN
Chief Engineer and General Manager

September 22, 2008

Ms. Frances Spivy-Weber, Member
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1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Mr. Mark Cowin, Deputy Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Dear Ms. Spivy-Weber and Mr. Cowin:

Essential Public Services in Cap and Trade Programs under the AB 32 Scoping Plan

The purpose of this letter is to set forth the reasons why the Los Angeles County Sanitation Districts (LACSD) believe that essential public services[1] should NOT be included under declining cap and trade programs as part of the AB 32 Scoping Plan. These comments are based on our experiences carefully monitoring the South Coast Air Quality Management District's RECLAIM (Regional Clean Air Incentives Market) program over the years, as well as extensive emission reduction credit purchasing experience in several air districts around the state. As explained in the following paragraphs, we believe that essential public services should not be subjected to marketplace uncertainties to obtain credits to provide needed infrastructure and services. Such competition will only result in project delays and increased costs of credits for all taxpayers.

LACSD provides environmentally sound, cost-effective wastewater and solid waste management for approximately 5.3 million people in Los Angeles County. We convert much of the waste we manage into renewable resources as recycled water, energy and recycled materials. Our service area covers approximately 800 square miles

[1] Borrowing from SCAQMD Rule 1302, " essential public services" include (1) sewage treatment facilities, which are publicly owned or operated, and consistent with an approved regional growth plan; 2) prisons; 3) police facilities; 4) fire fighting facilities; 5) schools; 6) hospitals; 7) construction and operation of a landfill gas control or processing facility; 8) water delivery operations; and 9) public transit.

and encompasses 78 cities and other unincorporated territory within the County through a partnership agreement with 24 independent special districts.

We believe it would be prudent to exclude essential public services from the cap and trade program under development for the following reasons:

1) Essential public services should not be subjected to the vicissitudes of supply and demand of credits in fulfilling their mandate to provide needed infrastructure or other services in a timely manner. When facilities, consistent with approved regional plans or changes in regulations are needed, they are needed within a strict time horizon and should not be delayed by the lack of or excessive costs associated with scarce credits.

2) Essential public services are at a fundamental competitive disadvantage in the marketplace since they cannot move as fast as private industry because dealing with public funds justifiably requires more approval steps. The consequences of said delays are lost purchasing opportunities that equate to higher costs for taxpayers and, of course, the associated project delays.

3) Most essential public services have competitive bidding requirements prescribed by regulations. If an essential public service employs two brokers from a list of qualified brokers, for example, potential sellers see an artificial, increased demand for their credits/offsets/allowances and raise their asking price to *all buyers* accordingly. By employing multiple brokers looking for credits, essential public services are in essence bidding against themselves. Even using one broker selected through a pre-qualification process has transparency issues that may never satisfy an elected board.

4) Budget processes and budget cycles of essential public services, especially where user fees are involved, cannot accommodate volatile swings and price increases for credits similar to what occurred in RECLAIM in the 2000-2001 timeframe. Prices in SCAQMD's program jumped from cents per pound for a RECLAIM trading credit to over $60 per pound in a very short period of time, a two order of magnitude change.

5) It is inappropriate in our opinion for essential public services to allocate staff and resources away from their primary role and into trying to find the best credit deals in the marketplace.

The simplest and best alternative to cap and trade regulation for essential public services is command and control rulemaking principally because there is adequate time to budget and implement the regulation. It is also usually a completely transparent process.

Finally, while essential public services should not be included under a cap and trade program, they should be allowed to be a source of offsets for *other* source categories regulated under cap and trade programs. Being under command and control regulations makes additionality[2] determinations for credits and offsets for essential public services fairly straightforward, at least initially. Many innovative opportunities for generation of offsets exist within certain essential public service sectors. Such offsets will very much be needed by the entities under cap and trade and such a scheme provides the lowest possible costs for the taxpayers.

Thank you for the opportunity to present these thoughts.

Stephen R. Maguin

Gregory M. Adams

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[2] One of several tests to satisfy to generate a valid offset or credit, additionality in essence refers to emissions reductions above and beyond what are required by some other regulatory mechanism. It is a difficult test to satisfy especially as credits/offsets become increasingly rare.