SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Staff Report

Proposed Rule 1315 – Federal New Source Review Tracking System

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EXECUTIVE SUMMARY

Proposed Rule 1315 (~~PR1315~~PR 1315) has been developed to formalize AQMD's accounting methodology in tracking debits and credits to its offset budget under its New Source Review (NSR) program. The accounting methodology contained in ~~PR1315~~PR 1315 will be used to annually demonstrate that emissions increases from sources which are not required to provide their own offsets (*i.e.*, sources whose offsets are provided by AQMD) are balanced by credits held in AQMD's offset accounts. ~~PR1315~~PR 1315 applies exclusively to AQMD's offset accounts. Therefore, the accounting methodology and equivalency demonstration requirements of the proposed rule will not impact holders of Emission Reduction Credits.

AQMD's NSR program is defined in and established by Regulation XIII – New Source Review. Most recently in 1996, EPA SIP-approved AQMD's Regulation XIII establishing that AQMD's NSR requirements and the federal NSR requirements are programmatically equivalent[1]. As part of this SIP-approval, EPA required AQMD to track both emission credits and emission increases from major sources not required to provide emissions offsets to make annual showings that the aggregate emissions offsets provided by AQMD for emission increases pursuant to AQMD's NSR program exemptions are equal to (or greater than) the aggregate emissions offsets that would be required pursuant to the federal NSR requirements. Emissions offsets are emission reductions created at one location to compensate and balance emission increases at another, different location. AQMD's NSR program requires that emission increases are offset by emission reduction credits provided by the applicant or by allocations from the priority reserve pursuant to Rule 1309.1 – Priority Reserve or from the offset budget pursuant to Rule 1309.2. – Offset Budget. The federal new source review program does not include the exemptions listed in Rule 1304. Therefore, major sources exempt under Rule 1304 are not exempt from the offset requirements of federal NSR. As a result, AQMD maintains offset accounts from which it provides offsets for federal major sources exempt from AQMD's NSR requirements pursuant to Rule 1304 and for federal major sources which receive offsets from the priority reserve or the offset budget. AQMD tracks all disbursements from these offset accounts, as well as all deposits to them. The results of this tracking are aggregated and reported on an annual basis. These annual reports summarize the disbursements from and deposits to AQMD's offset accounts, as well as the running account balances. They also demonstrate programmatic equivalency between AQMD's NSR offset requirements and federal NSR offset requirements contained in the federal Clean Air Act for such sources. Proposed Rule 1315 – Federal New Source Review Tracking System is intended to formalize AQMD's accounting methodology for its offset accounts and AQMD's equivalency demonstration and reporting procedures.

BACKGROUND

In general, the Federal Clean Air Act requires that, among other things, emission increases of non-attainment air pollutants from new and modified federal major sources be offset with emissions reductions. The AQMD has implemented an NSR tracking system to demonstrate adequate emission reductions for sources exempt from emission offsets requirements under

[1] Subsequent to that, in June 2006, EPA SIP-approved AQMD's most-recent (post-1996) amendments to Rule 1309.1.

Regulation XIII – New Source Review, which are otherwise subject to offset requirements under the federal NSR program. AQMD staff has prepared annual reports which track credits and debits for each year and present the remaining balances of credits in AQMD's offset accounts. The NSR tracking reports go back to the year 1990, which was the year when major amendments were made to AQMD's Regulation XIII. A key source of credits in the tracking system in the past has been orphan shutdowns of major sources. Other credit sources have been "negative NSR balances" resulting from permit actions prior to 1990, and the "BACT discount" currently required by Regulation XIII when banking emission reduction credits (ERCs).

In 2002 AQMD adopted an Offset Budget rule (Rule 1309.2 – Offset Budget) as part of AQMD's NSR program to address some of the shortage problems with ERCs. As part of the discussions between EPA and AQMD regarding Rule 1309.2, EPA raised some questions related to the credits in AQMD's offset accounts for use in the Offset Budget rule. Among the key issues raised by EPA are the following:

- creditability of pre-1990 emission reductions, particularly availability of existing records associated with such reductions;
- creditability of reductions resulting from the BACT discount of newly-banked ERCs, since the discount is presumably also used to satisfy the federal time of use discount requirement;
- baseline calculation procedures to assure an "actual" baseline;
- surplus adjustment at time of use of credits in the tracking system; and
- consistency of credit use with assumptions in the State Implementation Plan (SIP).

EPA staff requested that these issues be resolved in order for EPA to approve amendments to Regulation XIII as a result of adoption of Rule 1309.2, which establishes an "Offset Budget." EPA staff has also requested that AQMD adopt a rule specifying how the tracking of debits and credits will occur in the future. Therefore, EPA and AQMD staff engaged in a series of discussions to develop a proposed revised NSR Tracking System intended to demonstrate continued equivalency of AQMD's NSR program with federal NSR requirements and to address EPA's above-described concerns. Proposed Rule 1315 – Federal New Source Review Tracking System (~~PR1315~~PR 1315), as well as certain of the proposed amendments to Rule 1302 – Definitions (PAR1302), represents the result of this process.

DISCUSSION OF PROPOSED RULE 1315 – FEDERAL NEW SOURCE REVIEW TRACKING SYSTEM

AQMD staff has developed a proposed rule which formalizes AQMD's NSR tracking system and includes several modifications to the procedures used in the existing tracking system. The proposed revised procedures include elimination of all credits for which AQMD no longer retains documentation. AQMD has also included additional classes of credits in the tracking system, namely orphan shutdowns of minor sources and other surplus reductions. As a result of these proposed modifications, and even with the inclusion of the minor source orphan shutdowns and other surplus reductions, AQMD's previously-reported 2002 offset account balances[2] for all

[2] This was the latest NSR Annual Report utilizing the existing tracking procedures.

pollutants, except for NOx[3], will be reduced, depending on the pollutant, by from 37 % to 81 %. Several elements of the proposed revisions to AQMD's tracking system contribute to these reductions, as discussed below, but the single element of the proposal with the greatest contribution is the reevaluation of pre-1990 credits and proposed elimination of all credits for which AQMD no longer retains documentation. As a result of this proposed change, AQMD's pre-1990 credits will be reduced, depending on the pollutant, by from 7 % to 92 %. The specific amounts of reductions for each pollutant for the pre-1990 credit account balances and the 2002 offset account balances are shown in Table 1.

The detailed line-by-line adjusted credit balances that result from the proposed modified procedures are shown in Appendix I~~Attachment A~~: *AQMD's NSR Offset Tracking—Federal Running Balances*. The following is a more detailed description of the proposed changes.

Table 1
Reductions in AQMD's Pre-1990 Offset Account and 2002 Offset Account Balances Resulting from Implementation of Proposed Rule 1315

	VOC	NOx	SOx	CO	PM10
Reduction in AQMD's Pre-1990 Credit Account Balances	58 %	7 %	56 %	76 %	92 %
Reduction in AQMD's 2002 Offset Account Balances	37 %	-33 %	43 %	68 %	81 %

SOURCES OF CREDITS

AQMD has described in its annual status reports on Regulation XIII a 1990 starting balance for offset accounts based on data available in 1990. While portions of pre-1990 credits were used years ago, EPA staff has requested an accounting of the validity of such credits to ensure that such credits were creditable. To that end, EPA staff has raised questions about the availability of records relating to the pre-1990 credits. To address the issues raised by EPA, AQMD staff spent several thousand staff hours reviewing and reevaluating all available data for the pre-1990 credits in its 1990 starting balances. The following is a description of sources of credits in AQMD's tracking system. The pre-1990 timeframe and the 1990 and beyond timeframe are addressed separately due to differing provisions of AQMD rules applicable to generation of credits in these time periods.

[3] The 2002 NOx balance increased relative to the previously-reported 2002 balance. This increase is the result of both the fact that reevaluation of the pre-1990 balances had only a minor impact on NOx (7 % reduction compared with 56 % to 92 % reductions for the other four pollutants) and the inclusion of additional sources of credits into the revised tracking system that have always been surplus but previously were not tracked due to the ample supply of credits in AQMD's offset accounts for all five pollutants.

Pre-1990 Credits

Pre-1990 Permitting Program

AQMD had a robust stationary source permitting program for both major and minor sources in place well before 1990. Key elements of that program are summarized below:

- Permit Rules
  Since prior to 1976, the year that AQMD adopted its initial NSR rules, virtually any construction or modification of a source has required the operator to obtain a permit to construct from AQMD (Rule 201 – Permit to Construct). The only exceptions to these permit requirements are, and at all times were, specified in AQMD Rule 219 – Equipment not Requiring a Written Permit Pursuant to Regulation II, which exempts certain equipment from permit requirements due to minimal potential to affect air quality. With the exception of the specific exemptions in Rule 219, there has been no exemption from permit requirements for sources emitting even relatively small amounts of air contaminants; that is, *all* sources with potential to emit or control air contaminants, including all federal minor sources have been required to obtain permits when constructed or modified unless specifically exempted by Rule 219.

- New Source Review Rules
  AQMD adopted its initial New Source Review rules in October, 1976 even prior to the adoption of the New Source Review requirements into the federal CAA. Originally included in Rule 213 – Standards for Permits to Construct: Air Quality Impact, the NSR rules were moved into a series of rules in Regulation XIII – New Source Review in 1979. The rules required offsetting of emissions increases that exceeded certain thresholds. The thresholds were decreased over time pursuant to rule amendments. For example, for volatile organic compounds and nitrogen oxides, the offset threshold initially was 250 pounds per day, and was reduced by rule amendments during the 1980's to 150 pounds per day, 75 pounds per day, 30 pounds VOC per day and 40 pounds NOx per day, and finally down to zero, requiring no net increase in emissions, unless specifically exempt from offset requirements pursuant to Regulation XIII.

- NSR Balance
  Prior to 1990, in order to implement its offset requirements, AQMD kept a running "NSR balance" for each facility with permitted sources. The NSR balance included an entry for every increase and every decrease in emissions at the facility that resulted from a permit action. The entries in the NSR balance were based on *maximum allowable* emissions, *i.e.* the maximum amount of emissions that a source could emit given its physical capabilities and permit limitations and rule requirements. However, the NSR balance was initially determined for each piece of equipment which had not previously undergone NSR analysis (*i.e.*, pre-NSR equipment) from an *actual* emissions baseline for that equipment. Any subsequent NSR activity for such equipment was conducted on a potential-to-potential basis. Therefore, a pre-NSR source modified under NSR would be subject to NSR on an actual-to-potential basis (*i.e.*, actual pre-modification emissions to potential post-modification emissions)—a very conservative approach.

Prior to 1990, emissions offsets were required when a permit was sought for construction of a new source, or for modification of an existing source, that would cause the sum of increases and decreases at a facility (*i.e.* the NSR balance) to exceed the pre-1990 offset threshold levels.

NSR balance entries had to be quantifiable and enforceable. Such entries only occurred pursuant to permit applications with sufficient substantiating data to ensure quantifiability, after evaluation by AQMD engineers and review by supervisory staff pursuant to Regulation XIII rules and implementing policies established by the agency, and upon issuance of permits or permit modifications which were enforceable under state law.

AQMD applied substantial resources to implementing these rules. For example, from 1985 through 1989 AQMD's engineering staff which processed permits consisted of between 97 and 175 professional engineers and supervisory and management staff. In sum, at all times including, but not limited to, prior to 1990, AQMD has had a robust air quality permitting system—a system which AQMD believes was qualitatively superior in terms of quantification and reliability to any other NSR permitting system in the nation.

- Compliance with Federal NSR Requirements
  In addition to being reliable, the above-described pre-1990 AQMD NSR rules fully complied with all federal requirements. Indeed, AQMD's NSR rules were more stringent than required by federal law in the following important respects: (1) offset thresholds were lower than required by federal law and a 1.2 to 1.0 offset ratio was used for all sources and all emittents; (2) unlike federal requirements which allowed "bubbling" or netting out of LAER until the 1990 amendments to the Clean Air Act, AQMD's BACT requirement (equivalent to federal LAER) applied to any emissions increase from an individual piece of equipment; *i.e.*, there was no netting out of LAER; (3) offset ratios for SOx, CO, and PM10 were greater than 1 to 1 (*i.e.*, were at 1.2 to 1); (4) AQMD had a zero BACT threshold; and (5) the fact that the NSR balance was initially based upon an actual emissions baseline ensured that any increase in potential emissions that exceeded the actual emissions baseline and resulted in total potential emissions in excess of the offset threshold amount (which, again, was more restrictive than federally required) would be subject to NSR requirements. Additionally, EPA SIP-approved AQMD's Rule 201 as amended January 5, 1990, and AQMD's NSR rules as adopted or amended on the dates identified in Table 2.

Table 2
SIP-Approved Revisions of AQMD's NSR Rules

Rule	AQMD Adoption Date(s)
213	10/8/1976 (Rescinded by AQMD 6/28/1990)
1300	(Rescinded by AQMD 6/28/1990)
1301	12/7/1995
1302	12/7/1995, 6/13/1997
1303	5/10/1996
1304	6/14/1996
1305	4/6/1984 (Rescinded by AQMD 6/28/1990)
1306	6/14/1996
1307	(Rescinded by AQMD 6/28/1990)
1308	10/5/1979 *or* 3/7/1980 *or* 4/4/1980 *or* 7/11/1980 (Rescinded by AQMD 6/28/1990)
1309	12/7/1995
1309.1	12/7/1995, 6/19/2006
1309.2	(Pending SIP Approval)
1310	12/7/1995
1311	10/5/1979 (Rescinded by AQMD 6/28/1990)
1312	(Rescinded by AQMD 6/28/1990)
1313	12/7/1995

- Negative Balances
  By 1990, some facilities had negative NSR balances. These negative balances were the result of equipment shutdowns or process changes since October 1976 which resulted in reductions in emissions from a source. The majority of negative balances resulted from equipment shutdowns. Like all entries in the NSR balance, negative balances only occurred pursuant to permit actions—*i.e.* either modification of an AQMD permit or shutdown of equipment. Negative balances were quantified by AQMD engineers based upon the permitted physical capabilities of the modified or shut down equipment and applicable permit requirements.

Existing Pre-1990 Accounting

AQMD's offset accounts were established with starting balances based on pre-1990 emissions reductions. The primary source of these pre-1990 reductions was a portion of facilities' negative NSR balances which were discounted as specified in the 1990 amendments to Regulation XIII (described below). The 1990 Regulation XIII amendments also directed the Executive Officer to recall all existing pre-1990 ERCs which had resulted from shutdowns, discount them by eighty percent, and issue new ERCs at twenty percent of their original values. The eighty percent discount of the pre-1990 shutdown ERCs was deposited into AQMD's offset accounts along with the amounts derived from the discount of pre-1990 negative balances (further explanation of the implementation of the 1990 amendments to Regulation XIII is provided with the discussion of AQMD's proposed revisions to its pre-1990 accounting). **All of AQMD's annual status reports prepared to date have included the starting balances from these sources (discount of pre-1990 negative balances and pre-1990 shutdown ERCs); AQMD has not**

taken credit for any other pre-1990 sources of credits, such as the zero BACT threshold, use of ERCs by minor sources, or the additional ERCs provided by major sources for SOx, CO, and PM10 at a ratio of 1.2 to 1.0 compared to 1.0 to 1.0.

