



Our Children's Earth Foundation | 100 First Street, Suite 100-367, San Francisco, CA 94105

NEWS RELEASE

Date: October 09, 2003

GROUPS SUE CALIFORNIA DISTRICT, ALLEGE CLEAN AIR PROGRAM MISMANAGED

via InsideEPA.com --- Two environmental groups are suing a California air district over its management of a controversial emissions trading program in the Los Angeles area once touted as a national model. The groups say their latest lawsuit against the beleaguered program, which was also criticized in a scathing report last year by EPA Region IX, is further evidence against cap-and-trade programs in general, including several national proposals to reduce utility air pollution pending before Congress.

Our Children's Earth (OCE) and Communities for a Better Environment (CBE) filed suit Sept. 29 against the South Coast Air Quality Management District (SCAQMD) in U.S. District Court for the Central District of California claiming that the air district's alleged mismanagement of the regional clean air incentive market (RECLAIM) program has resulted in the illegal release of thousands of tons of smog-forming pollution.

"SCAQMD has repeatedly violated, and is currently in violation of, the act and the California [state implementation plan] SIP rules. SCAQMD has repeatedly allowed facilities in SCAQMD's jurisdiction to emit air pollutions known as nitrogen oxides ("NOx") in excess of the amount allowed by SIP Rules. . . . SCAQMD has also violated and is currently in violation of the act and the California SIP by failing to maintain accurate records of pollution-trading transactions," the complaint says. The complaint is available on InsideEPA.com.

An air district source says attorneys will vigorously defend the program in court. "We completely disagree with the contentions in the lawsuit," the source says.

At issue are disagreements over how the air district audits and accounts for each of the approximately 400 participating company's emissions credits. Environmentalists claim the district is shirking its responsibility by only conducting audits once a year, rather than quarterly as required, and that the district is lax in compounding emissions violations from quarter to quarter. But the air district source says the district does quarterly accounting, and adds that the suit's claims about compounding violations are "nothing more than an accounting trick that has no basis in law."

A CBE source says it will be up to a judge to decide the proper way to implement the program. The suit is seeking a program that is more punitive to company participants, which the

plaintiffs claim the program mandates, in part because the groups believe RECLAIM has failed. The source says this claim is obvious because smog has worsened in the region, reaching its highest level in six years this past summer.

"That's why we filed suit," the source says, noting that the two environmental groups have been "strategically chipping away at huge problems in this program." They previously brought a series of successful suits against RECLAIM participants over allegations that they were using illegal mobile source credits. The latest challenge was filed after the groups say it took one and one-half years to receive and analyze the records they sought.

The new suit, *Communities for a Better Environment, et al v. South Coast Air Quality Management District*, is also an attempt to show how difficult managing cap-and-trade programs can be for regulators. The South Coast source concedes that running the program can be complex but defends the district's performance.

"These programs look good on paper," an OCE source says. "But when it's implemented, it's a mess. There is no oversight."

The activists say the RECLAIM experience should serve as a warning to proponents in Congress and elsewhere of moving to cap and trade, particularly in attempting to reduce air pollution from electric utilities as several proposals touted by Republicans and Democrats do.

That idea "is alarming. There is a huge gap between the concept of banking and trading, and reducing pollution at the end pipe," the OCE source adds. "Here, we are looking at one program in one city and it is rife with problems. It takes so much more oversight than command-and-control programs do because of the complicated accounting that is allowed. . . .Government agencies don't have the expertise, and ways to finagle are unlimited."

The South Coast source agrees that managing the program is complex, but counters that RECLAIM has been a success because it has dramatically reduced emissions allocations and has slightly reduced emissions. The allocations have dropped because when they were distributed in the 1980s, production was generally higher than today, but those allocations have dropped each year, the source explains.

"Actual emissions have come down but not as dramatically. Environmentalists would say it's a failure, but without RECLAIM there is no guarantee a facility couldn't have emitted more each and every year. It is working, it has reduced emissions and provided companies with greater flexibility and lower compliance costs," the source says. "We will seek to convince the court that this lawsuit is without merit."

###