Proposed Adjustments to Pre-1990 Accounting

AQMD is now proposing to significantly reduce (by more than 60 % overall) its pre-1990 emission credits by eliminating any present or past use of any credits for which AQMD presently has no records and cannot re-verify the validity of such credits and to only utilize the portion of the previously-reported pre-1990 emission reductions which was originally validated in 1990/91 and revalidated in 2004/05 as credits in its tracking system and for which AQMD has all or some records. The emission reductions that underlie those credits occurred between 15 and 29 years ago, and not all records related to them are available today. In many cases, however, summary data based on previous analyses are available. While not all records are available, AQMD at all relevant times prior to and after 1990 had a sufficiently robust permitting program and record validation procedure to provide confidence regarding the validated emission reductions for which AQMD proposes to take pre-1990 credits. This conclusion is supported by the preceding discussion of AQMD's pre-1990 permitting program and the following summary of the 1990 Regulation XIII amendments and their implementation:

- 1990 Regulation XIII Amendments
  AQMD substantially modified Regulation XIII in 1990. The offset threshold was dropped to zero, although relatively small emitting facilities (*e.g.* less than 30 pounds per day of VOC or 40 pounds per day of NOx) were eligible to obtain needed credits from a new "Community Bank." Under the 1990 amendments, negative balances were to be "verified by the Executive Officer" and discounted by 80%. The rules specified that "upon validation" the remaining amount was to be issued to the permit holder in the form of an ERC (Rule 1309(a)).

- Implementation of 1990 Amendments
  Shortly after adoption of the 1990 amendments to Regulation XIII, AQMD staff drafted a detailed internal guidance document titled "Regulation XIII – New Source Review Guidance Manual" specifying how the amendments would be implemented by AQMD permit processing engineers. The required treatment of negative balances was described in this document. It specified that negative balances would have to be "verified" in accordance with standard procedures. It also specified that each facility's NSR account would be searched by computer to determine if any "forgivenesses" (*i.e.* negative entries due to prior rule amendments lowering offset thresholds) contributed to the facility's negative balance. The document further provided that NSR balances "shall be recalculated" since these forgivenesses were not "real" emission reductions and therefore did not qualify for an ERC pursuant to Rule 1309(b)(1). The transition document also specified that any negative particulate matter emissions balances would be converted to PM10 by multiplying the particulate matter emissions by an average factor of 0.5. Finally, the document stated that any facility with a negative balance of 500 pounds per day or greater was to have each negative entry "confirmed by reviewing the application file which resulted in the negative NSR entry." The vast majority of negative balances at the time (in excess of 80%) were associated with facilities with negative balances exceeding 500 pounds.

In 1991, AQMD's engineering staff commenced the verification and validation processes described in the transition document. The result of these processes was a substantial reduction in the amount of the negative balances for some pollutants, even prior to the 80% discount. These reductions were the result of (1) addressing the "forgivenesses," (2) determinations that some reductions were required by AQMD rules and thus ineligible for ERCs, and (3) in some cases correction of simple data entry errors. Table 3 presents the 80 % portion of the 1990 negative balances that were deposited in AQMD's offset accounts. The larger amount shown for each pollutant is the amount originally deposited as the result of this process in the early 1990s and which has been previously reported as the 1990 starting balance in the annual NSR status reports and the lower amount is revised based upon recent (2003) re-validation of these numbers by AQMD staff based on records that are still available to address EPA's comments and consistent with EPA policy guidance which allows use of pre-1990 credits that are explicitly included and quantified as growth in the SIP. Such guidance provides that the permitting agency must maintain information including, at a minimum, the name of the source that generated the credit, the source category, credit quantity, specific action that generated the credit, date the credit was generated and "enough other information to determine the creditability. . . ." (Memorandum from John Seitz to David Howekamp August 26, 1994).

Records for pre-1990 emission credits are from 15 to 29 years old. AQMD staff recently conducted an extensive review of the pre-1990 credits and determined that the types of records available today include printouts of NSR data captured in AQMD's permitting database at the time of permit issuance and complete engineering files, which include the materials and documentation submitted by the applicant and AQMD's engineering evaluation.

Table 3
Pre-1990 Credits Deposited in AQMD's Offset Accounts
(Tons per Day)

	VOC	NOx	SOx	CO	PM10	Overall
Previously-Reported Pre-1990 Credits	92.4	25.8	18.4	34.9	34.5	206
Revised Pre-1990 Credits Verified with Records or Validation Procedures	38.46	23.92	8.04	8.45	2.67	81.5
Percent **Reduction** in Pre-1990 Credits	58 %	7 %	56 %	76 %	92 %	60 %

In the proposed revised NSR Tracking System, AQMD is proposing to only use the revised and re-verified pre-1990 credits (as set forth in Table 3). There are pre-1990 credits which can reasonably be concluded to be creditable based on presently available records. In some cases, such conclusion can be reached because all of the information described in the 1994 Seitz memorandum is currently available. In other cases, the above-described permitting procedures provide "enough other information to determine the creditability. . . ." However, for the majority of the pre-1990 emission reduction credits (more than 60 % overall), the AQMD at present time no longer has the ability to substantiate the validity of the original

records based on the available records. Therefore, AQMD is now proposing to significantly reduce its pre-1990 emission reduction credits by eliminating any past or present use of any credits for which AQMD presently can no longer substantiate the validity of such records.

- Remaining Pre-1990 Credits
  AQMD's NSR tracking system has not previously specified the age of credits held in AQMD's offset accounts. However, in response to EPA's comments about the use of pre-1990 credits, staff has completed a "First In/First Out" analysis of these accounts. This analysis shows that significant portions of the pre-1990 VOC and SOx credits remain in AQMD's offset accounts as of July 2002, about one quarter of the pre-1990 NOx credits remained in AQMD's offset accounts as of July 2002, and all of the pre-1990 CO and PM10 credits were depleted from AQMD's offset accounts by 1997[4]. In order to address EPA's comment regarding future use of pre-1990 credits from AQMD's accounts, AQMD proposes to eliminate any unused pre-1990 VOC, NOx, and SOx credits remaining in its offset accounts at the end of the 2004-2005 reporting period and not use any pre-1990 credits in its offset accounts post 2005.

1990 and Beyond Credits

Existing 1990 and Beyond Accounting

Due to the high level of available credits in AQMD's offset accounts, AQMD presently only takes credit for some of the qualified credit sources. For example, AQMD's NSR tracking system currently takes credit for orphan shutdowns from major sources only, but not from minor sources. The existing tracking system credits orphan shutdowns to AQMD's offset accounts based upon the allowable permitted level of emissions of the shutdown source. It also does not take credit for surplus reductions of SOx, CO, or PM10 provided as ERCs by major sources as a result of the differences in federal and local offset requirements for these pollutants (local requirement is 1.2 to 1.0 while federal law does not specify an offset ratio in excess of 1.0 to 1.0 for SOx, CO, or PM10) or for surplus reductions resulting from minor sources providing ERCs as emission offsets. The tracking system also does not take credit for AQMD's zero BACT threshold. BACT discounts applied to newly-banked ERCs are credited to AQMD's offset accounts. Offsets are debited from AQMD's offset accounts at 1.2 to 1.0 for all five pollutants when major sources that are not exempt pursuant to the CAA are permitted using Rule 1304 exemptions or the Priority Reserve. AQMD's portion of the California SIP does not include assumptions reflecting the NSR tracking system or commitments to make up any shortfall in AQMD's offset accounts. Additionally, the tracking system does not take credit for surplus reductions resulting from modifications at major sources that do not constitute "major modifications" pursuant to the new NSR Reform Regulations.

[4] All data for 1991 to 1997 is aggregated, so it is uncertain when in this time period the 1990 starting federal account balances for CO, and PM10 were depleted. However, by assuming that these credits were consumed at an approximately constant rate, it is estimated that PM10 was depleted in 1994, and CO was depleted in 1995.

Proposed Adjustments to 1990 and Beyond Accounting

The proposed changes to the sources of credits to and debits from AQMD's offset accounts for the 1990 and beyond time period are summarized below:

- Pre-1990 Credits
  AQMD proposes to **eliminate** any unused pre-1990 credits remaining in its offset accounts at the end of the 2004-2005 reporting period and to not use any pre-1990 credits in its offset accounts post 2005.

- Minor Source Orphan Shutdowns
  Post-1990, the NSR tracking system has only used orphan shutdowns of major sources to fund AQMD's offset accounts. However, shutdowns of permitted *minor* sources also meet the requirements that credits be real, permanent, enforceable, quantifiable, and surplus in the same way as do major source shutdowns. ERCs generated from minor sources are commonly used to fulfill the offset requirements for emission increases at major sources which are not exempt from offset requirements under AQMD's NSR rules. Therefore, although AQMD has not previously used these credits due to the large balances available in its offset accounts, it is appropriate to include emission reductions from minor source orphan shutdowns as credits in AQMD's offset accounts.

  AQMD's Rule 201 requires written authorization from the Executive Officer (*i.e.*, a permit to construct) before a person may build, erect, install, alter or replace any equipment, the use of which may cause the issuance of air contaminants or the use of which may eliminate, reduce or control the issuance of air contaminants. Rule 203 – Permit to Operate similarly prevents the operation or use of such equipment without a permit issued by the Executive Officer. The only exceptions to these requirements are specifically identified in Rule 219. However, all of the minor sources which AQMD proposes to use as sources of orphan shutdown credits as described above have been through the permitting process. In fact, such minor sources are subject to the same Regulation IV - Prohibitions, Regulation XI - Source Specific Standards, and Regulation XIII rule requirements as are major sources. In some cases the operators of these sources go through the necessary steps to quantify and generate ERCs when they experience real, permanent, enforceable, quantifiable, surplus emission reductions (*e.g.*, equipment or facility shutdown or modification). Such ERCs generated by minor sources are fully valid and eligible for use as major source offsets. Therefore, in cases where the operators do not go through the steps to generate ERCs from their emission reductions, it is appropriate for AQMD to treat these orphan shutdowns in the same manner as it does orphan shutdowns at major sources.

- Major Source Use of SOx, CO, and PM10 ERCs
  ~~PR1315~~PR 1315 includes credit for the 20 % additional SOx, CO, and PM10 ERCs provided by major sources as emission offsets at a ratio of 1.2 to 1.0 pursuant to Rule 1303 rather 1.0 to 1.0 (federal accounting). The 20 % above a 1.0 to 1.0 offset ratio is creditable because the federal CAA only requires a 1.2 to 1.0 offset ratio for extreme non-attainment pollutants and their precursors; the required offset ratio for SOx, CO, and PM10 pursuant to the CAA and the TSD is "at least 1 to 1" according to EPA.

- Offset Ratio for Exempt Major Sources of SOx, CO, and PM10
  ~~PR1315~~PR 1315 changes the offset ratio for major sources of SOx, CO, and PM10 offset from AQMD's offset accounts from 1.2 to 1.0 to 1.0 to 1.0 (federal accounting). This change is consistent with the CAA, which only require a 1.2 to 1.0 offset ratio for extreme nonattainment pollutants and their precursors (not from SOx, CO, or PM10).

- ERCs Provided by Minor Sources to Offset Emission Increases
  The CAA does not require minor sources to provide offsets for their emission increases. Therefore, the third-party ERCs that these sources provide to offset their increases pursuant to Rule 1303 are creditable to AQMD's offset accounts.

- Surplus Discount at Time of Use
  Credits in AQMD's offset accounts that resulted from post-1990 orphan shutdowns or orphan reductions and which, based on a first-in/first-out analysis, are not used in the same timeframe they are banked will be subject to a BARCT at the time of use adjustment pursuant to ~~PR1315~~PR 1315. This will be accomplished based on rule control requirements that become effective each year. Specifically, each year all credits in AQMD's offset accounts carried over from the previous year be discounted by the amount of the percentage reduction in overall permitted emissions[5] projected to be achieved as a result of implementation of control requirements that become effective during the year for the pollutant in question. This analysis will be performed on an aggregate basis each year for credits carried over from the previous year.

- Actual Emissions Baseline
  ~~PR1315~~PR 1315 uses an average discount factor to account for the difference between potential and actual emissions. Since 1997, AQMD has used a twenty percent discount to convert potential emissions to estimated actual emissions for purposes of compliance with state "no net increase" requirements. This procedure has been used with concurrence of the California Air Resources Board. ~~PR1315~~PR 1315 uses the same factor for federal NSR tracking purposes. In light of the methodology used to quantify potential emissions (explained in more detail below), staff's engineering judgment indicates that, on average, a twenty percent reduction from potential emissions is a reasonable estimate of actual emissions. Actual emissions for individual sources will range from the sources' potential emissions down to less than eighty percent of potential emissions, but eighty percent of potential emissions represents an acceptable estimate of aggregate actual emissions. The use of eighty percent of potential emissions as actual emissions is well documented in AQMD's annual status reports regarding Regulation XIII.

  Facilities with potential to emit in excess of the Rule 1304 exemption thresholds (4 tons per year for VOC, NOx, SOx, and PM10 and 29 tons per year for CO), provide ERCs to offset their increases in potential emissions so they have a strong incentive to keep their potential emissions in line with actual emissions at times of high production. Smaller facilities with potential to emit below the exemption thresholds may be inclined to request permits based on potential emissions at the exemption threshold levels because the offsets are provided by

[5] Permitted emissions data is derived primarily from permitted facilities emitting more than four tons of VOC, NOx, SOx, or PM per year or more than 100 tons of CO per year.

AQMD at no cost to the facility. However, AQMD engineers perform a thorough evaluation of each permit application prior to recommending issuance of a permit to construct or a permit to operate. These evaluations include a determination of the actual controlled emission rate (based on source test results, VOC content of coatings, sulfur content of fuel, or other potential toxics emissions for example) or expected actual controlled emission rate (based on established emission factors or manufacturers' guarantees, for example). This data is then combined with the maximum anticipated production rate to determine the equipment's potential to emit. Note that the maximum production rate used in these calculations is based on what is reasonably expected for the facility and source in question during periods of high production and is not based on either "24-7" operations (except for those facilities that actually do operate in such a manner) or an artificially highest permissible emission level for each source. In addition, although these sources are not required to provide emission offsets, they are still subject to AQMD's toxics NSR rules, and as such will not artificially raise their potential to emit or permitted emissions. Therefore, actual emissions are not expected to be considerably different than potential emissions and 80 % of potential emissions provides a reasonable estimate of actual emissions. This conclusion is further supported by potential to emit data for facilities at or below the exemption thresholds. Table 4 shows that there are far more facilities with potentials to emit below the exemption thresholds than at the exemption thresholds.

Table 4
Ratio of Numbers of Facilities with Potential to Emit (PTE) Below Exemptions Thresholds to Numbers of Facilities with PTE at Exemption Thresholds

Pollutant	Facility Count			Ratio (Below Threshold: At Threshold)
	PTE Range A[1]	PTE Range B[2]	PTE C[3]	
VOC	1,336	1,348	601	4.5:1
NOx	2,021	1,534	363	10:1
SOx	545	180	32	23:1
CO	2,789	330	10	310:1
PM10	1,686	940	188	14:1

[1] PTE Range A is greater than zero but less than 2 tons per year for VOC, NOx, SOx, and PM10 and is greater than zero but less than 15 tons per year for CO.
[2] PTE Range B is greater than or equal to two but less than four tons per year for VOC, NOx, SOx, and PM10 and is greater than 15 but less than 29 tons per year for CO.
[3] PTE C is four tons per year for VOC, NOx, SOx, and PM10 and is 29 tons per year for CO.

- Discounting Newly-Banked ERCs to BACT

  Rule 1309 – Emission Reduction Credits and Short Term Credits specifies that the amount of emission reductions banked as a new ERC not be "greater than the equipment would have achieved if operating with current Best Available Control Technology (BACT)." No similar requirement exists in the federal CAA. Therefore, the amount of any otherwise qualifying emission reductions not issued as an ERC due to implementation of this provision are surplus. However, EPA has indicated that since AQMD uses the BACT discount at time of generation in lieu of the federally-required BARCT discount at time of use, therefore, AQMD cannot take credit into its offset accounts for the BACT discount of ERCs. In order to address EPA's concerns, AQMD agrees to retroactively remove all credits generated from

BACT discount of ERCs from its offset accounts, except such credits which AQMD has demonstrated (or demonstrates in the future) exceed the discount that would be required by approved SIP rules and rules scheduled to be approved by AQMD in the following year's rule cycle. AQMD shall notify EPA and obtain EPA's concurrence when making this alternative discount. Specifically, AQMD has identified 6.67 tons of CO per day of BACT discount of ERC credits from 1991 in AQMD's federal CO offset account which are beyond approved SIP rules and rules scheduled to be approved by AQMD in the following year's rule cycle at the time of use. AQMD will, therefore, retain these offsets (which were used in the early 1990s).

- SIP Inventory and Growth Assumptions
  To date, the AQMD has incorporated a sufficient portion of available tracking system credits into the AQMP at the time of plan revision to assure that the growth assumptions in the plan are consistent with NSR credits used. In order to assure that the SIP assumes that all necessary credits are "in the air," AQMD proposes to provide an enforceable commitment to revise the amount of credits assumed to be "in the air" at the time of the next triennial plan revision required by state law while meeting ROP & attainment demonstration.

- Other Potential Credits
  ~~PR1315~~PR 1315 does not propose to take any credits for surplus reductions such as application of LAER in excess of federal requirements to any increase in emissions at a major stationary source for non-ozone precursors such as SOx, CO and PM10 or the zero BACT threshold. AQMD understands that when and if it wants to use such credits it will be necessary to hold further discussions with EPA and ARB. AQMD is also not presently proposing to take any credits for not having to deduct emission increases resulting from modifications at major sources that do not constitute major modifications pursuant to the NSR Reform Regulations at this time. However, AQMD would like to be able to use such provisions if a project can be demonstrated to not be subject to NSR since it is not a "federal major modification" under NSR reform. AQMD is also currently investing funds resulting from the mitigation fees provided by electrical generating facilities pursuant to Rule 1309.1 – Priority Reserve in various emission reduction projects. Therefore, AQMD may discuss mechanisms for taking credit for such emission reductions with EPA and ARB in the future.

Inventory Issues Related to Minor Source Orphan Shutdowns

Emissions from small permitted sources (*i.e.*, less than 4 tpy of any criteria pollutant or 100 tpy of CO) are treated as area sources in the AQMP inventory. Typically, a base year inventory is prepared by projecting historical activity data to future years on the basis of socioeconomic data provided by SCAG. The surrogates used for emission growth projection are documented in Appendix III, Table 2-3 of the 2003 AQMP. The growth factors for source categories are mostly greater than 1 with a few exceptions. When the growth factor is greater than 1, emissions are projected to grow without taking into account any potential NSR constraint that offsets may not be available. By the same token, if the growth factor is less than 1, future emissions are estimated to be lower than the base year emissions.

EPA staff raised an issue that shutdown credits from source categories that are projected to decrease in the AQMP may not be appropriate to be used as offsets, since the AQMP has already

reflected such decreases. However, closer examination of the AQMP process and the assumptions made in the Plan reveals that use of shutdown credits from source categories with even negative projected growth does not result in double counting of emissions reductions. The AQMP assumes negative growth in some categories and positive growth in others. Further, the positive growth assumptions include no constraints on growth posed by cost or availability of emission offsets (and all existing ERCs are also assumed to be "in the air" independent of the growth projections). Inherent in these AQMP assumptions is the assumption that emission decreases, including decreases associated with negative growth, result in emission credits that can be used to offset emission increases. Therefore, movement of potential emissions from a negative growth category to a positive growth category via appropriately quantified and discounted credits is entirely consistent with the AQMP and its assumptions. Furthermore, even though AQMD has never experienced actual growth greater than that projected in the AQMP, AQMD reevaluates the AQMP with each AQMP revision and makes appropriate changes and corrections as a part of this process (and commits to continue to do so consistent with state law). Finally, there is no restriction on the generation of ERCs by sources in categories with negative projected growth or on the use of such ERCs by sources within other categories. The standard for credits in AQMD's offset accounts should not be higher than for privately held credits.

Summary

The NSR tracking system outlined in ~~PR1315~~PR 1315 establishes a very conservative accounting methodology. As indicated earlier, it includes reducing AQMD's previously-reported pre-1990 credits from a 7 % reduction in NOx to a 92 % reduction in PM10 and will change the previously-reported 2002 NSR offset accounts from a 39 % increase in NOx credits to an 81 % reduction in PM10 credits. The overall impact on emission credits resulting from ~~PR1315~~PR 1315 are summarized in Table 5 for both the 1990 starting balances and July 2002 running balances. Table 5 also presents the District offset account balances at the end of the 2002-2003 and 2003-2004 reporting periods as calculated consistent with the proposed revised NSR tracking system procedures (refer to Appendix III~~Attachment C~~ for a complete discussion of the 2002-2003 and 2003-2004 reporting periods).

Table 5
Summary of AQMD's Offsets Accounts
(Tons per Day)

	VOC	NOx	SOx	CO	PM10
Previously-Reported 1990 Starting Balance	92.4	25.8	18.4	34.9	34.5
Revised 1990 Starting Balance	38.46	23.92	8.04	8.45	2.67
Reductions in AQMD's Pre-1990 NSR Account Balance	58 %	7 %	56 %	76 %	92 %
Previously-Reported 2002 Running Balance	107.65	21.60	18.76	24.09	41.24
Revised 2002 Running Balance	68.37	28.77	10.72	7.84	7.66
Reductions in AQMD's 2002 NSR Account Balance	36 %	-39 %	43 %	68 %	81 %
2003 Running Balance	73.96	30.25	10.92	9.14	9.29
2004 Running Balance	82.57	29.19	11.24	10.20	10.49

Tables 6 and 7 summarizes the changes between AQMD's existing federal NSR tracking system and the federal NSR tracking system established by ~~PR1315~~PR 1315. These tables summarize the existing and proposed revised NSR tracking system for pre-1990 emission reductions and 1990 and beyond emission reductions. Table 8 and 9 summarize the equivalency determination and the backstop provisions of Proposed Rule 1315.

Table 6
Summary of Changes between AQMD'S Existing and Proposed Revised NSR Tracking Systems for Equivalency with Federal Requirements:

Pre-1990 Federal Emission Reductions

AQMD's Existing NSR Tracking System	AQMD's Proposed Revised NSR Tracking System
Starting Balance based on data generated in 1990 from facilities' (both major and minor sources) emission reductions recorded as negative NSR balances. This data has been used and previously reported in all annual NSR status reports.	Initial Starting Balance based on data from facilities' (both major and minor sources) emission reductions recorded as negative NSR balances which were originally verified in 1990/91 and re-verified in 2004/05 and all or some records currently exist. This excludes all other data for emission reductions with no present records.
No credit taken for surplus reductions from SOx, CO, and PM10 offsets provided (at 120 %) as ERCs for minor sources.	No Change.
No credit taken for the 20 % additional SOx, CO, and PM10 offsets (ERCs) for major sources provided at a ratio of 1.2 to 1.0 compared to 1.0 to 1.0.	No Change.
No credit taken for emission reductions created from the application of zero BACT threshold(1).	No Change.

(1) "Zero BACT threshold" refers to AQMD's requirement that BACT applies to all emission increases (no matter how small) at all sources (no matter how low their potential to emit).

Table 7
Summary of Changes between AQMD'S Existing and Proposed Revised NSR Tracking Systems for Equivalency with Federal Requirements:

1990 and Beyond Federal Emission Reductions

AQMD's Existing NSR Tracking System	AQMD's Proposed Revised NSR Tracking System
Remaining pre-1990 credits eligible for use until depleted.	Remaining pre-1990 credits eligible for use until the end of 2005; no pre-1990 credits will be used post-2005.
No credit taken for orphan shutdowns from minor sources.	Orphan shutdowns include shutdowns of both major and minor sources.
No further discount/adjustment applied to estimate actual emissions.	All orphan shutdowns will be discounted/ adjusted to reflect estimated actual emissions.
No further discount/adjustment for orphan shutdowns due to BARCT at time of use.	All orphan shutdowns will be discounted/ adjusted to BARCT at time of use by discounting balances "carried over" from one year to the next.

Table 7 (continued)

1990 and Beyond Federal Emission Reductions

AQMD's Existing NSR Tracking System	AQMD's Proposed Revised NSR Tracking System
BACT discount credit portion of newly-issued ERCs eligible for crediting to AQMD's offset accounts (as previously approved by EPA).	No BACT-discount credits from any past or future-issued ERCs will be eligible for crediting to AQMD's offset accounts except those for specific projects for which staff has demonstrated or demonstrates that the BACT discount is beyond approved SIP rules and rules scheduled to be approved by AQMD in the following year's rule cycle at the time of use of the credits.
VOC and NOx offsets provided by AQMD for federal major sources exempted by AQMD at a ratio of 1.2 to 1.0.	No Change.
No credit taken for surplus reductions from SOx, CO, and PM10 offsets provided by AQMD for major sources exempted by AQMD at a ratio of 1.2 to 1.0 compared to 1.0 to 1.0.	SOx, CO, and PM10 offsets provided by AQMD for major sources exempted by AQMD at a ratio of 1.0 to 1.0(1).
No credit taken for surplus reductions created from offsets (ERCs) provided (at 120 %) by minor sources which are not exempt from offset requirements under AQMD NSR rules (*i.e.*, > 4 but < 10 TPY of VOCs and NOx, etc.).	Credit taken for surplus reductions created from offsets (ERCs) provided (at 120 %) by minor sources which are not exempt from offsets requirements under AQMD rules (*i.e.*, > 4 but < 10 TPY of VOCs and NOx, etc.).
No credit taken for surplus reductions created from the 20 % additional SOx, CO, and PM10 offsets (ERCs) provided by major sources at 1.2 to 1.0 ratio compared to 1.0 to 1.0 ratio.	Credit taken for surplus reductions created from the 20 % additional SOx, CO, and PM10 offsets (ERCs) provided by federal major sources at a ratio of 1.2 to 1.0 compared to 1.0 to 1.0 ratio.
No credit taken for emission reductions created from the application of zero BACT threshold(1).	No Change.
No credit taken for application of LAER in excess of federal requirements to any increase in emissions at a major stationary source for non-ozone precursors (SOx, CO, and PM10).	No credit taken for application of LAER in excess of federal requirements to any increase in emissions at a major stationary source for non-ozone precursors (SOx, CO, and PM10) at this time. If AQMD decides to pursue use of such credits in the future, further discussions with EPA will be necessary.
No SIP adjustment for NSR tracking system.	Appropriate assumptions in the SIP to reflect NSR tracking system with commitment to make up any shortfall in next AQMP revision pursuant to state law.

(1) "Zero BACT threshold" refers to AQMD's requirement that BACT applies to all emission increases (no matter how small) at all sources (no matter how low their potential to emit).

USE OF CREDITS

The above-described credits will be used to fund the Offset Budget as adopted by AQMD's Governing Board in Rule 1309.2 in addition to the current use of credits to provide offsets for federal major sources which are exempt from offset requirements under AQMD Regulation XIII (Rule 1304) and to provide Priority Reserve offsets (Rule 1309.1) in order to provide equivalence to federal NSR requirements. As indicated earlier, a list of Regulation XIII provisions for which sources are exempt from offset requirements and AQMD uses its offset accounts to demonstrate equivalency is presented in Appendix II~~Attachment B~~.

DEMONSTRATIONS OF EQUIVALENCY

~~PR1315~~PR 1315 directs the Executive Officer to make annual equivalency demonstrations in two steps. In step one, AQMD will make a preliminary determination of equivalency (PDE) within twelve months of the close of each reporting period. Such PDE will be a very conservative determination based on the reporting period's combined debits but will not include the credits from that reporting period. Therefore, the PDE will represent a "worst case" analyses. Provided the PDE demonstrates equivalency, the orphan shutdowns for the reporting period will be reported (and credited) in the subsequent PDE, as illustrated in Figure 1. However, if the PDE does not demonstrate equivalency, AQMD will, as step two, make a final determination of equivalency (FDE), which will include the reporting period's orphan shutdown credits. The FDE will be prepared within six months of the PDE time frame, as illustrated in Figure 2. For example, the PDE for reporting year B (including all debits for years A and B and orphan shutdown credits for year A only) will be completed by the end of reporting year C. Provided this preliminary annual determination for year B demonstrates equivalency, the year B orphan shutdowns will be included in the preliminary annual determination for year C (to be completed

Figure 1
Equivalency Demonstration Timeline
(PDE Demonstrates Equivalency)

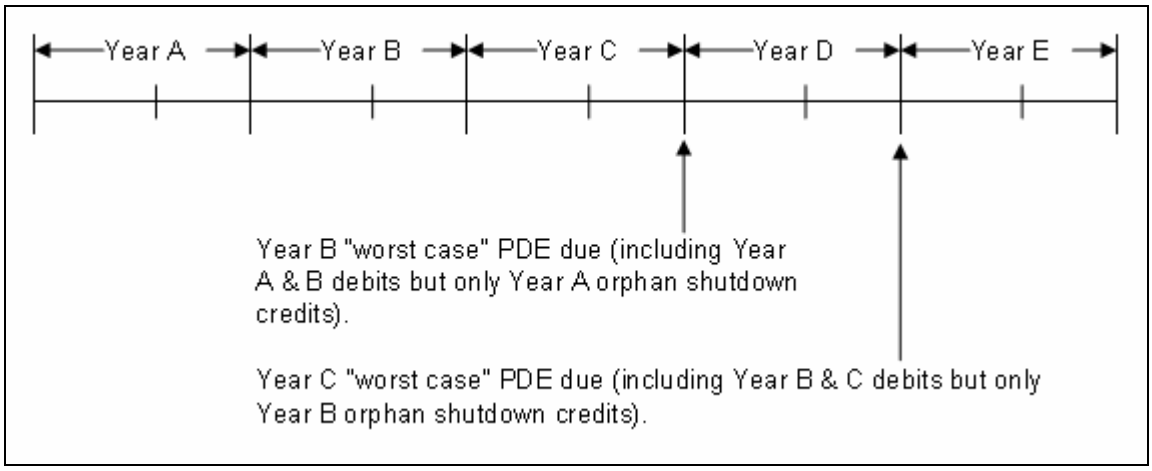
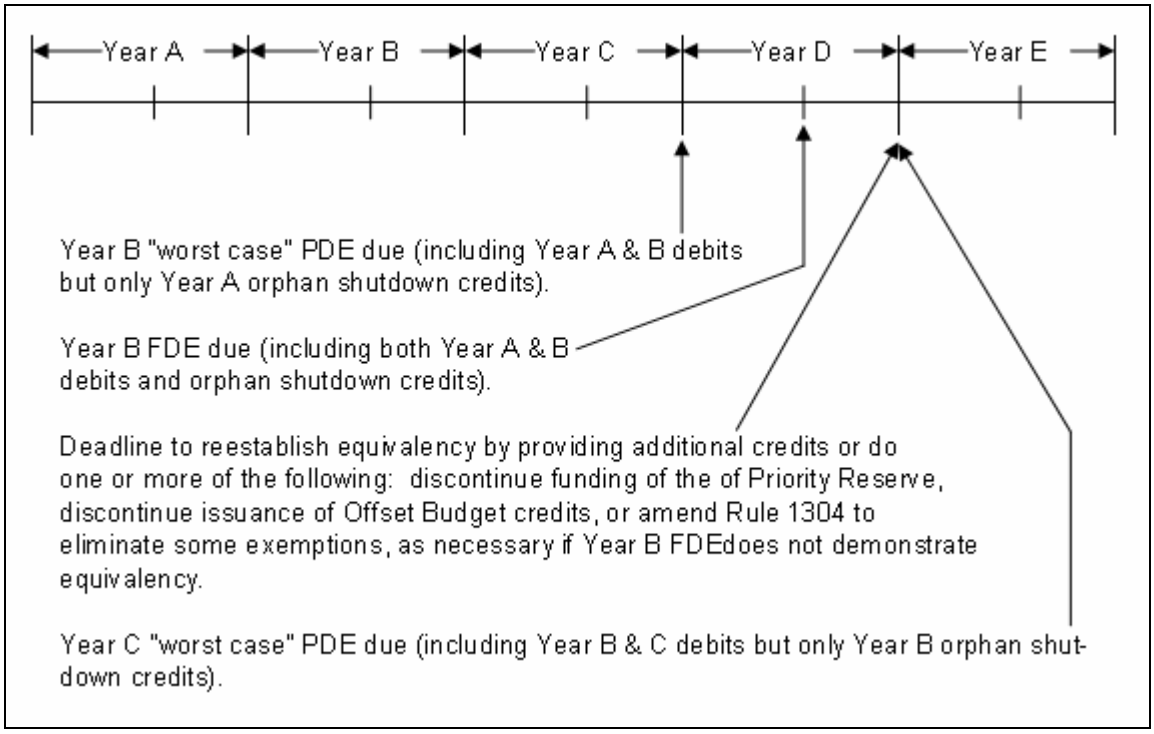


Figure 2
Equivalency Demonstration Timeline
(PDE Does Not Demonstrate Equivalency)



by the end of year D). On the other hand, if the PDE for year B does not demonstrate equivalency, a FDE incorporating year B's orphan shutdown credits will be prepared within six months of the end of year C. In lieu of preparing a PDE and an FDE for a particular reporting period, the Executive Officer may elect to merge the PDE into the FDE provided the FDE includes all of the elements of the PDE which it subsumes and it complies with the completion and reporting requirements of the subsumed PDE. The offset accounting will be conducted in the following order:

1. Subtract year B's debits from any remaining pre-1990 credits (1990-2005 timeframe only); then
2. Subtract any debits remaining after step 1 from any post-1990 credits remaining from year A; then

3a. If there are no remaining debits, discount the post-1990 credits remaining from step 2 as described in the discussion of Surplus Discount at Time of Use. Then add Year B's credits to the discounted post-1990 credits remaining from year A.

3b. If there are any remaining debits from step 2 (meaning there are not any post -1990 credits remaining), subtract year B's remaining debits from year B's credits.

~~PR1315~~PR 1315 specifies that each PDE and FDE will be presented to AQMD's Governing Board in a report from the Executive Officer ("Board Letter") at a public meeting of the AQMD Governing Board, no later than the second regularly-scheduled Governing Board meeting after the conclusion of the applicable twelve-month (PDE) or six-month (FDE) preparation period.

The reported determinations of equivalency will include the balances in AQMD's offset accounts, as well as summaries of credit and debit data by category such as Priority Reserve, Community Bank, and Rule 1304 exemptions.

In addition, pursuant to ~~PR1315~~PR 1315, AQMD will evaluate the future availability of credits in AQMD's offset accounts by conducting a two-year projection of debits, credits, and account balances in conjunction with (but not as a part of) each determination of equivalency. This analysis will include projected debits, credits, and offset account balances for each of the two years following the subject reporting period. The projections for each pollutant will be based on the average of the previous five years' credits and debits for that pollutant. The Executive Officer will not make quarterly allocations to the Priority Reserve for any pollutant during a time when AQMD's offset account for that pollutant is not projected to remain positive[6]. The purpose of the projections is to prospectively determine if sufficient offsets will remain in AQMD's offset accounts to continue funding the Priority Reserve; they are not intended to demonstrate equivalency retrospectively.

TRACKING AND BACKSTOP

~~PR1315~~PR 1315 includes backstop provisions to be triggered in the event that an FDE does not demonstrate equivalency. In such an event, the backstop provisions would require AQMD to take one or more of the following actions to the extent necessary to correct the credit shortfall:

- Provide additional credits within six months of the FDE; such credits could be derived through AQMD purchase of credits, through AQMD funding of emission reduction projects using quantification protocols or rules approved by EPA on a case-by case or programmatic basis, application of LAER in excess of federal requirements[7], or other approved sources of credits.
- Suspend issuance of both Priority Reserve and Offset Budget credits (Rules 1309.1 and 1309.2) within 90 days and not resume the issuance of any such credits until AQMD has demonstrated that equivalency has been reestablished. Equivalency may be reestablished through procurement of additional offsets and/or appropriate program modifications.

[6] Offsets provided from the Priority Reserve are debited from AQMD's offset accounts for the period during which the permit was issued (*i.e.*, for the timeframe they are used) whereas the quarterly allocations made to the Priority Reserve pursuant to Rule 1309.1(a) do not constitute debits from AQMD's offset accounts. The newly-proposed future years' projections of balances in AQMD's offset accounts will include projected use of Priority Reserve and Offset Budget offsets as well as sources exempted pursuant to Rule 1304. A significant portion of the quarterly allocations to the Priority Reserve are used by sources which are not subject to federal offset requirements (*i.e.*, federal minor sources) and, therefore, do not need to be debited from AQMD's offset accounts for purposes demonstrating equivalency with federal NSR requirements.

[7] Precise quantification of all surplus credits generated through application of LAER in excess of federal requirements may be extremely resource intensive. Therefore, AQMD may, with EPA approval, demonstrate that such application of LAER has generated at least enough surplus reductions to make up for the shortfall using very conservative assumptions to estimate the surplus reductions.

- Amend Rules 1309.1, 1309.2 and/or 1304 to restrict access by specific sources to the Priority Reserve and/or to eliminate certain categories of offset exemptions, respectively, to be identified during the rulemaking process.

Table 8
Summary of Changes between AQMD'S Existing and Proposed Revised Determinations of Equivalency

AQMD's Existing NSR Offset Account and Tracking System	AQMD's Proposed Revised NSR Offset Account and Tracking System
No specific deadlines and equivalency demonstration typically completed within two years of the close of the reporting period[8].	Preliminary (worst case) determination of equivalency (PDE) completed within one year of the close of the reporting period. If PDE does not verify equivalency, final determination of equivalency (FDE) completed within six months of the PDE timeframe.
No projections of future equivalency done with annual equivalency demonstrations	All annual demonstrations of equivalency (FDE or PDE) will be accompanied by projected NSR offset account balances for the two years following the subject reporting period. These projections are for the purpose of prospectively determining if sufficient offsets remain in AQMD's accounts to continue providing Priority Reserve offsets and will not constitute a part of the determinations of equivalency.
Funding of Priority Reserve conducted quarterly on an automatic basis without utilization of any projections of AQMD's offset account balances.	Executive Officer to exercise the option to discontinue funding the Priority Reserve upon finding that AQMD's offset accounts do not include sufficient credits. This will include discontinuation of funding when offset account balance projections in the most recent determination of equivalency do not indicate equivalency for the current reporting period.

[8] However, AQMD did not previously prepare an equivalency demonstration for the period post 2002 until now (see Appendix C) in order to address EPA's concerns and, as a result, utilize the proposed revised NSR Tracking System procedures.

Table 9
Summary of Changes between AQMD'S Existing and Proposed Revised Backstop Measures:

AQMD's Existing NSR Offset Account and Tracking System	AQMD's Proposed Revised NSR Offset Account and Tracking System
No backstop measures identified for addressing potential shortfalls in AQMD's offset accounts.	Several backstop provisions identified in the proposed tracking rule, one or more to be implemented as needed to return AQMD's NSR program to equivalency with federal NSR requirements and correct any credit shortfall: ▪ Provide additional credits within six months of the FDE; to be derived from AQMD purchase of credits, AQMD funding of emission reduction projects using quantification protocols or rules approved by EPA, application of LAER in excess of federal requirements, or other EPA-approved credit sources. ▪ Suspend issuance of both Priority Reserve and Offset Budget credits within 90 days, not to be resumed until equivalency has been reestablished. ▪ Amend Rules 1309.1, 1309.2, and/or 1304 to eliminate access to the Priority Reserve by certain sources and/or certain offset exemptions, respectively.

CEQA ANALYSIS

Pursuant to the California Environmental Quality Act (CEQA), the SCAQMD is the Lead Agency and has reviewed the proposed rule~~project~~ pursuant to CEQA Guidelines §15002 (k)(1). There are no reasonably foreseeable environmental impacts resulting from PR1315. Therefore, PR1315 is not a "project" under CEQA. Furthermore, ~~B~~because the proposed rule~~project~~ specifies New Source Review reporting procedures and, therefore, is administrative in nature, it can be seen with certainty that there is no possibility that the proposed rule~~project~~ in question has the potential to have a significant adverse effect on the environment. Thus, even if the proposed rule~~project~~ is determined to be a "project" under CEQA, it is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) - Review for Exemption. A Notice of Exemption will be prepared pursuant to CEQA Guidelines §15062 - Notice of Exemption. The Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties immediately following the adoption of the proposed rule~~project~~. Please refer to the Addendum to the Staff Report for CEQA comments and responses.

SOCIO-ECONOMIC IMPACTS

PR 1315 will formalize the accounting procedures the AQMD will use in demonstrating the equivalency of Regulation XIII to the federal new source review requirements for sources which do not provide their own offsets yet are subject to the federal NSR requirements for offsets. It will require annual equivalency demonstrations within twelve months after the close of each reporting period. Additionally, a two-year projection of credits and debits will be made along with each equivalency demonstration following each reporting period. The AQMD will be able to stop funding of the Priority Reserve and will be required to implement backstop measures if there is a shortfall in its offset accounts.

The elimination of banked credits from BACT discount, annual discount of newly-generated credits, and significant adjustments (overall 60 % reductions) to the pre-1990 balances and the removal of pre-1990 balances after calendar year 2005 will reduce the number of credits in the AQMD's offset accounts. On the other hand, minor source shutdowns will increase credits available. However, it is too speculative to project the amounts of all these categories for future years until the close of each period.

The AQMD's offset accounts have not experienced a shortfall historically. The backstop provisions would forestall future shortfalls. The impact of backstop provisions cannot be evaluated at this time due to their speculative nature. However, the suspension of offset funding within 90 days of a demonstrated FDE shortfall, if applicable, might delay the start of new sources since currently there is no stipulation as to funding suspension.

AQMP AND LEGAL MANDATES

The California Health and Safety Code requires the AQMD to adopt an Air Quality Management Plan (AQMP) to meet state and federal ambient air quality standards in the South Coast Air Basin. In addition, the California Health and Safety Code requires that the AQMD adopt rules and regulations that carry out the objectives of the AQMP. While Proposed Rule 1315 is not a control measure included in the AQMP, its requirements are consistent with the AQMP objectives.

RESOURCE IMPACTS

Due to the volume and complexity of analysis required, it is estimated that implementation of ~~PR1315~~PR 1315 will require one full time employee and $150,000 in programming costs for enhancements to AQMD's New Source Review computer program.

PR 1315 AND STAFF REPORT COMMENTS AND RESPONSES ~~TO COMMENTS~~

Comment: A chart showing the impacts of the proposed amendments to Rule 1309.1 scheduled for a Public Hearing in September 2006 might be included in the staff report and discussed.

Response: The impacts of the proposed amendments to Rule 1309.1 are thoroughly addressed in the staff report for that proposed rulemaking. For example, the preliminary draft staff report for the proposed amendments to Rule 1302 and Rule 1309.1 includes a table summarizing estimated demand for Priority Reserve offsets for each of the categories of sources which are proposed to be given short-term access to the Priority Reserve (*i.e.*, in-basin electrical generating facilities (EGF), energy projects of regional significance, out-of-basin EGFs, and biosolids projects). The totals presented in that table are reproduced below for reference (in pounds per day), along with the fractions of AQMD's 2004 offset account balances and of AQMD's projected 2006 offset account balances the estimated demand represents for each pollutant (as a percent):

	VOC	NOx	SOx	CO	PM10
Pre-2010 Total	6,404	41	1,479	8,827	3,825
Post-2010 Total	491	22	--	113	22
Fraction of 2004 Balance	4.2 %	0.11 %	6.6 %	44 %	18 %
Fraction of 2006 Balance*	4.9 %	0.12 %	16 %	40 %	15 %

* 2006 balances are projected, refer to Appendix III~~Attachment C~~.

Please refer to the staff report for Proposed Rule 1302 and Proposed Rule 1309.1 for a complete discussion of the impact of these proposed amendments.

Comment: It is still unclear if AQMD intends to require CO credits of sources given the pending attainment demonstration.

Response: CO offsets will be required until such time as US EPA re-designates this region as an attainment area..

Comment: At the end of the first paragraph in the Executive Summary, it would be appropriate to add some comforting words to the effect that private holders of ERC certificates are not impacted by this action.

Response: A statement to this effect has been added to the Executive Summary.

Comment: Please clarify that surplus adjustments at time of use at ~~PR1315~~PR 1315(b)(4), which we understand will be done on a programmatic basis, will be allowed the opportunity for public comment and Board approval.

Response: The short timelines which apply to the completion of each demonstration of equivalency (one year for each PDE and an additional six months for each FDE) make a public comment period and Governing Board approval of the surplus adjustments infeasible prior to completion of each demonstration. However, these discounts will be included in the reports to the Governing Board prepared for each demonstration of equivalency. These reports, including the surplus at time of use adjustments, will be subject to public comment and Governing Board review and

approval. Therefore, public comment and Governing Board review and approval prior to completion of each demonstration of equivalency is unnecessary and would be redundant.

Comment: It is unclear why ~~PR1315~~PR 1315(b)(2) and ~~PR1315~~PR 1315(b)(3)(A)(iv) discuss offset ratios for extreme non-attainment air contaminants and their precursors when we are currently designated as Severe-17.

Response: The federally-required offset ratio for extreme non-attainment air contaminants and their precursors is 1.2:1.0. The proposed rule language was written to be consistent with federal requirements. This language eliminates the need to amend this rule if AQMD's attainment status changes in the future. The appropriate offset ratios will be used in each demonstration of equivalency based on the attainment status(es) that pertain to the subject reporting period for each air contaminant.

Comment: At ~~PR1315~~PR 1315(b)(3)(A)(i) and (ii), we cannot find definitions of the terms "orphan shutdowns" and "orphan reductions" within the text of the proposed rule or the text of Proposed Amended Rule 1302.

Response: Definitions of "orphan shutdown" and "orphan reduction" are now included in subdivision (b) of PR 1315~~the version of Proposed Amended Rule 1302 to be released on or before August 9, 2006~~.

Comment: At ~~PR1315~~PR 1315(b)(3)(A)(iii), will the major source threshold be considered to be 25 TPY for VOC and NOx?

Response: The major source thresholds (the potential to emit thresholds below which a facility is a minor source and at or above which a facility is a major source) are contained in Rule 1302. Therefore, the thresholds which apply at any point in time are those which are contained in the most-recently SIP-approved version of Rule 1302 at that time. Currently, those thresholds for VOC and NOx are ten tons per year in the South Coast Air Basin, 25 tons per year in SCAQMD's portion of the Salton Sea Air Basin, and 100 tons per year in SCAQMD's portion of the Mojave Desert air Basin.

Comment: At, ~~PR1315~~PR 1315(b)(3)(A)(v), the "Community Bank" term doesn't actually exist in name within the New Source Review rules.

Response: The term "Community Bank" refers to the meaning established and used by the June 28, 1990 and May 3, 1991 revisions of Rule 1309.1.

Comment: At ~~PR1315~~PR 1315(b)(3)(B)(i), how can a paragraph be pursuant to itself [(b)(3)(B)]?

Response: The references in ~~PR1315~~PR 1315b)(3)(i) have been corrected.

Comment: Subparagraphs (b)(3)(D), (b)(3)(E), and (b)(3)(F) do not seem to exist.

Response: The references in ~~PR1315~~PR 1315b)(3)(ii) have been corrected.

Comment: In the backstop provisions at ~~PR1315~~PR 1315(e), why wouldn't the Offset Budget procedures in Rule 1309.2 be discontinued first?

Response: As proposed to be amended ~~September 8, 2006~~, Rule 1309.1 gives the Executive Officer the authority to discontinue funding of the Priority Reserve without Governing Board action. Rule 1309.2 does not give the Executive Officer similar authority regarding the Offset Budget. Therefore, discontinuation of funding of the Offset Budget would require Governing Board action and could not be complete in as short a timeframe as could discontinuation of funding the Priority Reserve. Note that the authority to discontinue funding of the Priority Reserve does not suggest that the Executive Officer has the authority to discontinue use of the Priority Reserve so long as it continues to have positive account balances.

DRAFT FINDINGS

Before adopting, amending or repealing a rule, the AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference, as defined in Health and Safety Code Section 40727. The draft findings are as follows:

Necessity – The AQMD Governing Board has determined that a need exists to adopt Proposed Rule 1315 – Federal New Source Review Tracking System, to formalize AQMD's accounting methodology for tracking changes to its internal NSR offset accounts for the purpose of demonstrating programmatic equivalency between AQMD's NSR program and federal NSR requirements.

Authority – The AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Sections 40000, 40702, 40725 through 40728, and 42300 *et seq.* of the California Health and Safety Code.

Clarity – The AQMD Governing Board has determined that Proposed Rule 1315 – Federal New Source Review Tracking System, as proposed to be adopted is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

Consistency – The AQMD Governing Board has determined that Proposed Rule 1315 – Federal New Source Review Tracking System, as proposed to be adopted is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.

Non-Duplication – The AQMD Governing Board has determined that Proposed Rule 1315 – Federal New Source Review Tracking System, as proposed to be adopted, does not impose the same requirements as any existing state or federal regulation and is necessary and proper to execute the power and duties granted to, and imposed upon, the AQMD.

Reference – The AQMD Governing Board, in adopting this rule, references the following statutes which the AQMD hereby implements, interprets, or makes specific: Health and Safety Code Sections 42300 et seq. and Clean Air Act Sections 172, 173, and

182(e).

CONCLUSIONS AND RECOMMENDATIONS

The comparative analysis referred to in Health and Safety Code Section 40727.2 is not required because ~~PR1315~~PR 1315 does not establish a new emissions limit, make an existing limit more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements on a source. Similarly, the proposed rule will not impose any requirements on regulated sources so the incremental cost effectiveness analysis identified in Health and Safety Code Section 40920.6 (which only applies to adoption of rules or regulations which require use of best available retrofit control technology or which are feasible measures pursuant to Health and Safety Code Section 40914) is not required.

Staff recommends adoption of Proposed Rule 1315 for the reasons stated in this staff report.

APPENDIX IATTACHMENT A
AQMD'S NSR OFFSET TRACKING—UPDATED RUNNING BALANCES

As explained in detail in the main body of this staff report, AQMD staff has devoted considerable resources to re-evaluating and revalidating its offset accounts:

- The pre-1990 credits were adjusted and reduced to reflect the quantities for which AQMD retains full or partial records documenting the credit amounts;
- The post-1990 credits were updated to reflect the eligibility and quantification requirements contained in PR1315PR 1315;
- The post-1990 debits were updated to reflect the eligibility and quantification requirements contained in PR1315PR 1315; and
- The accounting procedures were updated to reflect the procedures contained in PR1315PR 1315.

These updates are all discussed in greater detail in the main body of this staff report. Their combined impacts are significant changes in both the pre-1990 and post-1990 balances in AQMD's offset accounts (overall 60 % and 42 % reductions, respectively, in the pre-1990 and 2002 offset account balances). These changes are summarized in Tables 1, 3, and 5. Table IA-1 provides much greater line-by-line detail regarding the offset accounts over time. Each source of credit or debit in Table I is cross referenced to the PR 1315 rule section in each line immediately after the description of such credit or debit.

APPENDIX II~~ATTACHMENT B~~:
LIST OF SOURCES EXEMPT FROM OFFSET REQUIREMENTS AND PROVISIONS COVERED BY EQUIVALENCY SHOWING

The following sources are exempt from AQMD's NSR offset requirements or their offsets from AQMD's Priority Reserve or Offset Budget but are not exempt from federal NSR offset requirements. Therefore, use of these exemptions or use of Priority Reserve or Offset Budget offsets by major sources constitutes debits from AQMD's offset accounts and is reflected in AQMD's demonstrations of equivalency. Items listed below in italics are not currently in AQMD's NSR program but are proposed for inclusion into Rule 1309.1 – Priority Reserve by the Governing Board at a Public Hearing currently scheduled for September 8, 2006.

Rule 1304 - Exemptions:

(1) Replacements need to be tracked because of PTE Baseline in 1304 (a)(1) Emissions will generally be lower due to BACT. AQMD will demonstrate through representative analysis that emission reductions from BACT exceed those needed for offsets pursuant to actual – potential analysis.

(2) Relocations need to be tracked because of PTE baseline in 1304(c)(1) Emissions will generally be lower due to BACT.

(3) Abrasive Blasting Equipment

(4) Air Pollution Control Strategies

(5) Emergency Equipment

(6) Portable Internal Combustion Engines

(7) Methyl Bromide Fumigation

(8) Replacement of Ozone Depleting Compounds

(9) Portable Equipment

(10) Regulatory Compliance

(11) Regulatory Compliance for Essential Public Services

(12) Facility Exemption (VOC, NOx, SOx, or PM10 PTE less than 4 tons per year or CO PTE less than 29 tons per year)

(13) Resource Recovery

(14) Electric Utility Boilers Alt Energy

Rule 1309.1 - Priority Reserve

The Priority Reserve, which is funded from AQMD's offset accounts, provides a source of emission offsets for certain priority categories of sources. Except as noted below, these offsets are provided by AQMD at no cost to the operator. The various categories of sources eligible to access the Priority Reserve are summarized below:

(1) Innovative Technology
Use of a technology that results in significantly lower emissions than would the use of BACT.

(2) Research Operations
Projects with the purpose of "investigation, [experimentation], or research to advance the state of knowledge or the state-of-the-art." Limited to at most two years.

(3) Essential Public Service
Sources in the following categories located at facilities where all sources operate at or below BARCT levels
- Publicly-owned sewage facilities;
- Prisons;
- Police facilities;
- Fire fighting facilities;
- Schools;
- Hospitals;
- Construction/operation of landfill gas control or processing facility;
- Water delivery operations;
- Public transit; and
- ~~*Public Biosolids processing facilities.*~~

(4) Electrical Generating Facilities (2000 through 2003)
Specified categories of facilities that generate electricity; meet BARCT for all sources; applicant has conducted a due diligence effort to acquire ERCs on the open market; applicant has applied for California Energy Commission certification or AQMD permit to construct during calendar years 2000, 2001, 2002, or 2003; and applicant pays the following fee for each pound of Priority Reserve offsets obtained (VOC and NOx not available for these sources):
- $25,000 per pound PM10 and day;
- $8,900 per pound SOx per day; and
- $12,000 per pound CO per day.

(5) Electrical Generating Facilities, ~~Energy Projects of Regional Significance,~~ and Electrical Generating Facilities in Downwind Air Basins, ~~and Non-Public Biosolids Processing Facilities~~ (2005 though 2008)
Electrical generating facilities, energy projects of regional significance, electrical generating facilities in downwind air basins, and non-public biosolids processing facilities that meet BARCT for all sources; applicant has conducted a due diligence effort to acquire ERCs on the open market; applicant has applied for California Energy Commission certification or AQMD permit to construct during calendar years 2005 2006, 2007, or 2008; and applicant pays the following fee for each pound of Priority Reserve offsets obtained (VOC and NOx not available for these sources):
- *$50,417 per pound PM10 and day;*
- *$15,083 per pound SOx per day; and*

- *$12,000 per pound CO per day;*

(6) Electrical Generating Facilities in Downwind Air Basins, (2005 though 2008)
Electrical generating facilities in downwind air basins, that meet BARCT for all sources; applicant has conducted a due diligence effort to acquire ERCs on the open market; applicant has applied for California Energy Commission certification or AQMD permit to construct during calendar years 2005 2006, 2007, or 2008; and applicant pays the following fee for each pound of Priority Reserve offsets obtained (NOx, SOx, CO, and PM10 not available for these sources):

- *$1,410 per pound VOC per day.*

Rule 1309.2 - Offset Budget

Sources that are not exempt from offset requirements pursuant to Rule 1304 and are not eligible to obtain offsets from the Priority Reserve may obtain offsets from the Offset Budget provided they meet certain criteria[1]:

(1) All sources the applicant owns or operates comply with BARCT;

(2) Applicant has conducted a due diligence effort to acquire ERCs on the open market;

(3) Applicant pays the appropriate mitigation fee (based on pollutant and pounds of offsets obtained) specified in Regulation III – Fees; and

(4) Applicant publishes a notice (prepared by AQMD's Executive Officer) in a newspaper of general circulation in each of the four counties in AQMD, sends copies of the notice to the Administrator of EPA's Region IX and the Executive Officer of the California Air Resources Board, and responds to all public comments received within 30 days of publication.

[1] The Offset Budget has not been implemented because it has not been approved into the State Implementation Plan, as required by the express terms of Rule 1309.2 before it can be implemented.

APPENDIX IIIATTACHMENT C
PROVISIONAL FINAL DETERMINATIONS OF EQUIVALENCY FOR 2002-2003 AND 2003-2004

SYNOPSIS

This report presents *provisional* final determinations of equivalency for August 2002 through July 2003 and August 2003 through July 2004. As such, it provides provisional information regarding the status of Regulation XIII – New Source Review (NSR) in meeting federal NSR requirements and shows that AQMD's NSR program was in compliance with applicable federal requirements during the periods covered. Staff has not finalized all elements of the data analysis, but has taken a conservative approach so does not expect large changes in the results (small increases in some ending offset account balances may occur). A second report will be prepared presenting the final determinations upon completion of staff's data analysis. This second report will satisfy the reporting requirements of subdivision (b) of Rule 1310 – Analysis and Reporting and of subdivisions (c) and (d) of Proposed Rule 1315 – Federal New Source Review Tracking System (PR1315PR 1315).

SUMMARY

AQMD's NSR Rules and Regulations are designed to support efforts to attain and maintain compliance with the federal and state air quality standards and to ensure that emissions increases from new and modified sources do not interfere with such efforts, while maintaining economic growth in the South Coast region. Regulation XIII - New Source Review regulates emissions increases and accounts for all emission changes (both increases and decreases) from the permitting of new, modified, and relocated sources within AQMD with the exception of NOx and SOx sources subject to Regulation XX – Regional Clean Air Incentives Market (RECLAIM)[1].

The annual reports on the status of Regulation XIII (final determinations of equivalency, or FDE) cover NSR activities for twelve-month periods and the last report submitted to the Board on April 2, 2004 covered the period from August 2001 through July 2002 for both federal and state NSR requirements. The provisional FDEs presented in this report cover the periods August 2002 through July 2003 and August 2003 through July 2004 and demonstrate compliance with federal NSR requirements by establishing aggregate equivalence with federal offset requirements for sources which obtain their offsets from AQMD. A separate FDE report presenting the FDEs for these two time periods will be prepared by AQMD staff and submitted to the Governing

[1] While the RECLAIM program is different than command and control rules for NOx and SOx and it provides greater regulatory flexibility to businesses, its NSR requirements, as specified in Rule 2005, are designed to comply with the governing principles of NSR contained in the federal Clean Air Act (CAA) and the California State Health and Safety Codes.

Board. This FDE will also address equivalency between AQMD's NSR program and state NSR requirements.

The provisional results of the analysis for the August 2002 through July 2003 and August 2003 through July 2004 timeframes are summarized below in Tables IIIC-1 and IIIC-2, respectively. Additionally, projected credits, debits, and balances for the August 2004 through December 2005 and the January 2006 through December 2006 timeframes are presented in Table IIIC-3. These results demonstrate that there were, and it is projected that there will be, adequate offsets available to mitigate all emission increases during these reporting periods. This report, therefore, demonstrates that AQMD's NSR program continues to meet federal offset requirements and is equivalent to those requirements on an aggregate basis[2].

Table IIIC-1
August 2002 through July 2003 Starting Balances,
Net Activity, and Ending Balances for AQMD's Offset Accounts

DESCRIPTION	VOC	NOx	SOx	CO	PM10
Starting Balance* (ton/day)	68.37	28.77	10.72	7.84	7.66
Total Credits** (lb/day)	13,515	5,908	545	7,149	3,480
Total Debits** (lb/day)	-1,424	-2,066	-135	-4,544	-211
Sum of Credits/Debits (lb/day)**	**12,091**	**3,842**	**410**	**2,605**	**3,269**
Sum of Credits/Debits (ton/day)**	**6.05**	**1.92**	**0.20**	**1.30**	**1.63**
Surplus Adjustment*** (ton/day)	-0.46	-0.44	0.00	0.00	0.00
Ending Balance** (ton/day)	**73.96**	**30.25**	**10.92**	**9.14**	**9.29**

* The revised 2002 running balances as shown in Table 5 of the staff report and Table IA-1 of Appendix IAttachment A.

** Refer to PR1315PR 1315(b) and the staff report to which this report is attached for an explanation of the sources of credits and debits. Credits are shown as positive and Debits as negative, while sum of Credits/Debits and Net Activity are shown as positive or negative, as appropriate.

*** Surplus at the time of use discount pursuant to PR1315PR 1315(b)(4).

**** "Ending Balance" equals the "Starting Balance" plus the sum of credits and debits and plus any surplus adjustments.

[2] AQMD's NSR program is deemed to be equivalent to federal offset requirements because AQMD's ending offset account balances remained positive, indicating there were adequate offsets during this period.

Table IIIC-2
August 2003 through July 2004 Net Activity, Starting Balances, and Ending Balances for AQMD's Offset Accounts

DESCRIPTION	VOC	NOx	SOx	CO	PM10
Starting Balance* (ton/day)	73.96	30.25	10.92	9.14	9.29
Total Credits** (lb/day)	18,795	3,912	1,833	5,634	2,639
Total Debits** (lb/day)	-539	-1,610	-3	-3,521	-245
Sum of Credits/Debits (lb/day)**	**18,256**	**2,302**	**1,830**	**2,113**	**2,394**
Sum of Credits/Debits (ton/day)**	**9.13**	**1.15**	**0.92**	**1.06**	**1.20**
Surplus Adjustment*** (ton/day)	-0.52	-2.21	-0.59	0.00	0.00
Ending Balance** (ton/day)	**82.57**	**29.19**	**11.24**	**10.20**	**10.49**

* Same as "Ending Balance" from Table IIIC-1

** Refer to PR1315PR 1315(b) and the staff report to which this report is attached for an explanation of the sources of credits and debits. Credits are shown as positive and Debits as negative, while sum of Credits/Debits are shown as positive or negative, as appropriate.

*** Surplus at the time of use discount pursuant to PR1315PR 1315(b)(4).

**** "Ending Balance" equals the "Starting Balance" plus the sum of credits and debits and plus any surplus adjustment.

Table IIIC-3
Projected Credits, Debits, and Balances for August 2004 through December 2005 and January 2006 through December 2006
(Tons per Day)

DESCRIPTION	VOC	NOx	SOx	CO	PM10
8/2004 Starting Balance*	**82.57**	**29.19**	**11.24**	**10.20**	**10.49**
8/2004-12/2005 Credits**	7.58	2.79	0.67	2.88	1.89
8/2004-12/2005 Debits**	-1.04	-1.11	-0.02	-2.36	-0.43
8/2004-12/2005 Surplus Adjustment	-1.82	-0.97	-0.19	0.00	0.00
12/2005 Ending Balance**	**87.29**	**29.90**	**11.70**	**10.72**	**11.95**
Removal of Unused Initial Balances**	-20.89	-3.85	-7.40	0.00	0.00
1/2006 Starting Balance**	**66.40**	**26.05**	**4.30**	**10.72**	**11.95**
1/2006-12/2006 Credits**	5.35	1.97	0.47	2.03	1.34
1/2006-12/2006 Debits**	-0.74	-0.78	-0.01	-1.67	-0.30
1/2006-12/2006 Surplus Adjustment	-1.31	-0.76	-0.13	0.00	0.00
12/2006 Ending Balance**	**69.70**	**26.48**	**4.63**	**11.08**	**12.99**

* Same as "Ending Balance" in Table IIIC-2.
** Projected pursuant to ~~PR1315~~PR 1315(d).

BACKGROUND
AQMD originally adopted its NSR program in 1976. U.S. EPA approved AQMD's NSR program into California's State Implementation Plan initially on January 21, 1981 (46FR5965) and again on December 4, 1996 (61FR64291). The original program has evolved into the current version of the Regulation XIII rules in response to federal and state legal requirements and the changing needs of the local environment and economy. The most recent amendments to the NSR rules were adopted on December 6, 2002 to facilitate and provide additional options for credit generation. The most notable changes in those amendments are summarized below:

- Short Term Credits (STC)
  Rules 1303 – Requirements and 1309 – Emission Reduction Credits and Short Term Credits now provide for the generation and use of short term offsets for stationary sources. These credits can be generated by stationary sources (Emission Reduction Credits or ERCs), mobile sources (MSERCs), and area sources (ASERCs).
- Extended ERC Filing Deadline
  Rule 1309 – Emission Reduction Credits and Short Term Credits' deadline to apply to bank an ERC was extended from 90 days after to 180 days after the emission reduction occurring.
- Offset Budget
  Rule 1309.2 – Offset Budget creates a "bank of last resort" to provide offsets for sources that are unable to otherwise obtain needed offsets.

Also in April and November 2001, AQMD amended Rule 1309.1 to allow electric generating facilities (EGFs) to be able to access the Priority Reserve to purchase emission credits. The amendments to Rule 1309.1 were approved by EPA into the SIP on June 19, 2006. EPA has not yet taken SIP action on the amendments to Rules 1303 and 1309 or the adoption of Rule 1309.2. EPA has indicated that AQMD's adoption of an emission tracking rule (such as PR1315PR 1315) is necessary before Rule 1309.2 can be approved into the SIP.

AQMD's NSR program is designed, amongst other things, to, at a minimum, offset emission increases in a manner equivalent to federal statutory NSR requirements. To this end, AQMD's NSR program implements the federal statutory requirements for NSR and ensures that construction and operation of new and modified sources does not interfere with progress towards attainment of the National and State Ambient Air Quality Standards. AQMD's computerized emission tracking system is utilized to demonstrate equivalence with federal offset requirements on an aggregate basis. Specific NSR requirements of federal law are presented below.

Federal Law

Federal law requires the use of Lowest Achievable Emission Rate (LAER) and offsets for new, modified, and relocated major stationary sources[3]. Effective November 15, 1992, the federal Clean Air Act (CAA) requires a 1.5-to-1 external offset ratio for major stationary sources located in an extreme ozone non-attainment area. For this reporting period[4], the South Coast Air Basin (SOCAB) is one of only two areas in the nation that has been designated as extreme ozone non-attainment. An extreme ozone non-attainment area may qualify for a 1.2-to-1 offset ratio if it requires implementation of federal Best Available Control Technology (BACT), as defined in CAA Section 169(3) for prevention of Significant Deterioration of Air Quality on all major sources [CAA Section 182(e)(1)]. The federal definition of BACT is equivalent to state Best Available Retrofit Control Technology (BARCT), which AQMD implements through its Regulation XI – Source Specific Standards and other AQMD rules and regulations. AQMD meets this criterion and uses a 1.2-to-1 offset ratio. In addition, AQMD not only requires the 1.2-to-1 offset ratio for all federal sources, but also requires the same offset ratio for non-federal sources[5].

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[3] The October 20, 2000 amendments to Rule 1302 – Definitions changed the "major stationary source" thresholds applicable to AQMD's jurisdiction. The applicable thresholds during the time period covered by this report were as summarized below:

Pollutant	SOCAB	SSAB	MDAB
VOC	10 tons per year	25 tons per year	100 tons per year
NOx	10 tons per year	25 tons per year	100 tons per year
SOx	100 tons per year	100 tons per year	100 tons per year
PM10	70 tons per year	70 tons per year	100 tons per year
CO	50 tons per year	100 tons per year	100 tons per year

[4] The South Coast Air Basin is currently classified by EPA in severe 17 ozone non-attainment status. However, this basin was designated as extreme non-attainment during the reporting periods covered by this demonstration of equivalence.

[5] Non-federal sources that do not meet any of the exemption criteria of Rule 1304 and that do not qualify to obtain offsets from the Priority Reserve are also required by AQMD to provide offsets (i.e., ERCs) at a ratio of 1.2-to-1.

Based on their classification, the SOCAB and Salton Sea Air Basin (SSAB) must comply with the requirements for extreme and severe non-attainment areas, respectively, for ozone precursors (i.e., VOC and NOx). Both the SOCAB and the SSAB must at this time comply with the requirements for serious non-attainment areas for PM10 and its precursors (i.e., VOC, NOx, and SOx). For CO, the SOCAB must comply with the requirements for serious non-attainment areas; however SSAB is considered attainment for CO. SOCAB had one federal CO exceedance in 2002 and has not had any since that time. AQMD has requested EPA to re-designate SOCAB as attainment with federal CO standards and is waiting for EPA's action on that request. Both SOCAB and SSAB are considered attainment for SO_2 and NO_2, however SOx and NOx are precursors to pollutants for which both SOCAB and SSAB are designated as non-attainment[6]. The Mojave Desert Air Basin (MDAB) is currently unclassified for all pollutants. The various attainment statuses for the VOC, NOx, SOx, PM10, and CO in the three air basins for this reporting period result in the major source thresholds presented by pollutant and air basin in footnote 3 on the previous page. This report demonstrates compliance with the federal NSR requirements.

OVERVIEW OF ANALYSIS METHODOLOGY

The two major elements of federal NSR requirements are LAER and emission offsetting. AQMD's BACT requirements are at least as stringent as federal LAER for major sources. Furthermore, the NSR emission offset requirements that AQMD implements through its permitting process ensure that sources provide emission reduction credits (ERCs) to offset their emission increases in compliance with federal requirements. As a result, these sources each comply with federal offset requirements by providing their own ERCs. However, certain sources are exempt from AQMD's offset requirements pursuant to Rule 1304 or qualify for offsets from AQMD's Community Bank (applications received between October 1, 1990 and February 1, 1996 only) or Priority Reserve, both pursuant to Rule 1309.1. AQMD has determined that providing offset exemptions and the Priority Reserve (as well as the previously-administered Community Bank) is important to the NSR program and the local economy while encouraging installation of control equipment. Therefore, AQMD has assumed the responsibility of providing the necessary offsets for exempt sources, the Priority Reserve, and the Community Bank. This report examines credits to and debits from AQMD's emission offset accounts and demonstrates programmatic equivalence on an aggregate basis with federal emission offset requirements for the sources exempt from providing offsets and the sources that receive offsets from the Priority Reserve or the Community Bank.

AQMD's Offset Accounts

For the purposes of this report, debit and credit accounting for AQMD's offset accounts was conducted pursuant to the procedures delineated in ~~PR1315~~PR 1315 and described in the staff report to which this is attached. Each of the five pollutants subject to offset requirements (VOC, NOx, SOx, CO, and PM10) has its own offset account. AQMD's NSR program is considered to provide equivalent or greater offsets of emissions as required by federal requirements for each subject pollutant provided the balance of credits left in AQMD's offset account for each pollutant remains positive, indicating that there were adequate offsets available.

[6] SOx is a precursor to PM10 and NOx is a precursor to both PM10 and ozone.

Debit Accounting

On the other hand, AQMD also tracks all emission increases that are offset through the Priority Reserve or the Community Bank, as well as all increases that are exempt from offset requirements pursuant to Rule 1304 – Exemptions. These increases are all debited from AQMD's offset accounts when they occur at major sources. AQMD uses an offset ratio of 1.2-to-1.0 for extreme non-attainment pollutants (currently ozone and ozone precursors) and uses 1.0-to-1.0 for all other non-attainment pollutants (non-ozone precursors) at this time to offset any such increases. That is, at this time 1.2 pounds are deducted from AQMD's offset accounts for each pound of maximum allowable permitted potential to emit VOC or NOx increase at a federal source 1.0 pound for each pound of maximum allowable permitted potential to emit SOx, CO, or PM10 at a federal source. Refer to the ~~PR1315~~PR 1315 staff report for a more complete description of debit accounting.

Credit Accounting

When emissions from a permitted source are permanently reduced (e.g., installation of control equipment, removal of the source) and the emission reduction is not required by rule or law and is not called for by an AQMP control measure that has been assigned a target implementation date[7], the permit holder may apply for ERCs for the pollutants reduced. If the permit holder for the source generating the emission reduction had previously received offsets from AQMD or has a "positive balance" (i.e., pre-1990 net emission increase), the quantity of AQMD credits used or the amount of the positive balance is subtracted from the reduction and "paid back" to AQMD's accounts prior to issuance of an ERC pursuant to Rule 1306. In other cases, permit holders do not always submit applications to claim ERCs for their equipment shutdowns or other eligible emission reductions. These unclaimed reductions are referred to as "orphan shutdowns" or "surplus reductions" and are credited to AQMD's offset accounts. ERCs provided as offsets by major sources in excess of the applicable federally-required offset ratio and all ERCs provided as offsets by minor sources are also credited to AQMD's offset accounts. Refer to the ~~PR1315~~PR 1315 staff report for a more complete description of credit accounting.

PROVISIONAL DEMONSTRATIONS OF EQUIVALENCE WITH FEDERAL OFFSET REQUIREMENTS

Table IIIC-4 presents the total emission increases debited from AQMD's offset accounts from August 2002 through July 2003. Credits to AQMD's offset accounts during the same period are summarized in Table IIIC-5. Finally, the sum of debit and credit activity for the federal accounts is displayed in Table IIIC-6. Similarly, Tables IIIC-7, IIIC-8, and IIIC-9 summarize the debits, credits, and net activity, respectively, for August 2003 through July 2004. Refer to ~~PR1315~~PR 1315 and the staff report to which this report is attached for an explanation of the sources of credits and debits.

[7] Refer to Rule 1309(b) for a complete explanation of eligibility requirements.

Table IIIC-4
Debits from AQMD's Offset Accounts
(August 2002 through July 2003)

DISTRICT OFFSETS USED	VOC	NOx	SOx	CO	PM10
Priority Reserve* (lb/day)	383	867	135	2,249	159
Community Bank (lb/day)	0	14	0	0	0
Rule 1304 Exemptions (lb/day)	804	841	0	2,295	52
Sum Total of AQMD Offsets (lb/day)	1,187	1,722	135	4,544	211
120% Offset Ratio (lb/day)	237	344	N/A	N/A	N/A
Total Debit to AQMD Account (lb/day)	1,424	2,066	135	4,544	211
Total Debit to AQMD Account (ton/day)	0.71	1.03	0.07	2.27	0.10

* Includes electrical generating facilities and other sources accessing the Priority Reserve.

Table IIIC-5
Credits to AQMD's Offset Accounts
(August 2002 through July 2003)

CREDITS RECEIVED*	VOC	NOx	SOx	CO	PM10
Major Source Orphan Credits (lb/day)	4,619	4,289	58	3,995	2,879
Minor Source Orphan Credits (lb/day)	11,955	2,998	549	4,690	1,253
Total Orphan Credits (lb/day)	16,574	7,287	607	8,685	4,132
Adjustment to Actual Emissions* (lb/day)	-3,315	-1,457	-121	-1,737	-826
Discount of ERCs** (lb/day)	31	0	38	15	30
Creditable Minor Source ERC Use (lb/day)	225	78	21	147	139
Creditable Major Source ERC Use (lb/day)	0	0	0	39	5
Total Credit to AQMD Account (lb/day)	13,515	5,908	545	7,149	3,480
Total Credit to AQMD Account (ton/day)	6.76	2.95	0.27	3.57	1.74

* Adjustment of orphan shutdown and orphan reduction offset credits deposited in AQMD offset accounts to correct from potential emissions to actual emissions pursuant to ~~PR1315~~PR 1315(b)(3)(B)(i).

** "Payback" of NSR balance, Community Bank and Priority Reserve allocations, and offset exemptions pursuant to ~~PR1315~~PR 1315(b)(3)(v) and Rule 1306(c).

Table IIIC-6
Sum of Credits/Debits Activity in AQMD's Offset Accounts
(August 2002 through July 2003)

	VOC	NOx	SOx	CO	PM10
Total Debits* (lb/day)	-1,424	-2,066	-135	-4,544	-211
Total Credits* (lb/day)	13,515	5,908	545	7,149	3,480
Sum of Debits(-)/Credits(+)* (lb/day)	**12,091**	**3,842**	**410**	**2,605**	**3,269**
Sum of Debits(-)/Credits(+)* (ton/day)	**6.05**	**1.92**	**0.20**	**1.30**	**1.63**

* Debits are shown as negative and Credits as positive, while their sum is shown as negative or positive, as appropriate.

Table IIIC-7
Debits from AQMD's Offset Accounts
(August 2003 through July 2004)

DISTRICT OFFSETS USED	VOC	NOx	SOx	CO	PM10
Priority Reserve* (lb/day)	99	517	0	919	0
Community Bank (lb/day)	0	0	0	0	0
Rule 1304 Exemptions (lb/day)	350	825	3	2602	245
Sum Total of AQMD Offsets (lb/day)	449	1,342	3	3,521	245
120% Offset Ratio (lb/day)	90	268	N/A	N/A	N/A
Total Debit to AQMD Account (lb/day)	539	1,610	3	3,521	245
Total Debit to AQMD Account (ton/day)	0.27	0.80	0.00	1.76	0.12

* Includes electrical generating facilities and other sources accessing the Priority Reserve.

Table IIIC-8
Credits to AQMD's Offset Accounts
(August 2003 through July 2004)

CREDITS RECEIVED*	VOC	NOx	SOx	CO	PM10
Major Source Orphan Credits (lb/day)	6,355	841	7	3,749	467
Minor Source Orphan Credits (lb/day)	16,850	3,953	2,259	3,060	2,653
Total Orphan Credits (lb/day)	23,205	4,794	2,266	6,809	3,120
Adjustment to Actual Emissions* (lb/day)	-4,641	-959	-453	-1,362	-624
Discount of ERCs** (lb/day)	7	0	0	0	0
Creditable Minor Source ERC Use (lb/day)	224	77	20	148	139
Creditable Major Source ERC Use (lb/day)	0	0	0	39	4
Total Credit to AQMD Account (lb/day)	18,795	3,912	1,833	5,634	2,639
Total Credit to AQMD Account (ton/day)	9.40	1.96	0.92	2.82	1.32

* Adjustment of orphan shutdown and orphan reduction offset credits deposited in AQMD offset accounts to correct from potential emissions to actual emissions pursuant to ~~PR1315~~PR 1315(b)(3)(B)(i).

** "Payback" of NSR balance, Community Bank and Priority Reserve allocations, and offset exemptions pursuant to ~~PR1315~~PR 1315(b)(3)(v) and Rule 1306(c).

Table IIIC-9
Sum of Credits/Debits Activity in AQMD's Offset Accounts
(August 2003 through July 2004)

	VOC	NOx	SOx	CO	PM10
Total Debits* (lb/day)	-539	-1,610	-3	-3,521	-245
Total Credits* (lb/day)	18,795	3,912	1,833	5,634	2,639
Sum of Debits(-)/Credits(+)* (lb/day)	**18,256**	**2,302**	**1,830**	**2,113**	**2,394**
Sum of Debits(-)/Credits(+)* (ton/day)	**9.13**	**1.15**	**0.92**	**1.06**	**1.20**

* Debits are shown as negative and Credits as positive, while their sum is shown as negative or positive, as appropriate.

The sum of credits and debits activity from this analysis (the sum may be positive or negative) is added to the starting offset account balance for each pollutant to calculate the offset account ending balance which is then used to determine compliance with federal NSR requirements. Refer to Table IIIC-1 for a summary of starting and ending account balances for the August 2002 through July 2003 reporting period and Table IIIC-2 for the August 2003 through July 2004 reporting period.

ELECTRICAL GENERATING FACILITY ACCESS TO PRIORITY RESERVE

The April 2001 amendments to Rule 1303 – Requirements and Rule 1309.1 – Priority Reserve provide EGFs with access to PM10 offsets from the Priority Reserve[8]. Subsequently, the November 2001 and May 2002 amendments to Rule 1309.1 expanded EGF access to Priority Reserve offsets to include SOx and CO. Table IIIC-10 summarizes the Priority Reserve offsets provided to EGFs during the August 2002 through July 2003 reporting period and Table IIIC-11 summarizes it for the August 2003 through July 2004 reporting period. These priority reserve debits are included in (not in addition to) the debits summarized in Tables IIIC-4, and IIIC-7.

Table IIIC-10
EGF Access to Priority Reserve Offsets
(August 2002 through July 2003)

	PM10	SOx	CO
Priority Reserve Offsets Used (lb/day)	514	0	0
Priority Reserve Offsets Used (ton/day)	0.26	0	0

Table IIIC-11
EGF Access to Priority Reserve Offsets
(August 2003 through July 2004)

	PM10	SOx	CO
Priority Reserve Offsets Used (lb/day)	15	0	0
Priority Reserve Offsets Used (ton/day)	0.01	0	0

CONCLUSIONS

The analysis presented in this report demonstrates that AQMD's NSR program provides equivalent offsets to those required by federal NSR requirements and is at least equivalent to the federal requirements on an aggregate basis. This conclusion is based on the fact that the ending offset account balances for both of the reporting periods covered by this report (August 2002 through July 2003 and August 2003 through July 2004), as shown in Tables IIIC-1 and IIIC-2, respectively, remained positive for all pollutants. The majority of sources subject to AQMD's permitting program are not major stationary sources and, therefore, are not subject to federal offset requirements. The sums of credits to and debits from AQMD's offset accounts during the August 2002 through July 2003 and August 2003 through July 2004 reporting periods were positive for all pollutants in both years. However, the NOx offset account experienced a net decrease for the August 2003 through July 2004 reporting period of 1.06 tons per day. This net decrease occurred because the amount of the NOx surplus at the time of use discount pursuant to ~~PR1315~~PR 1315(b)(4) for this reporting period (-2.16 tons per day) was larger than the increase due to the sum of credits and debits (1.11 tons per day) for the reporting period.

[8] Refer to Rule 1309.1(a)(4) for eligibility requirements.

Staff will continue to track credits to and debits from AQMD's offset accounts and will provide annual reports and equivalency demonstrations to the Board consistent with PR1315PR 1315 to ensure that AQMD's NSR program continues to operate in compliance with federal NSR requirements.

ADDENDUM

CEQA COMMENTS AND RESPONSES

This section provides a summary of comments received in two letters to AQMD, both dated August 15, 2006, one from a group of environmental organizations[1] and the other from Coalition For a Safe Environment regarding the Draft Environmental Assessment for Proposed Amendments to Rule 1309.1 and Preparation of Notice of Exemption for Proposed Rule 1315 along with the AQMD's responses to such comments. The summary of comments and AQMD's responses listed in this addendum include comments from the August 15, 2006 letters that relate to Proposed Rule 1315.

Comments by the Group of Environmental Organizations

Comment #1: (Page 5, Section II-B)

Proposed Rule 1315 has potential significant environmental impacts. Proposed Rule 1315 will govern availability of credits and significantly alters existing credits in internal accounts.

Response *Proposed Rule (PR)1315 is intended to merely memorialize and formalize the accounting procedures used by AQMD for federal NSR offset tracking. The AQMD has been maintaining a tracking system for federal NSR offsets for several years, and the purpose of PR 1315 is not to govern availability of credits, but to incorporate the federal NSR offsets accounting procedures into a rule. EPA has requested AQMD to incorporate the accounting procedures into a rule to more formalize the tracking system. In addition to formalizing the federal NSR offsets tracking, PR 1315 makes the NSR offsets program more stringent by providing backstop measures, as requested by EPA, in case there are any shortfalls in AQMD's federal NSR offset accounts. However, the occurrence of any shortfall is speculative, as AQMD has never experienced such an event. Therefore, PR 1315 clearly does not have any significant adverse environmental impacts.*

Proposed Rule 1315 does not, directly or indirectly, result in any adverse effect on the environment. It does not in itself result in any more credits becoming available for use by projects, which may themselves have an effect on the environment. Access to credits is provided through other District rules, such as 1309.1 (Priority Reserve), and 1304 (exemptions).

[1] The group of environmental organizations includes:
California Communities Against Toxics
California Environmental Rights Alliance
California Safe Schools
Center for Community Action and Environmental Justice
Coalition for Clean Air
Coalition for a Safe Environment
Communities for a Better Environment
Del Amo Action Committee
Natural Resources Defense Council
Sierra Club-Harbor Division Task Force
Society for Positive Action

PR 1315 may actually provide a benefit to the environment, although that effect is not foreseeable because it is unknown how many credits will be used and because the District has never experienced a shortfall in credits, so a future shortfall is not foreseeable. Under the system in effect before the adoption of Rule 1315, sources may access credits through Rules 1309.1 and 1304 without regard to whether the District will be able to show equivalency with federal requirements, i.e., without regard to whether there are credits "in the bank." Under Rule 1309.2, credits may not be accessed until EPA approves the rule into the SIP. In contrast, under Rule 1315, backstop provisions, the District will each year project whether credits will be available for future use, and if not, cease funding the Priority Reserve. If the final determination of equivalency does not demonstrate equivalency, the AQMD must implement backstop measures to return to equivalency. Therefore, PR 1315 may provide a beneficial effect on the environment by assuring that credits are available in the bank before a source is permitted, thus assuring that increases in emissions resulting from such sources are fully offset. Thus, it can be seen with certainty that there will be no adverse environmental impacts from PR 1315.

In addition, PR 1315 is not even a "project" under CEQA because the CEQA definition requires that a "project" may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Pub. Res. C. §21065. The comment asserts that PR 1315 will govern availability of credits. The comment does not explain how this may result in an adverse effect on the environment. And as discussed above, Rule 1315 results in a brake on the availability of credits, not an increase. But even if the comment were correct, PR 1315 would not result in an adverse effect on the environment. According to a leading treatise, "Agency action that merely establishes its ability to take a later action that will affect the environment but does not commit the agency to a definite course of action is not a project subject to CEQA." 1 Kosta & Zischke, Practice Under the California Environmental Quality Act, §4.20 (p. 171). In Citizens to Enforce CEQA v. City of Rohnert Park (131 Cal. App. 4th 1594 (2005), the court explained that where a city's Memorandum of Understanding with an Indian Tribe established a source of funds for future development of a casino, but did not obligate the City to undertake development, the MOU was not a "project." Similarly, where a school district established a community facilities district to raise funds for school development, this was not a "project." Kaufman & Broad South Bay, Inc. v. Morgan Hill Unified School Dist. (1992) 9 Cal. App. 4th 464. Even if PR 1315 may increase the number of credits that will be available in the future, this is analogous to the financing mechanisms discussed in the above cases, and is not a "project" under CEQA because any future impacts are not "reasonably foreseeable." It is not foreseeable whether PR 1315 will

make these credits available. Also, the District does not have any way of knowing what projects, if any, will use any such future credits. CEQA will be performed by the lead agency at the time the projects are given development permits. CEQA law is clear that although environmental analysis must be performed as early as feasible to allow environmental considerations to influence the project, it must be "late enough to provide meaningful information for environmental assessment." Stand Tall on Principles v Shasta Union High School District, 235 Cal. App. 3d 772 (1991). In that case, selecting a "preferred" site for a new high school was not "approval" of a "project" under CEQA. In this case, any attempt to analyze environmental impacts of future projects would be speculation, which CEQA does not require. CEQA Guidelines, §15145. Therefore, PR 1315 is not a "project" under CEQA, and it can be seen with certainty that it will not result in significant adverse impacts.

Comment #2: (Page 5, Section II-B-1)

By implementing modifications to Rule 1315 offset credit accounting, AQMD would reduce state regulations in relation to federal regulations and cause backsliding to, and in some cases, past federal standards.

Response *As indicated earlier, PR 1315 is merely formalizing the AQMD's federal NSR offset tracking system into a rule as per EPA's request. AQMD is not modifying its existing rules or regulations and PR 1315 is strictly for federal NSR offset tracking, as a result, AQMD is not reducing any state regulations. In addition, California Air Resources Board (CARB) has reviewed PR 1315 and has not raised any issues in relation to reducing any state regulations. Therefore, there is no backsliding.*

The commenter refers to §193 of the Clean Air Act (42 U.S.C. §7515), the General Savings Clause. This provision only limits modifying control requirements in effect prior to the 1990 CAA Amendments. PR 1315 does not modify any control requirements in effect prior to the 1990 Amendments. Indeed, it does not modify any control requirements at all, since until PR 1315 is adopted, there are no rules governing the NSR equivalency showing.

Comment #3: (Pages 5 and 6, Section II-B-1)

Proposed Rule 1315 makes minor source orphan shut-downs a source of ERCs, which is less stringent than current EPA regulations and violates federal law.

Response *Use of emission credits resulting from minor source orphan shutdowns is neither less stringent than current EPA regulations nor a violation of federal law. Orphan shutdowns have always been creditable to AQMD's offset accounts; AQMD has not quantified minor source orphan shutdowns historically because the balances in the AQMD's offset*

accounts were sufficient for foreseeable needs so it was not necessary for staff to devote the resources to quantify and account for this source of credits. Furthermore, minor sources do (and always have) generate ERCs pursuant to AQMD Rule 1309. These ERCs generated by minor sources can be and are used by major sources as emissions offsets pursuant to AQMD Rule 1303. EPA has approved Rules 1303 and 1309 into the SIP in 1996, and has also agreed that minor source orphan shutdowns are creditable and has not considered this to be contrary to any EPA regulations. Furthermore, the statement "the CAA's state authority retention clause…grants state power to make federal standards more stringent, but not less stringent" is not correct, as states have no authority to affect federal standards. While it is true that 42U.S.C § 7416 precludes a state from adopting or enforcing emission standards less stringent that those set forth under §§ 7411 or 7412, neither of those sections apply to emission credits.

Comment #4: (Page 6, Section II-B-1)

Proposed Rule 1315 produces more state credits for the same reduction and would violate the federal surplus requirements.

Response *The purpose of PR 1315 is in fact to identify offsets that are surplus to federal NSR requirements. PR 1315 does not affect state offsets which are separately accounted for state NSR purposes. In evaluating the federal NSR offset tracking system, EPA has agreed that the only credits used by AQMD are those that are surplus to federal NSR requirements.*

The commenter does not explain how PR 1315 would violate the federal "surplus" requirement. All the credits allowed under PR 1315 have been carefully reviewed to assure that they are surplus to federal requirements.

Comment #5: (Page 6, Section II-B-2)

Rule 1315 retroactively increases the amount of ERCs available and is prohibited because it is not contemporaneous.

Response *Retroactive adjustments to AQMD's offset account tracking and accounting have no impact on the contemporaneousness of the offsets in AQMD's offset accounts. The notion of emissions credits being contemporaneous with the increases they are used to offset refers to the timing of the emission reductions underlying the credits and the timing of the emission increases that are being offset; it does not refer to the timing of the accounting. That is, the emission reduction satisfies the contemporaneous test if it exists on or before the time of the emission increase. AQMD only uses credits after such reductions have taken place.*

All the credits referred to in PR 1315 are in existence – i.e., the emission reductions had occurred – at the time they are used, and therefore are contemporaneous with the emissions increase.

Comment #6: (Page 6, Section II-B-2)

A reduction is not creditable where the decrease in emissions has already been assumed under prior permitting rules. AQMD has previously relied on offset ratios for certain facilities, so is double counting ERCs by reinstating a credit that has already been used.

Response *For federal accounting purposes only, AQMD is taking the difference of AQMD's NSR offset ratio of 1.2 to 1.0 and the required federal offset ratio of 1.0 to 1.0 as a credit when an ERC is used at a major source for SOx, CO or PM10. The additional 0.2 portion is not "relied' on as federal requirements for major source permitting since only a 1.0 to 1.0 offset ratio is required to meet federal NSR requirements. The 0.2 portion would be considered surplus for federal NSR accounting purposes which makes it available as a credit. Therefore it is not considered double counting.*

Under PR 1315, SCAQMD is not using the same credit to meet federal equivalency requirements for two different sources. Instead, the 0.2 credit provided by certain sources is above and beyond (surplus to) federal requirements, and can be used to establish that the program as a whole is equivalent to federal requirements.

Comment #7: (Page 6, Section II-B-2)

Proposed Rule 1315 would take the 0.2 portion of historic emission reductions and use it in the AQMD's internal account, rendering it temporary and contrary to the federal NSR requirements for credits to be permanent.

Response *As earlier stated, PR 1315 is only an accounting mechanism that accounts for offsets that are surplus to federal requirements and so, by itself, does not cause any use of these offsets. Moreover, federal requirements that credits be permanent, means that emissions source creating the credits be permanently shut down as opposed to temporarily shut down. As a result, the original credits that were applied at a 1.2 to 1 offset ratio were all permanent and in compliance with federal NSR requirements. PR 1315 does not change that status.*

Comment #8: (Page 7, Section II-B-3)

Proposed Rule 1315 contains provisions which would alter the credits available for purchase and would have real consequences to the physical environment. Therefore it should not be exempt from CEQA.

Response *PR 1315 is an accounting mechanism and will not alter the quantity of emission reductions available from the Priority Reserve. Rule 1309.1 limits the quantity of offsets to be deposited into the Priority Reserve each quarter and, therefore, the quantity available that may be used, if any. However, as requested by EPA, PR 1315 enables or directs the Executive Officer to discontinue funding the Priority Reserve if insufficient credits exist in AQMD federal offsets accounts or if a shortfall is projected to exist. Currently there is no mechanism to discontinue funding the Priority Reserve due to an actual or projected shortage of credits in AQMD's offset accounts. As a result, PR 1315 has the potential to benefit the environment by triggering the discontinuation of funding of the Priority Reserve, but not of negatively impacting the environment. Therefore, PR 1315 does not have the potential for adverse significant impacts. (Also please refer to response to Comment #1.)*

Comment #9: (Page 7, Section II-B-4)

Proposed Rule 1315 is a violation of AB 1054's (H & S §39616) anti-backsliding provisions because is allows more credits into the offset account under less stringent criteria, and state law prohibits the AQMD from making its NSR rules less stringent than they were on December 30, 2002. (H. & S. 42504.)

Response *As indicated earlier, PR 1315 merely formalizes the AQMD's federal NSR offset accounting methodology. Moreover, the proposed methodology would reduce the AQMD's overall offset accounts by 42%. This is calculated by summing the previously-reported 2002 total offset account balances and comparing it to the Revised 2002 total running balances as illustrated in Table 5. Therefore, PR 1315 does not violate any backsliding provision. Also, CARB, which is charged with enforcing these anti-backsliding provisions, has not raised objection with the proposed rule.*

The commenter cites AB 1054 (H & S § 39616), which authorizes districts to adopt "market-based incentive programs" meeting certain requirements. Section 39616, adopted in 1992, is not applicable to District NSR rules, because districts have implemented – and indeed have been required to implement – such rules since the 1970s, whereas the authorization for "market-based incentive programs" was only effective in 1992. Instead AB 1054 applies to market-based programs such as RECLAIM, which allows sources to choose to either reduce emissions or obtain credits from another source that has reduced emissions beyond applicable requirements. Also, section 39616 (g) provides that AB 1054 does not apply to district emission trades imposed by permit or rule that are not part of a market-based incentive program, so clearly not all use of credits is subject to AB 1054.

The commenter also cites SB 288 and H & S §42504(a), which provides that a district may not "amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002." PR 1315 cannot violate this provision since as of December 30, 2002, the District did not have any NSR rule governing accounting for federal equivalency, so PR 1315 cannot be less stringent than 2002 rules. Moreover, the District believes that SB 288 does not apply to offset requirements in any event. Finally, as noted above, PR 1315 actually makes the existing program more stringent by limiting access to credits where the District projects that insufficient credits will be available.

Comment #10: (Page 8, Section II-B-4)

Proposed Rule 1315 would make current accounting practices less stringent and roll them back compared to federal NSR standards by including certain credits which were not previously available for purchase. This change will increase available NOx credits by 39%, which is an example of backsliding from existing rules.

Response *The proposed rule memorializes the currently available accounting practices. Some aspects (i.e. minor sources shutdowns, etc.) of the proposed accounting methodology were always available the entire subject period, but due to the ample amounts available and resource constraints, weren't quantified in the past accounting. In addition, while the amount of NOx has increased, the rest of the criteria pollutants have decreased by much greater percentages. For all pollutants, the revised 2002 balances have been reduced by an overall 42%. Individual reductions – excluding NOx - have ranged from a maximum of 81% for PM10 to 36% for VOC. Moreover, as indicated earlier, these sources of credits have always been available, but AQMD had not previously quantified them for purpose of accounting. Additionally, sources of NOx emissions are combustion sources, which also emit CO, PM10, and VOCs, which again are being sharply decreased. Thus, a new or modified source relying on the Priority Reserve would be limited in its ability to increase NOx emissions, because of the more limited amounts of CO, PM10, and VOCs. Therefore, there is no backsliding from current rules.*

Comment #11: (Page 8, Section II-B-4)

The amount of past credits that AQMD claims will be reduced are invalid due to lack of documentation which also is a violation of state and federal law.

Response *AQMD has decided to remove the past credits from its federal offset accounts because it presently does not retain any documentation related to the generation of such credits. This was a voluntary change made by AQMD in order to reach agreements with EPA on the overall tracking system. The credits were not removed because they were considered*

invalid, and up until this time had resided in AQMD's federal offset account as an available source of credits. Also AQMD is not requesting any State Implementation Plan (SIP) emission reductions for such action. Therefore, there is no violation of state or federal law.

EPA has previously approved the use of these credits in its 1996 approval of the District's NSR rules. Therefore, EPA did not believe these credits were invalid under federal law.

Comment #12: (Page 8, Section II-B-4)

Proposed Rule 1315 will take credit for 20% extra reductions, thus what used to be 20% reduction from major sources will become a purchasable credit, producing an offset ratio of 1:1, which constitutes backsliding and a violation of state law.

Response *The use of 20% extra reductions as credits due to the offset ratios is in recognition that federal law only requires a 1 to 1 ratio for SOx, CO, and PM10. Although AQMD's NSR rule requires a 1.2 to 1 ratio, the additional 20% reductions has always been a surplus to federal NSR requirements. The AQMD had previously not quantified such surplus credits and PR 1315 merely formalizes the procedures that AQMD uses to quantify such surplus credits. AQMD's NSR rule still requires a 1.2 to 1 offset ratio for all pollutants. Therefore, there is no increase in emissions or violations of the state law. CARB has also not found any violations of state law in PR 1315. (Also please see response to comment #6 and to comment #9, relating to backsliding.)*

Comment #13: (Page 8, Section II-B-5)

Proposed Rule 1315 retroactively reassigns ERCs from orphan shutdowns without agreement from their original owners and wrongfully assumes the right to deposit these newly created credits into offset accounts without retiring them.

Response *As indicated earlier, PR 1315 merely memorializes the AQMD's federal NSR offset tracking procedures. The purpose of such accounting is to demonstrate whether or not in the aggregate there were sufficient credits surplus to federal NSR requirements to offset increases from major sources which are exempt from providing offsets in the form of ERCs under AQMD's NSR program. If emission reductions associated with shut down of equipment are to be used to offset emission increases from sources that are not exempt from AQMD's NSR offset requirements, the equipment operator must apply and obtain ERCs. If a source does not apply for ERCs, then such emission reductions are considered surplus to federal requirements. AQMD uses the NSR tracking procedures to quantify and track such reductions, as well as increases from major sources which are exempt from offset requirements under AQMD's NSR*

program, in order to show that the overall emission reductions are equal to or greater than the emission increases from such sources. If a source wishes to retire their reductions, it can apply for an ERC and subsequently retire the ERC. If they fail to do so, they have abandoned their credits, giving up any right to control what will be done with them. Finally, as indicated before, the minor source orphan shutdowns have always been surplus but not previously quantified. PR 1315 does not increase or decrease such credits, but rather formalizes the procedure used for tracking and accounting for such reductions and increases.

Comment #14: (Page 12, Section II-C-4) AQMD piecemeals the CEQA analysis by not addressing the environmental impacts of PAR 1309.1, 1302 and 1315 together.

Response *As discussed in Response to Comment 1, PR 1315 will not result in any adverse environmental impacts, and does not even qualify as a "project" under CEQA. Therefore, considering PR 1315 separately from PAR 1309.1 does not violate the requirement that a "project" include "the whole of an action" (CEQA Guidelines §15378) and does not constitute piecemealing.*

Comments by Coalition for a Safe Environment

Comment #1: (Page 1, Item #1) The amendments provide no environmental benefits and therefore violate CEQA.

Response: *Throughout this letter, the commenter fails to identify what rule amendment is being referred to. For purposes of responding where it is unclear, AQMD will assume the commenter refers to PR 1315. CEQA does not require environmental benefit, so Comment 1 does not establish a violation.*

Comment #2: (Page 1, Item #2) The amendments will increase cumulative impacts by allowing new polluting facilities to be established, and will allow new sources and types of pollution, in violation of CEQA.

Response: *See response #1 to NRDC comment letter. PR 1315 does not cause any adverse environmental impact.*

Comment #3: (Page 2, Item #3) The amendments will cause asthma in children, respiratory health problems, cardiovascular disease and premature death, in violation of CEQA.

Response: *See response #1 to NRDC comment letter. PR 1315 does not cause any adverse environmental impact.*

Comment 4: (Page 2, Item #4) The amendments allow the expansion of an illegal pollution trading program and will allow an increase in pollution.

Response: *See response #1 to NRDC comment letter. Offset programs for major NSR sources are not illegal but in fact required by federal law.*

Comment #5: (Page 2, Item #5) The amendments illegally subsidize polluters by allowing them to purchase credits at a cheap price. AQMD gives polluters a license to kill and creates a permanent public health crisis.

Response: *This comment refers to PAR 1309.1, not to PR 1315. However, the credit prices contained in PR 1309.1 are intended to be representative of recent market prices. Moreover, whenever AQMD issues a permit, it assures that there will not be a significant increase in criteria pollutant concentrations, through Regulation XIII, and assures that toxic pollutants will not create risks beyond what the District Board has deemed acceptable in Rule 1401 (e.g., 10 in a million cancer risk and using Best Available Control*

Technology to reduce toxics). AQMD is doing everything it its power to reduce public health risks resulting from air pollution, including the most stringent control program in the nation.

Comment #6: (Page 2, Item #6) There were no meetings in Environmental Justice Communities where new toxic polluting facilities are being proposed. AQMD refused to extend the public comment period. There is no need to adopt in September.

Response: *This comment pertains to PAR 1309.1. However, AQMD's permit process will assure that any new sources do not exceed legal limits on toxic pollution.*

Comment #7: (Page 3, Item #7) AQMD failed to advertisein newspaper, radio, or television, attend any community meeting, or distribute public information to the Environmental Justice Communities that will be impacted by these amendments.

Response: *The public notices for the public consultation meeting regarding PR 1315 and the two workshops regarding Proposed Amended Rules (PARs) 1302 and 1309.1 described the proposed project and announced the date, time and location of the meetings and the notices were posted in local newspapers in each of the four counties. An Initial Study and a Draft EA were prepared for PARs 1302 and 1309.1 and both the Notice of Preparation (NOP) and Notice of Completion (NOC) were published in the Los Angeles Times which is the most widely distributed regional newspaper in southern California. The NOP and NOC also provided a brief description of the proposed project and where the CEQA document could be obtained or accessed. These notices were also sent via e-mail to interested parties, local cities, counties, school and fire department contacts. Interested parties include citizen groups such as environmental organizations. Specifically, Julie Masters and Tim Grabiel from the Natural Resources Defense Council; Joseph K. Lyou Ph D from California Environmental Rights Alliance; Scott Kuhn, Bahrem Fazeli and Agustin Eichwald from Communities for a Better Environment; Mary Ann Webster from the Sierra Club; Robina Suwol from California Safe Schools; Cynthia Babich from Del Amo Action Committee; Jan Musquit from Center for Community Action & Environmental Justice and Jesse Marquez from the Coalition for a Safe Environment receive all notifications regarding all our CEQA actions. Further, notices have been sent to contacts in EJ communities such as Mariano Aguirre at the City of Huntington Park, Julia Gonzalez at the City of Maywood, and Gretchen Hardison and Wayne King at the City of Los Angeles (whose jurisdiction includes the Wilmington area). Finally, proposed rules, staff reports and*

CEQA documents have been available online and at the SCAQMD's Public Information Center.

Comment #8: (Page 3, Item #8) AQMD is misleading the public by giving the impression that new projects will be approved, when they may not be. CEQA requires description of these projects.

Response: *This comment pertains to PAR 1309.1. However, AQMD has not implied that any project will necessarily be approved. AQMD will postpone the portions of PAR 1309.1 which are not statutorily exempt from CEQA to give fuller CEQA consideration to non-exempt projects.*

Comment #9: (Page 3, Item #9) AQMD should have consulted with its Environmental Justice Advisory Committee.

Response: *PR 1315 does not have any adverse impact on the environment, as explained in Response to comment No. 1 to the group of environmental organizations' comment letter.*

Comment #10: (Page 3, Item #10) The amendments violate AQMD, state, and federal Environmental Justice Policies.

Response: *PR 1315 does not have any adverse impact and does not violate any environmental justice policies.*

Comment #11: (Page 3, Item #11) PR 1309.1 lists certain specific projects that have not submitted permit applications. Why is there no description of these projects in the environmental assessment?

Response: *This comment pertains to PAR 1309.1.*

Comment #12: (Page 4, Item #12) CEQA requires "alternatives to activity." AQMD should have included alternatives to the projects listed in Table 1 or the EA.

Response: *This comment pertains to PAR 1309.1. However, the "activity" being approved is PAR 1309.1, not the individual projects that may in the future use credits under PAR 1309.1. These projects will be subject to full CEQA analysis, including alternatives if there are any significant adverse impacts of such projects. AQMD will consider alternatives to the "activity," i.e., PAR 1309.1 in its CEQA analysis of that rule.*

Comment #13: (Page 4, Item #13) AQMD has not provided an assessment of reasonably foreseeable impacts or appropriate mitigation measures for any of the projects listed in Table 1 or the EA.

Response: *This comment pertains to PAR 1309.1*

Comment #14: (Page 4, Item #14)
Proposed Rule 1315 accounting changes violate the Federal NSR rules which require that reductions be surplus and permanent. AQMD is in violation of the Clean Air Act and federal NSR.

Response: *As indicated earlier, PR 1315 is merely formalizing the accounting mechanism for federal NSR offset tracking. In addition, as indicated in responses to comments #4 and #7 to the group of environmental organizations' comment letter, the credits tracked by PR 1315 are both surplus and permanent. Therefore, there are no violations of the Clean Air Act or federal NSR.*